

**RESOLUTION NO. 2015 -043**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A LEASE AGREEMENT AND A MAINTENANCE CONTRACT WITH TOSHIBA AMERICA BUSINESS SOLUTIONS, INC. FOR THREE (3) COPIER/PRINTER/SCANNERS; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, all departments of the Town, rely on the current copiers to make copies and scan documents in the course of carrying out the responsibilities they are charged with; and

**WHEREAS**, currently the Town has a lease agreement with Toshiba America Business Solutions, Inc. to lease three copiers that will expire in May 2015; and

**WHEREAS**, the Town is desirous of leasing three new copier/printer/scanners to perform copying, printing, and scanning as needed to conduct normal business operations; and

**WHEREAS**, it is in the best interest of the Town to also enter into a Maintenance Contract with Toshiba America Business Solutions, Inc. for the proper maintenance and servicing of the three (3) copier/ printer/scanners; and

**WHEREAS**, Town Staff has reviewed operating costs and based on comparative Florida State Contract pricing, technical specifications and performance efficiencies offered, staff determined that the solution provided by Toshiba America Business Solutions, Inc. is the best choice overall for meeting Town Staff needs as outlined above.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**SECTION 1. ADOPTION OF RECITALS.** The foregoing recitals are true and correct, and are incorporated herein by reference.

**SECTION 2.** The Town Council hereby approves the leasing of three (3) copier/ printer/scanners, pursuant to a lease agreement with Toshiba America Business Solutions, Inc. in substantially the form attached hereto as Exhibit "A" (the "Lease Agreement"), with such changes, insertions and omissions as may be necessary to effectuate the intent of this Resolution.

**SECTION 3.** The Town Council hereby approves the Maintenance Contract for the maintenance and servicing of three (3) copier/ printer/scanners, in substantially the form

attached hereto as Exhibit "B" (the "Maintenance Contract"), with such changes, insertions and omissions as may be necessary to effectuate the intent of this Resolution.

**SECTION 4.** The Mayor or Vice Mayor and the Town Administrator, as attested by the Town Clerk and approved as to legal form and correctness by the Town Attorney, are hereby authorized and directed to enter into the Lease Agreement and Maintenance Contract with Toshiba America Business Solutions, Inc. for three (3) copier/printer/scanners.

**SECTION 5. SAVINGS CLAUSE.** If any section, paragraph, sentence, clause or phrase of this Resolution shall, for any reason, be held to be invalid or unenforceable, such decision shall not affect the validity of the remaining sections, paragraphs, sentences, clauses or phrase of this Resolution.

**SECTION 6. CONFLICTS.** All resolutions or parts thereof which conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 7. EFFECTIVE DATE.** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 23<sup>rd</sup> day of April, 2015, on a motion by

C/M McKay, seconded by C/M Breitkreuz.

Nelson	<u>Yes</u>	Ayes	<u>5</u>
Fisikelli	<u>Yes</u>	Nays	<u>0</u>
Breitkreuz	<u>Yes</u>	Absent	<u>0</u>
Jablonski	<u>Yes</u>	Abstaining	<u>0</u>
McKay	<u>Yes</u>		

[Signature]  
Jeff Nelson, Mayor

ATTEST:  
[Signature]  
Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to legal Form and Correctness  
[Signature]  
Keith M. Poliakoff, Esq., Town Attorney



FMV LEASE AGREEMENT



APPLICATION NUMBER: \_\_\_\_\_ AGREEMENT NUMBER: \_\_\_\_\_

The words Lessee, you, and your refer to the customer. The words Lessor, we, us and our refer to Toshiba Financial Services. The Toshiba Equipment is covered by the terms of the Toshiba Quality Commitment, a copy of which may be obtained from your Toshiba Business Solutions (TBS) provider. We own the Equipment (excluding software) and you have the right to use it under the terms of this Lease.

CUSTOMER CONTACT INFORMATION

Legal Company Name: **TOWN OF SOUTHWEST RANCHES** Fed. Tax ID #: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Bill-To Phone: \_\_\_\_\_ Bill-To Fax: \_\_\_\_\_  
 Billing Address: **13400 GRIFFIN ROAD** City, State-Zip: **SOUTHWEST RANCHES, FL 33330**  
 Equipment Location: \_\_\_\_\_ City, State-Zip: \_\_\_\_\_  
 (If different from above)

TBS LOCATION

Contact Name: **PAULINE GREGORY** Subsidiary Location: **TBSFL**

ITEM DESCRIPTION	MODEL NO.	SERIAL NO.
(2) ESTUDIO5560CT (3 Drawer Version)	(1) ESTUDIO257 (25 PPM MFD)	
(2) 50-SHEET STAPLE FINISHER (MJ1109)	(1) RADF (MR3028)	
(2) HOLE PUNCH UNIT (MJ6102)	(1) STAPLE FINISHER (MJ1032N)	
(2) RAIL FOR FINISHER (KN1103)	(1) STAND (STAND 355/455)	
(1) FAX BOARD (GD127ONXF)		

See attached form (Schedule "A") for Additional Equipment

LEASE TERM & PAYMENT SCHEDULE

Number of Payments: **36** **577.39** ~~\$579.39~~ (plus applicable taxes)  
 Security Deposit: \$ \_\_\_\_\_  Received   
 Documentation Fee: **\$75.00 (included in First Invoice)**

Lease payment period is monthly unless otherwise indicated. End of Lease Options: You will have the following options at the end of your original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing:  
 1. Purchase the Equipment at Fair Market Value - 2. Renew the Lease per section 16  
 3. Return Equipment

**THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT. THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED.**

LESSOR ACCEPTANCE

Toshiba Financial Services Signature: *[Signature]* Title: *[Signature]* Date: **4/23/15**

CUSTOMER ACCEPTANCE

You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes. This Lease may be executed in counterparts. The executed counterpart which has Lessor's original signature and/or is in Lessor's possession shall constitute chattel paper as that term is defined in the Uniform Commercial Code ("UCC") and shall constitute the original agreement for all purposes, including, without limitation, (i) any hearing, trial or proceeding with respect to this Lease, and (ii) any determination as to which version of this Lease constitutes the single true original item of chattel paper under the UCC. If Lessee signs and transmits this Lease to Lessor by facsimile or other electronic transmission, the transmitted copy, upon execution by Lessor, shall be binding upon the parties. Lessee agrees that the facsimile or other electronic transmission of this Lease manually signed by Lessor, when attached to the facsimile or other electronic copy signed by Lessee, shall constitute the original agreement for all purposes, including, without limitation, those outlined above in this Section. Without limiting and subject to the foregoing, the parties further agree that, for purposes of executing this Lease, (a) a document signed and transmitted by facsimile or other electronic transmission shall be treated as an original document, (b) the signature of any party on such document shall be considered as an original signature, (c) the document transmitted shall have the same effect as a counterpart thereof containing original signatures, and (d) at the request of Lessor, Lessee, who executed this Lease and transmitted its signature by facsimile, or other electronic transmission shall provide the counterpart of this Lease containing Lessee's original manual signature to Lessor. No party may raise as a defense to the enforcement of this Lease that a facsimile or other electronic transmission was used to transmit any signature of a party to this Lease.

Name: **Jeff Nelson** Signature: *[Signature]* Title: **Mayor** Date: **4/23/15**

PERSONAL GUARANTY

To induce us to enter into this lease and any supplement, the undersigned jointly and severally and unconditionally guarantee to us the prompt payment when due of all lease obligations to us under the Lease and any supplement. We will not be required to proceed against the lessee or the Equipment or enforce any other remedy before proceeding against the undersigned. The undersigned agree to pay all reasonable attorney's fees and other expenses incurred by us by reason of default by lessee or the undersigned. The undersigned waive notice of acceptance hereof and of all other notices or demands of any kind to which the undersigned may be entitled. The undersigned consents to any extensions or modifications granted to us and the release and/or compromise of any obligations of lessee or any other obligor and guarantor without in any way releasing the undersigned from his or her obligations hereunder. The obligations of the undersigned shall continue even if the lessee becomes insolvent or bankrupt or is discharged from bankruptcy, and the undersigned agree not to seek to be repaid by lessee in the event the undersigned must pay us. This is a continuing guaranty and shall not be discharged or affected by death of the undersigned, shall bind the heirs, administrators, representatives, successors and assigns of undersigned, and may be enforced by or for the benefit of any assignee or successor of us. The undersigned and we waive heretofore permitted by law any trial by jury for any action between the parties. You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.

By providing a telephone number for a cellular phone or other wireless service, you are expressly consenting to receiving communication (for NON Marketing or solicitation purposes) at that number, including but not limited to, pre-recorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls. This call and messages may incur fees from your cellular provider.

Print Name of 1st Guarantor: \_\_\_\_\_ Signature: *[Signature]* Date: \_\_\_\_\_  
 Print Name of 2nd Guarantor: \_\_\_\_\_ Signature: *[Signature]* Date: \_\_\_\_\_

## TERMS AND CONDITIONS

1. **Lease Agreement:** You agree to lease from us the equipment described under "ITEM DESCRIPTION" and on any attached Schedule (hereinafter, with all replacement parts, repairs, additions and accessories, referred to as the "Equipment") and as modified by Supplements to this Lease from time to time signed by you and us. You authorize us to insert or correct missing information on this Lease, including your accurate legal name, serial numbers and any other information describing the Equipment. ~~You authorize us to change the amount of each lease payment by not more than 15% due to changes in the equipment configuration which may occur prior to our acceptance of this lease or adjustments to reflect applicable sales taxes. We will send you copies of any changes. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignees or third parties having an economic interest in the Lease or the Equipment.~~
2. **Lease Commencement:** This Lease will commence upon your acceptance of the applicable Equipment. When you receive the Equipment, you agree to inspect it and verify your acceptance by telephone or, at our request, by delivery of written evidence of acceptance satisfactory to us. Upon acceptance, your obligations under this Lease will become absolute and unconditional, and are not subject to cancellation, reduction or setoff for any reason whatsoever. All payments will be made to us in accordance with the applicable Schedule at our address or at such other place as we may designate in writing. You agree to pay an Interim rent payment equal to 1/30th of the monthly rental, multiplied by the number of days between rent commencement date and the date of the beginning of the first rental period. For any payment that is not received by its due date, you agree to pay a late charge equal to the higher of 10% of the amount due or \$22 (not to exceed the maximum allowed by law) as reasonable collection costs.
3. **Security Deposit:** ~~The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions are fully completed with and provided you have not ever been in default of the Agreement in the Default section, the security deposit will be refunded to you after the return of the equipment in accordance with the Return of Equipment section.~~
4. **WARRANTY DISCLAIMER:** WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT AND TBS BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. YOU LEASE THE EQUIPMENT "AS IS". NO REPRESENTATION OR WARRANTY OF TBS WITH RESPECT TO THE EQUIPMENT WILL BIND US, NOR WILL ANY BREACH THEREOF RELIEVE YOU OF ANY OF YOUR OBLIGATIONS HEREUNDER. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS LEASE.
5. **Statutory Finance Lease:** You agree that this Lease qualifies as a statutory finance lease under Article 2A of the Uniform Commercial Code. To the extent you are permitted by applicable law, you waive all rights and remedies conferred upon a lessee by Article 2A (sections 608.622) of the Uniform Commercial Code.
6. **Security Interest:** You authorize us to file a financing statement with respect to the equipment. If this Lease is deemed to be a secured transaction, you grant us a security interest in the Equipment to secure all your obligations under this Lease.
7. **Use Maintenance and Repair of Equipment:** YOU WILL USE THE EQUIPMENT ONLY IN THE LAWFUL CONDUCT OF YOUR BUSINESS AND NOT FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES. You will not move the Equipment from the equipment location listed on the schedule without our advance written consent. You will give us reasonable access to the Equipment so that we can check the Equipment's existence, condition and proper maintenance. At your cost, you will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. You will not make any permanent alterations to the Equipment. You will keep the Equipment free and clear of all liens. You assign to us all of your rights, but none of your obligations, under any purchase agreement for the Equipment. We assign to you all our rights under any TBS warranties, so long as you are not in default.
8. **Taxes and Lease Charges:** You agree to pay all taxes, costs and expenses incurred by us as a consequence of the ownership, sale, lease or use of the Equipment, including all sales, use and documentary stamp taxes. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.
9. **Indemnity:** You will indemnify and hold us harmless from any and all liability, damages, losses or injuries including reasonable attorney's fees, arising out of the ownership, use, condition or possession of the Equipment, except to the extent directly caused by our gross negligence or willful misconduct. We reserve the right to control the defense and to select or approve defense counsel. This Indemnity will survive the termination of this Lease.
10. **Risk or Loss; Insurance:** You are responsible for risk of loss or for any destruction of or damage to the equipment. No such loss or damage shall relieve you from the payment obligations under this Lease. You agree to keep the Equipment fully insured against loss until this Lease is paid in full and to have us and our assigns named as loss payee. You also agree to maintain public liability insurance covering both personal injury and property damage and you shall name us and our assigns as additional insured. Upon request, you agree to provide us certificates or evidence of insurance acceptable to us. If you do not provide evidence of acceptable insurance, (a) we have the right but no obligation to obtain insurance covering our interest (and only our interest) in the Equipment for the Lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. You will be required to pay us an additional amount each month for the insurance and administrative fee. The cost may be more than the cost of obtaining your own insurance and we may make a profit. You agree to cooperate with us, our insurer and our agent in the placement of coverage and with claims, or (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the total stream of payments to cover our credit risk, administrative costs and other costs and in which we may make a profit. Once an acceptable certificate or evidence of insurance is submitted, any such fees will be discontinued. If any of the Equipment is lost, stolen or damaged you will at your option and cost, either (a) repair the item or replace the item with a comparable item reasonably acceptable to us, or (b) pay us the sum set forth in the Remedies section.
11. **Right to Perform:** If you fail to comply with any provision of this Lease, we may, at our option, perform such obligations on your behalf. Upon invoice you will reimburse us for all costs incurred by us to perform such obligations.
12. **Representations:** (a) You represent and warrant to us that (1) you have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease have been duly authorized to do so on your behalf, (3) you will notify us such financial information as we may reasonably request from time to time, (4) all financial information provided (or to be provided) is (or will be) accurate and complete in all material respects, (5) you will promptly notify us in writing if you move your principal place of business or there is a change in your name state of formation, or ownership, and (6) you will take any action we reasonably request to protect our rights in the Equipment. (b) We represent and warrant to you that (1) we have the lawful power and authority to enter into this Lease, and (2) the individuals signing this Lease have been duly authorized to do so on our behalf.
13. **Default:** You will be in default under this Lease if: (a) we do not receive any payment due under that Lease within ten (10) days after its due date, (b) you fail to meet any of your obligations in the Lease (other than payment obligations) and do not correct such default within 10 days after we send you written notice of such default, (c) you become insolvent, are liquidated or dissolved, merge, transfer a material portion of your ownership interest or assets, stop doing business, or assign rights or property for the benefit of creditors, (d) a petition is filed by or against you under any bankruptcy or insolvency law, (e) any representation made by you is false or misleading in any material respect, or (f) you default on any other agreement with us or our assigns.
14. **Remedies:** If you are in default, we may, at our option, do any or all of the following: (a) retain your security deposit, if any, (b) terminate this Lease, (c) require that you pay, as compensation for loss of our bargain and not as a penalty, the sum of (1) all amounts due and payable by you or accrued under this Lease, plus (2) the present value of all remaining payments to become due under this Lease (discounted at 4% or the lowest rate allowed by law), and (3)(i) the amount of any purchase option and, if none is specified, 20% of the original equipment cost, which represents our anticipated residual value in the Equipment or (ii) return the Equipment to a location designated by us and pay to us the excess, if any, of the amount payable under clause 3(i) above over the Fair Market Value of the returned Equipment as determined by us in our reasonable discretion, (d) recover interest on any unpaid balance at the rate of 4% per annum, and (e) exercise any other remedies available to us at law or in equity. You agree to pay our reasonable attorney's fees and actual court costs including any cost of appeal. If we have to take possession of the Equipment, you agree to pay the cost of repossession and we may sell or re-rent the equipment at terms we determine, at one or more public or private sales, with or without notice to you, and apply the net proceeds (after deducting any related expenses) to your obligations. You may remain liable for any deficiency with any excess being retained by us.
15. **Purchase Option:** At the end of the Term provided you are not in default, and upon 30 days prior written notice from you, you will either (a) return all the Equipment, or (b) purchase all the Equipment as is, without any warranty to condition, value or title for the Fair Market Value of the Equipment as determined by us in our reasonable discretion plus applicable sales and other taxes.
16. **Automatic Renewal:** This Lease will automatically renew on a month-to-month basis after the Term unless cancelled by either party upon 30 days prior written notice, and you shall pay us the same lease payments and lease charges as applied during the Term (and be subject to the terms and conditions of this Lease) until the Equipment is returned to us or you pay us the applicable purchase price (and taxes).
17. **Return of Equipment:** If (a) a default occurs, or (b) you do not purchase the Equipment at the end of the Term pursuant to a stated purchase option, you will immediately return the equipment to any location(s) we may designate in the continental United States. The Equipment must be returned in "Average Saleable Condition" and properly packed for shipment in accordance with our recommendations or specifications, freight prepaid and insured. "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third party, other than you, without the need for any repair or refurbishment. All Equipment must be free of markings. You will pay us for any missing or defective parts or accessories.
18. **Assignment:** We may, without your consent, assign or transfer any Equipment or this Lease, or any rights arising under this Lease, and in such event our assignee or transferee will have the rights, power, privileges and remedies of lessor hereunder, but none of the obligations. Upon such assignment you agree not to assert, as against our assignee, any defense, setoff, recoupment, claim or counterclaim that you may have against us. You will not assign, transfer or sublease this Lease or any rights thereunder or any Equipment subject to this Lease without our prior written consent.
19. **Personal Property Tax (PPT):** You agree at our discretion to (a) reimburse us annually for all personal property and similar taxes associated with the ownership, possession or use of the Equipment or (b) remit to us each billing period our estimate of the prorated equivalent of such taxes. You agree to pay us an administrative fee for the processing of such taxes.
20. **Tax Indemnity:** You agree to indemnify us for the loss of any income tax benefit caused by your acts or omissions inconsistent with our entitlement to certain tax benefits as owner of the Equipment.
21. **Governing Law:** BOTH PARTIES AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL. This Agreement and any supplement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under this Agreement, you irrevocably agree that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts of your state of residence, or in any other court having jurisdiction over you or your assets, all at the sole election of the Lessor or its Assignee. You hereby irrevocably submit generally and unconditionally to the jurisdiction of any such court so elected by Lessor or its Assignee in relation to such matters.
22. **Miscellaneous:** This Lease contains the entire agreement between you and us and may not be modified except as provided therein or in writing signed by you and us. We will not accept payment in cash. If you so request, and we permit the early termination of this Lease, you agree to pay a fee for such privilege. Notices must be in writing and will be deemed given five days after mailing to your or our mailing address. If a court finds any provision of this Lease to be unenforceable, all other terms of that Lease will remain in effect and enforceable. You agree that any delay or failure to enforce our rights under this Lease do not prevent us from enforcing any rights at a later time. In no event will we charge or collect any amounts in excess of those allowed by applicable law. Time is of the essence. You agree that a facsimile copy of the Lease with facsimile signatures may be treated as an original and will be admissible as evidence of the Lease. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or supplier of the Equipment. It is the Lessee's sole and exclusive responsibility to assure that all data from all disk drives or magnetic media are erased of any lessee data and information.

Subject to  
Section  
768.28,  
Florida  
Statutes.

Jurisdiction  
and venue  
shall be in  
Broward  
County,  
Florida



AIMS MAINTENANCE CONTRACT

MS-1.0.0

CUSTOMER NUMBER DATE

Sales Representative: PAULINE GREGORY

Customer agrees to purchase and Toshiba Business Solutions agrees to provide parts, labor, ink, toner, and toner collection containers (the "Maintenance Services") for the equipment listed below in accordance with the terms and conditions of this contract. The Maintenance Services exclude paper, staples and all other parts and services listed under the Exclusion section on page two of the contract. A Connectivity & Security Options Agreement must be attached and executed for Network Integration Support.

CUSTOMER INFORMATION

Customer Name:	TOWN OF SW RANCHES	Bill to Number:	
Billing Address:	TOWN CLERKS OFFICE	Phone #:	954-434-0008 Ext. Fax #:
Address 2:	13400 GRIFFIN ROAD	Contact:	RUSSELL MUNIZ Customer PO #:
City:	SW RANCHES State: FL Zip: 33330	eMail:	RMUNIZ@SOUTHWESTRANCHES.ORG

DEVICE DETAILS

LOCATION INFORMATION

Ship to Name:	TOWN OF SW RANCHES	Ship to Number:	
Shipping Address:	13400 GRIFFIN ROAD	Phone #:	Ext.
City:	SW RANCHES State: FL Zip: 33330	Fax #:	
Contact:	email:	Delivery Date:	Ship:

EQUIPMENT				PRODUCT NUMBER	ID #	SERIAL NUMBER	
(2) 5560CT AND (1) 257							
TYPE	START METER	INCLUDES	UNITS	MINIMUM PAYMENT	PAYMENT FREQUENCY	EXCESS CHARGE	EXCESS BILLING FREQUENCY
Color Images		ZERO	Clicks	ZERO	Monthly	\$0.04500	
Black Images		ZERO	Clicks	ZERO	Monthly	\$0.00528	
Black Images		ZERO	Clicks	ZERO	Monthly	\$0.00721	

See attached Maintenance Contract Schedule for additional covered devices

INVOICE INFORMATION

Invoice Customer Address Location  Invoice Equipment Location

DECLINATION

Customer is declining maintenance on the equipment listed above.

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_

ACCEPTANCE

THE TERMS AND CONDITIONS HEREOF ARE PART OF THIS SERVICE AGREEMENT. BY SIGNING THIS CONTRACT, THE CUSTOMER ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTAND THESE TERMS.

Customer agrees to pay the Minimum Payment per transaction terms, plus any Excess Per Click Charges for the term of this Contract. When this Contract is signed by Customer and TBS, it shall constitute a binding contract and is non-cancelable. This Contract will begin on the date signed by TBS below. ~~You hereby acknowledge and agree that your electronic signature below shall constitute an enforceable and original signature for all purposes.~~

Customer:	Town of Southwest Ranches	Toshiba Business Solutions	
Printed Name:	Jeff Nelson, Mayor	Printed Name:	Ron Moreno
Signature:		Signature:	
Title:	Mayor	Title:	Contract mgr
Date:	4/23/15	Effective Date:	4-23-15

**TERMS AND CONDITIONS (CONTINUED)****Customer Initials**

1. **ACCEPTANCE.** This Contract shall not be effective unless signed by the authorized TBS representative (Effective Date) within 30 days from the Customer's signing of this Contract.
2. **TERM.** This Contract will remain in force for one (1) year from the Effective Date (Renewal Date) and will then be automatically renewed for annual period(s) unless either party provides notice of termination not less than thirty (30) days prior to the Renewal Date. For each piece of equipment under this Contract there will be a Start Date & Start Meter which is shown on the face of this Contract. Service for each piece of equipment will be provided from the Start Date & Start Meter until this Contract is terminated or the equipment is withdrawn from the service. Customer may withdraw individual equipment by providing thirty (30) day written notice prior to the Renewal Date. Customer is responsible for all remaining Minimum Payments if Customer is in default or if equipment is withdrawn prior to Renewal Date.
3. **SERVICE AVAILABILITY.** TBS will provide service during TBS's normal service hours while the equipment is located within TBS's designated service area. Service outside TBS's designated area, if available and accepted by TBS is subject to a Trip Charge, which shall be based on reasonable travel expense for TBS's personnel. It is the responsibility of the Customer to notify TBS prior to relocating equipment. The service to keep the equipment in or restore the equipment to good working order includes Emergency Service Calls and Periodic Maintenance (PM's). PM's may be performed during the course of an Emergency Service Call and are based upon the specific needs of the individual equipment as determined by TBS. Maintenance will include lubrication, adjustments and replacement of maintenance parts deemed necessary by TBS. Maintenance parts will normally be either new or equivalent to new in performance when installed in the equipment. Maintenance parts will be furnished on an exchange basis and the replaced parts become the property of TBS. Service provided under this Contract does not assure the uninterrupted operation of the equipment. If the Customer requests service to be performed at a time outside TBS's normal service hours, there will be no additional charge for maintenance parts, however, the service, if available, will be furnished at TBS's applicable hourly rates and terms then in effect. Nothing herein shall be construed to require TBS to provide service outside its normal service hours and TBS hereby reserves the right to accept or reject such requests. In the event there is a substantial increase in the cost of fuel, Customer agrees to pay a fuel surcharge. "Substantial" shall be defined as a 10% or more change over a six month period in the average national fuel cost as reported by the United States Energy Information Administration. If there is a substantial decline in the cost of fuel, the fuel surcharge, if applied by TBS pursuant to this provision, may be decreased accordingly. The benchmark will be the national average fuel cost as reported by the United States Energy Information Administration on the Effective Date of this Agreement.
4. **NETWORK INTEGRATION SUPPORT.** Support of print controllers and print/scan enablers that permit the integration of the device onto a Customer's network is covered under the terms of a properly executed Connectivity & Security Options Agreement. The Connectivity & Security Options Agreement is an amendment to this contract and must be attached and/or on file for this optional service support.
5. **INVOICING - LATE CHARGES.** The first Minimum Payment is due upon receipt of an invoice. Thereafter, Minimum Payments will be due on the same date each month during the Term of this Contract whether or not Customer receives an invoice. Customer's obligation to pay the Minimum Payment is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. Excess Click Charge, if applicable, will be invoiced based on the billing period selected on the face of this contract. If any part of a payment is not made by the Customer when due, Customer agrees to pay TBS a Late Charge of the higher of \$25 or two percent (2%) of each such late payment, but not more than permitted by law. Customer agrees to pay TBS the Late Charge not later than one (1) month following the date of the original Minimum Payment.
6. **USAGE.** In return for the Minimum Payment, Customer is entitled to use the Minimum Number of Clicks each billing period. If Customer uses more than the Minimum Number of Clicks in any billing period, Customer will pay an additional amount equal to the number of metered clicks exceeding the agreed Minimum Number of Clicks times the Excess Click Charge as shown on the face of this Contract. In no event shall the Customer be entitled to any refund or rebate of the Minimum Payment if metered clicks result in less than the Minimum Number of Clicks in any billing period. Customer will provide meter readings via an automated website when requested by TBS. TBS may estimate the number of clicks used if requested Meter Readings are not received before a new billing period begins. TBS will adjust the estimated charge for Excess Clicks upon receipt of actual Meter Readings. Notwithstanding any adjustment, the Customer will never pay less than the Minimum Payment. TBS may charge a fee to recover the cost of meter collections if meters are not submitted through the automated website. The Minimum Payment, and Excess Click Charge are subject to increase each year during the Term of this Contract by an amount not to exceed fifteen percent (15%) of the Minimum Payment and Excess Click Charge in effect at the end of the prior annual period, or the maximum percentage permitted by law, whichever is lower.
7. **CONSUMABLE SUPPLIES.** TBS agrees to furnish consumable supplies (ink, toner and toner collection containers) for the Term of the Contract. Customer is responsible for ordering supplies to assure ample time for delivery. TBS may charge you a supply freight fee to cover our cost of shipping supplies to you. TBS will determine the number of supplies to be shipped based on the Minimum Number of Clicks and Excess Clicks metered. If TBS determines that the Customer has used more than fifteen percent (15%) supplies than normal for the number of metered clicks, based on yields published by the manufacturer, Customer agrees to pay TBS's customary charges for all excess supplies. All supplies delivered as part of this Contract remain the property of TBS until and unless they are consumed by the equipment in the performance of this Contract. Any supplies not consumed as specified and not surrendered to TBS upon expiration or termination of this Contract will be invoiced to the Customer at TBS's then current prices. Customer agrees to provide insurance coverage for supplies in case of loss under any circumstances. Notwithstanding the foregoing, the risk of loss of the consumable supplies shall be transferred from TBS to Customer if such consumable supplies are stored at Customer's facility.
8. **TAXES.** In addition to the charges due under this Contract, the Customer agrees to pay amounts equal to any taxes resulting from this Contract, or any activities hereunder, exclusive of taxes based upon net income.
9. **INSTALLATION AND ACCESS TO EQUIPMENT.** Customer agrees to provide adequate space, environment and appropriate electrical requirements including, if required, a dedicated 120 volt or 220 volt electrical line, as published in the Operator and Service Manuals for the operation and maintenance of the equipment. If TBS has installed a power filter/surge protector on the equipment, it must at all times remain continuously installed. If it is removed Customer agrees to purchase a replacement from TBS immediately. TBS shall have full and free access to the equipment to provide service thereon. If persons other than TBS representatives install conversions, feature additions, accessories or perform service on equipment and as a result further repair by TBS is required, such repairs shall be made at TBS's applicable Time and Material rates and terms then in effect. If such additional repair is required, TBS may immediately withdraw the equipment from this Contract.
10. **KEY OPERATOR - END-USER TRAINING.** Customer agrees to designate a Key Operator for training on the use, applications and features of the equipment. The Key Operator will be responsible for normal Key Operator activities as detailed in the Operators Manual and for training additional end-users. If the Key Operator assignment changes Customer agrees to designate a new Key Operator immediately. TBS agrees to provide training for the designated Key Operator and to provide initial training for end-users on the use, applications and features of the equipment. Additional training requested by Customer after thirty (30) days from Installation will be at TBS normal hourly rates.
11. **EXCLUSIONS.** Service under this Contract does not include:  
 (a) Furnishing paper, staples, replacement print heads or any of the following:  
 \_\_\_\_\_;  
 (b) Service of equipment if moved outside of TBS's designated service area;  
 (c) Repair of damage or increase in service time caused by accident, misuse, negligence, abuse or disaster;  
 (d) Service of accessories, attachments or click control devices other than those of the same manufacturer as the equipment;  
 (e) Painting or refinishing of the equipment;  
 (f) Making specification changes;  
 (g) overhaul, when TBS determines an overhaul is necessary because normal repair and parts replacement cannot keep the equipment in satisfactory operating condition, TBS will submit a cost estimate to Customer and TBS will not commence work until Customer has approved cost;  
 (h) Performing key operator functions as described in the operator manual;  
 (i) Moving equipment, repair of damage or increase in service time caused by the use of the equipment for other than the ordinary use for which designed;  
 (j) Repair of damage caused by electrical surges or lightning strikes, if equipment is connected to a TBS supplied power filter/surge protector repairs will be included;  
 (k) Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment as defined by the manufacturer, with all the facilities prescribed by TBS including, but not limited to, adequate space, electrical power, air conditioning or humidity control.  
 (l) Repair of equipment that has been designated as obsolete by the manufacturer and genuine OEM parts are no longer available.  
 (m) Repair of damage or increase of service time caused by Customer's use of media outside the specifications as described in the operator manual.
12. **INDEMNITY AND DISCLAIMER.** TBS shall not be responsible for any injuries, damages, penalties, claims or losses including legal expenses incurred by Customer or any other person caused by the installation, selection, ownership, possession, maintenance, condition or use of the Equipment. Customer agrees to reimburse TBS for and to defend TBS against any claims for such losses, damages, penalties, claims, injuries or expenses. This indemnity shall continue even after this Contract has expired. Subject to Section 768.28, Florida Statutes.
- IN NO EVENT WILL TBS BE LIABLE FOR LOST PROFITS, CONSEQUENTIAL, EXPECTANCY OR INDIRECT DAMAGES EVEN IF TBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**  
**EXCEPT AS OTHERWISE SET FORTH HEREIN, TBS DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REPRESENTATION OR WARRANTY ARISING OUT OF USAGE AND TRADE, COURSE OR DEALING OR COURSE OR PERFORMANCE. EXCEPT AS PROVIDED HEREIN, THE PARTS AND SERVICES ARE PROVIDED "AS IS."**
13. **GENERAL.** Subject to the terms of the following paragraph, TBS may modify the terms and conditions of this Contract effective on the Renewal Date by providing the Customer with prior written notice. Any such modification will apply unless the Customer withdraws the equipment affected by such modification from this Contract. Otherwise this Contract can only be modified by a written agreement duly signed by persons authorized to sign contracts on behalf of the Customer and of TBS. Variance from the terms and conditions of this Contract in any Customer order or other written modification will be of no effect. The Customer represents that the Customer is the owner of the equipment under this Contract, or, if not the owner, is the lessee or renter of the equipment. Customer will execute a maintenance agreement for the equipment with a Toshiba authorized dealer or Customer will waive certain rights under Toshiba's manufacturer's warranty. This Contract is not assignable, its right, duties and obligations may not be assigned or transferred by the Customer without the prior written consent of TBS. Any attempt to assign or transfer any of the rights, duties or obligations of this Contract without such consent is void. TBS's service provided outside the scope of this Contract will be furnished at TBS's applicable time and material rates and terms then in effect. TBS is not responsible for failure to render service due to causes beyond its control. This Contract will be governed by the laws of the state where the Customer executed this Contract. If either party fails to comply with the terms and conditions of this Contract, the non-breaching party shall notify the breaching party in writing using certified mail to the address on the face of this Contract. The breaching party shall have thirty (30) days to cure any breach of this Contract prior to the non-breaching party takes the legal action. No action, regardless of form, arising out of this Contract may be brought by either party more than one year after the cause of action has arisen, or, in the case of non-payment, more than two years from the date of the last payment.

NON APPROPRIATION RIDER

This Non-Appropriation Rider to the Lease With Maintenance Agreement No. \_\_\_\_\_ dated 4/23, 2015 or the FMV Lease Agreement No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_ (each, individually, the "Lease"), is by and between Toshiba Financial Services (Lessor) and \_\_\_\_\_ (Lessee). Capitalized terms used herein without definition shall be defined as provided in the Lease.

Notwithstanding anything contained in the Lease to the contrary,

1. Lessee presently intends to continue the Lease for its entire term and to pay all rentals or other payments relating thereto and shall do all things lawfully within its power to obtain and maintain funds from which the rentals and all other payments owing thereunder may be made. To the extent permitted by law, the person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year during the term of the Lease the rentals to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all rentals coming due therein. The parties acknowledge that appropriation for rentals is a governmental function which Lessee cannot contractually commit itself in advance to perform and the Lease does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make all rentals can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the term of the Lease.

2. If Lessee's governing body fails to appropriate sufficient moneys in any fiscal year for rentals or other payments due under the Lease and if other funds are not available for such payments, then a "Non-Appropriation" shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Lessee shall give Lessor immediate notice of such Non-Appropriation and provide written evidence of such failure by Lessee's governing body at least sixty (60) days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by that date, immediately upon such Non-Appropriation; (ii) no later than the last day of the fiscal year for which appropriations were made for the rentals due under the Lease (the "Return Date"), Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the Lease, at Lessee's sole expense, in accordance with the terms hereof; and (iii) the Lease shall terminate on the Return Date without penalty or expense to Lessee and Lessee shall not be obligated to pay the rentals beyond such fiscal year, provided, that Lessee shall pay all rentals and other payments due under the Lease for which moneys shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the Lease for each month or part thereof that Lessee fails to return the Equipment as required herein.

3. The Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by the Lessee beyond the amount of such monies. The Lease is not a general obligation of the Lessee. Neither the full faith and credit nor the taxing power of the Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.

4. The Lessee and Lessor agree that they intend the Lease to be an operating lease and that by the execution thereof, Lessee acquires no ownership interest in the Equipment whether vested or contingent. The Lessee's interest in the Equipment is limited to that of a lessee and Lessor retains all the rights of owner therein. Any provisions indicating to the contrary in this Rider are for precautionary purposes only.

IN WITNESS WHEREOF, each of the parties hereto has caused this Rider to be executed as of the 23<sup>rd</sup> day of April 2015.

Toshiba Financial Services  
(Lessor)

By 4/23/15  
(Date)

Name/Title [Signature]  
[Signature]

TOWN OF SOUTHWEST RANCHES  
(Lessee)

By 4/23/15  
(Date)

Name/Title [Signature]  
Jeff Nelson, Mayor

Attest:	By:
<u>[Signature]</u>	<u>[Signature]</u>
Russell Muñoz, Assistant Town Administrator/Town Clerk	Andrew D. Berns, Town Administrator
Approved as to Form and correctness:	
<u>[Signature]</u>	
Keith M. Poliakoff, Town Attorney	