

**SOUTH BROWARD DRAINAGE DISTRICT
GOVERNING BOARD MEETING MINUTES**

MARCH 27, 2014

Present:

Scott Hodges, Chairperson
James Ryan, Vice Chairperson
Vicki Minnaugh, Treasurer
Robert E. Goggin, IV, Secretary
Alanna Mersinger, Commissioner
Thomas Good, Commissioner
Mercedes Santana-Woodall, Commissioner

Kevin M. Hart, District Director
Douglas R. Bell, Legal Counsel
Reina Muniz, Recording Secretary
General Public: See Attached List

Absent:

01. CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE

Vice Chair Ryan called the SBDD Board Meeting to order at 8:09 A.M.; followed by a roll call with Vice Chair Ryan, Commissioner Minnaugh, Commissioner Mersinger, Commissioner Good, Commissioner Goggin and Commissioner Santana-Woodall present; and followed by the Pledge of Allegiance.

02. PUBLIC COMMENT

None.

03. APPROVAL OF MINUTES

Commissioner Minnaugh moved for approval of the minutes of the February 27th, 2014, South Broward Drainage District Board meeting. Motion was seconded by Commissioner Goggin and was carried unanimously by the Commissioners present.

04. DIRECTOR'S REPORT

A. PROCLAMATION FOR APRIL AS WATER CONSERVATION MONTH

Commissioner Minnaugh read a Proclamation from SBDD, declaring the month of April as "Water Conservation Month".

Chair Hodges joined the meeting at approximately 8:15 A.M.

B. VARIANCE REQUEST FOR EFREN CASTILLO PROPERTY AT 9831 N.W. 4TH STREET, PEMBROKE PINES

District Director Hart stated that the owner of the property located at 9831 NW 4TH Street, Pembroke Pines, FL 33024 is requesting a variance from SBDD for the extension of an existing shadow-box, wood fence 12 feet into a SBDD Lake Maintenance Easement (LME). The shadow-box, wood fence was installed between 2/25/14 and 3/1/14 as a replacement for an existing wood fence that was in need of repair/replacement. The property was purchased by Mr. Castillo in February, 2005 and is located in the Westview development of Pembroke Pines.

Mr. Hart said that at the time the property was purchased there was an existing board-on-board, wood fence in the same location as the new, shadow-box, wood fence. However, no permit had been obtained by the previous property owner for the fence, and Mr. Castillo was not aware that a permit had never been obtained.

On 2/27/14 Mr. Castillo was made aware by the City of Pembroke Pines Code Enforcement that a Building Permit was required for the new fence due to the fact that he was replacing the wood posts. Due to safety concerns, the installation of the new fence was completed prior to Mr. Castillo obtaining the required permits from the City and SBDD. On 3/6/14 Mr. Castillo visited the City's Building Department and was told that he would also need to obtain a permit from SBDD, and on that same day, Mr. Castillo stopped by and met with SBDD staff; and was told that the fence did not meet SBDD criteria.

Mr. Castillo met with the Variance Review Committee (VRC) on March 17, 2014 to discuss his options and as a follow-up to that meeting the variance request was presented to the SBDD Board for consideration.

District Director Hart presented the following points regarding Mr. Castillo's Variance; SBDD Criteria prohibits wooden fences within the LME; Mr. Castillo was not aware that the previous fence was not properly permitted; the adjacent property owner has no objection to the wood fence as constructed; and there is no HOA in this community. He said that Mr. Castillo was not aware that a new permit was required, and as soon as he was made aware by the City, he followed through with the proper course of permitting. The fence was completed before he was able to come before the Board for safety reasons. If the variance is approved, Mr. Castillo is agreeable to entering into an Indemnification and Hold Harmless Agreement with SBDD and paying for all associated legal fees and recording fees.

The requested variance is to allow the extension of an existing shadow-box, wood fence 12 feet into a SBDD LME. SBDD staff has no objections to this variance request and there are no financial impacts to this Agenda Item.

Commissioner Good made a motion to approve the Variance allowing the extension of an existing shadow-box, wood fence 12 feet into a SBDD Lake Maintenance Easement. Commissioner Goggin seconded the motion.

Discussion ensued.

Commissioner Mersinger commented that when purchasing a home, a title company usually researches any open permits. She asked why this was not picked up. Mr. Castillo stated that the title company did check for any outstanding permits, and that there was a City permit for the fence; however at the time the fence was built the easement area was never an issue, and there was never a permit obtained from SBDD. Commissioner Mersinger opined that Mr. Castillo purchased the home in good faith and that the title company said that everything was up to snuff; and it was the City that did not inform Mr. Castillo, the first time around, that he needed to apply for a permit from SBDD.

Chair Hodges explained that whether or not he needed a permit, he was asked to pull a permit because he was replacing the fence and doing structural work. He was then told by the City that he needed to get a permit from SBDD, and Mr. Castillo did not do that, and continued installing the fence.

Commissioner Minnaugh commented that she has the same concern. She said that Mr. Castillo knew he needed a permit because he checked back to 2005 to see if there was a permit for the original fence. She said that she would love to allow it, but she cannot; and commenced to explain why. She said that if the District allows this, the mere fact that there is no HOA places an onus and responsibility on this District to make sure that the District enforces their criteria for lake maintenance easements. The view is obstructed beyond just the adjacent neighbors. If the District allows this, they will have to do it for everyone. She said that if Mr. Castillo would have come to the District at the beginning, he would have been told that he had to have a chain link fence in the lake maintenance easement area. Mr. Castillo said that he did what he thought was adequate research on this. He was in the process of fixing parts of the fence when he was told by the City that since he was digging new posts, and although a permit already existed, that he needed a new permit. Commissioner Minnaugh stated that the District does not allow wood fences going into the LME, and he would have to sign an agreement that if it ever has to come out, or the District has to do work, he would be responsible for it, but she cannot vote to have him keep that 12' wooden fence inside the easement that obstructs the view to his neighboring homes.

Chair Hodges said that he agreed with Commissioner Minnaugh; that although he understands that Mr. Castillo wanted to hurry up and install the fence, if he would have taken 10 or 15 minutes to come to SBDD, he would have avoided this problem.

Commissioner Good commented that as a home owner in a similar community as Mr. Castillo, there is very little guidance on what one should or should not do, when one is trying to improve their property; and that he can recognize that. He said that he appreciates the fact that the moment Mr. Castillo was advised, he was actually responsive and responsible to take the action that he did. He said that in his zone this is not uncommon at all, and that taking the extra action to get a letter from his neighbor, who would be impacted by the view, saying that he was comfortable with that fence being placed where Mr. Castillo placed it, is also a plus to Mr. Castillo. Commissioner Good stated that he believes that the steps that Mr. Castillo has taken is the right thing to do and that this is not precedent setting to this Board. He said that this is not a permanent structure and, if access was needed, it could be quickly demolished. Also, Mr. Castillo would be signing an indemnification agreement that will not hold the District accountable to any destruction to that property; and therefore he is in full support of Mr. Castillo's variance request.

Commissioner Santana-Woodall gathered that Mr. Castillo started repairing the fence before he ended up replacing it totally, and that is when he realized that he needed to replace the posts and the permit became an issue.

Mr. Castillo reiterated that he was replacing a portion of the fence, mainly the back yard portion, because this is an open area and the part that gets compromised during harsh winds; and then he decided to continue on the rest of the fence. He said that he just wanted to beautify the property and make the neighborhood look good. He said that his neighbor has a pool and that he has a jacuzzi, and that he had concerns for the safety of the children. His girlfriend has two young children and he has a small dog, and his neighbor has three young kids. He said that he was never told to stop construction. He was told that he was not in trouble; to just go get a permit.

Vice Chair Ryan commented that this type of construction is probably compatible with many homes in this area and it does not distract as far as the value of the home. He said he would be in favor of granting this variance.

Commissioner Goggin asked Mr. Castillo if he ever knew that South Broward Drainage District existed before this issue came up? Mr. Castillo replied that he absolutely did. He said that previously he spoke to District Director Hart regarding a canal located on NW 2nd Street, off of 98th Avenue and Pines, that had a drainage pipe that was obstructed with trash, due to the fact that it is by a shopping center. He did some research as to who was responsible for cleaning it up and within two to three days there was a crew there cleaning it up. He said that until that time he did not know that SBDD existed, and he was very impressed with the level of service the District provided.

Commissioner Goggin said that he heard Mr. Castillo mention that there are many different type of fences within that community and Commissioner Goggin described the differences between a community with an HOA and one without. He said that when there is an HOA everyone follows the law and the rules are set in stone, and they all have the same thing; but when there is no HOA, or it is an older community, everyone follows their own rules, and as long as the City gives them a permit and places a check mark next to it, everyone moves on. He said that he agrees with Commissioner Minnaugh regarding someone who lives in an area with an HOA, but when you live in an older community and there is no HOA, then the City of Pembroke Pines gives a permit, checks it off, finalizes it, and may never involve SBDD. Commissioner Goggin said that Mr. Castillo began to try to make repairs, and is actually fixing something that was already in disarray; and is going by guidelines that he is familiar with, and due to the fact that the repair got even bigger, the City now requires him to get a permit. He said that most residences in a non-HOA community have no idea that there is this whole set of other rules that exist because there is a Drainage District involved. He said he is in favor of fixing and repairing the fence because it existed; and Mr. Castillo was just trying to fix a mess. Also the City never involved SBDD before this and he never had a permit showing that SBDD sign-off was needed.

After further discussion, Chair Hodges called the question and the motion passed with six in favor and one opposed (Chair Hodges).

Commissioner Minnaugh made a motion regarding the Variance, that subject to any transfer of the property, the wood fence is to be replaced with a 12' chain link fence per SBDD Criteria. Commissioner Goggin seconded the motion and it was carried unanimously.

C. VACATION OF DRAINAGE EASEMENT IN A PORTION OF PARCEL ‘A’, COUNTRY LAKES NORTHWEST QUADRANT PLAT (AKA – MIRAMAR CENTRE BUSINESS PARK – BUILDING B)

District Director Hart stated that South Broward Drainage District (SBDD) received a request to vacate a Drainage/Flowage/Storage Easement - Retention Area (Easement) located within the Miramar Centre Business Park – Building B development. The Easement was previously dedicated by separate instrument under OR Book 41547, Page 1255, Broward County Records (BCR).

The Easement requested to be vacated is no longer needed as the property owner has dedicated new Drainage Easements to SBDD for the drainage system serving the development. The reason for the request is to remove a previously dedicated Easement that has been superseded by new DEs. There are no financial impacts to this Agenda Item and SBDD staff has no objection to this vacation request.

Commissioner Minnaugh moved for approval of the vacation of the Drainage Easement in a portion of Parcel ‘A’ of the Country Lakes Northwest Quadrant Plat aka – Miramar Centre Business Park – Building B property as previously recorded under OR Book 41547, Page 1255, BCR. Motion was seconded by Commissioner Goggin and it was carried unanimously.

D. RESOLUTION NO. 2014-01 – REQUIREMENTS FOR LOBBYIST REGISTRATION AND REPORTING

District Director Hart stated that Proposed Resolution 2014-01 establishes a requirement for all lobbyists to register with the District and to file an annual statement of all lobbying activities. The proposed Resolution mirrors Section 11.045, Florida Statutes, Broward County Ordinance 2009-34, and Pembroke Pines Ordinance 1712 (aka: 2011-31).

This agenda item was brought up at the last meeting with a request for the District to be proactive in requiring lobbyist to register and report. This is in response to proposed legislation under Senate Bill 846; and although it does not really apply to SBDD per say, there are similar ordinances in place with Broward County, City of Pembroke Pines and with the State that require lobbyist who are going before decision making bodies to register with that agency, and to submit annual reports on compensation and the like.

Attorney Bell and District Director Hart put together a proposed Resolution for SBDD that would bring SBDD under the same guidelines as the State, County and Municipalities within their District.

If approved, this Resolution will require all lobbyists to register with SBDD prior to beginning any lobbying activities using the Lobbyist Registration Form and to pay an annual registration fee of \$40.00. In addition, each lobbyist will be required to submit an annual report disclosing all lobbying expenditures, contingency fees and the sources from which making such expenditures and paying such contingency fees have come. Failure to comply with this Resolution may result in a warning, reprimand or suspension from appearing before the Board for up to a 2 year period.

District Director Hart stated that Senate Bill 846 which is pending before the 2014-Florida Legislature includes a section which requires independent Special Districts that exercise ad valorem taxing authority with annual revenues of more than \$5,000,000 to create a procedure for registration of Lobbyists and to create a registration form. Although SBDD does not currently have revenues in excess of \$5,000,000 and does not exercise ad valorem taxing authority, by implementing this procedure now, SBDD would nonetheless be compliant with the proposed language in Senate Bill 846.

This to request approval of Resolution 2014-01 establishing a requirement for Lobbyist Registration and Reporting.

Commissioner Minnaugh made a motion to approve Resolution 2014-01 which establishes a requirement for all lobbyists to register with the District and to file an annual statement of all lobbying activities. Commissioner Goggin seconded the motion.

Discussion ensued.

Commissioner Mersinger suggested that the District hold-off on this item until after the legislative session to see if the bill passes.

Commissioner Good agreed with Commissioner Mersinger. He also suggested that District Director Hart educate the Board members in regard to the ethics issues associated with this Resolution should it pass; he said that it is not a simple issue.

Commissioner Mersinger asked Attorney Bell if Senate Bill 846 appears to be going through. Attorney Bell replied that presently, there is no House companion bill, and that being the case, it may not go through. Commissioner Mersinger asked if this item could be tabled until after May 2nd.

Chair Hodges called the question and the motion to approve Resolution 2014-01 failed by unanimous vote.

E. PURCHASE OF NEW DISTRICT VEHICLE – F250 FORD TRUCK

District Director Hart said that SBDD staff has researched pricing for the purchase a new vehicle to replace an existing, aging vehicle. He said that the District needs to replace a 2003 Ford Ranger truck which has exceeded its useful life span for use by District staff.

This is a request to purchase a new 2014 Ford F-250 4x4 truck with standard cab and trailer tow package. The lowest price available for the purchase of a new 2014 Ford F-250 4x4 truck is through the Florida Sheriff's Association Contract in the amount of \$19,997.00. The Florida Sheriff's Association Contract was awarded through a publically advertised, competitive bid process and therefore, the purchase of the new vehicle through this contract does not require SBDD to publically advertise for bids.

SBDD has researched other pricing options, and determined that the pricing through the Florida Sheriff's Association Contract is the most economical option. Informal pricing obtained from other local car/truck dealers exceeded \$30,000 in price for the same vehicle.

District Director Hart requested approval for the District to purchase a new 2014 Ford F-250 4x4 truck from Don Reed Ford under the Florida Sheriff's Association Contract in the

amount of \$19,997.00. The vehicle will be outfitted with additional options including electric brake controller, LED safety warning lights, an aluminum toolbox, spray on bed liner, skid plates, back-up alarm and a two-way radio for use during emergency situations. The total cost for the optional items is \$3,207.75. The total cost for the vehicle including all optional items will be \$23,204.75.

Upon acquisition of the new vehicle, SBDD will utilize the on-line public auction site, Public Surplus, to sell the obsolete 2003 Ford Ranger. That vehicle will be sold "as is" to the highest responsible bidder.

The purchase of the new vehicle will be funded through the General Operating Account as part of the District's 2013-2014 budget. It is estimated that the sale of the District's surplus vehicles will generate approximately \$3,000.

Commissioner Goggin moved for approval of the purchase of a new vehicle to replace an existing vehicle as submitted. Motion was seconded by Commissioner Minnaugh.

Commissioner Mersinger asked District Director Hart what methodology the District is using to sell the other vehicle. District Director Hart replied "an on-line auction". He said that the District has a series of obsolete items that will be placed on auction at the same time.

Chair Hodges asked District Director Hart if there was any reason to go from a smaller truck to a 4x4 truck? District Director Hart answered that the primary reason is because of the hauling of boats and other equipment the District utilizes; and that it is really more useful to the District; and it is also a very good price.

Commissioner Good asked District Director Hart what would be the complication of taking the blue book value of the old truck and placing it in the Auto Trader? District Director Hart replied that he does not know that there would be any complication. Commissioner Good asked what has been the District's experience regarding the prices received through the on-line auction vs. blue book value for that unit? Is there a consistent pattern that the District is receiving less? He said in his experience, the on-line auction price is much less than the blue book value. He asked if there is a way to get the full residual value on this unit by placing it in the Auto Trader based on a blue book value. District Director Hart said that the last time a vehicle was sold, they were very happy with the price that they got from the on-line auction, but he will do the research.

Vice Chair Ryan asked District Director Hart if the District would save more money if they did financing with zero down with no interest and 16 months to pay? District Director Hart replied that by going through the Florida Sheriff's bid list the District was able to save approximately \$10,000. He said that this is an excellent avenue in which to purchase equipment. He said that although the District can get those financing deals, at the end, the additional costs would exceed the savings.

The question was called and it was carried unanimously.

F. UPDATE TO THE DISTRICT'S DRUG FREE WORK PLACE POLICY INCLUDING A NEW PROVISION FOR COMMERCIAL DRIVER'S LICENSE (CDL) HOLDERS

District Director Hart presented the Board with an update to the District's Drug Free Workplace Policy, including a new provision for Commercial Driver License (CDL) holders. He said that this came about as a recommendation by the District's labor attorney. The proposed changes will bring these policies in line with current Florida Statutes and Federal and State laws that are applicable to government employees.

The proposed updates are consistent with the District's current practices and will not result in any reductions or changes to SBDD employee benefits.

This is to request approval for an update to the South Broward Drainage District's Drug Free Workplace Policy, including a new provision for Commercial Driver License (CDL) holders.

District Director Hart clarified that everyone will sign the Drug Free Work Place document, and if they have a CDL, there is a lengthier form that they will need to sign.

Commissioner Goggin asked District Director Hart if staff that uses the trucks to haul equipment are required to have a CDL? District Director Hart replied that no, that the CDL is based on the weight of the vehicles and the towing capacity of the vehicles. The State has guidelines that actually stipulate what those requirements are for CDLs. Commissioner Goggin asked District Director Hart regarding the CDL, does the staff receive any extra training or courses? District Director Hart replied yes; the District has had training here at SBDD Headquarters on safety precautions and on how to load and unload a trailer, etc.

Attorney Bell suggested that this Agenda Item be approved by Resolution at the next Board meeting. Chair Hodges agreed, and it was tabled to the next Board meeting of April 24, 2014.

G. OTHER

District Director Hart mentioned the following items:

- **Water Matters Day** – District Director Hart commented that Water Matters Day was very well attended. It set records for attendance through the County.
- **Durban Exchange Program and Partnership with South Plantation High School** - Commissioner Good suggested reaching out to South Plantation High School which the District has done. District Director Hart said that the District hopes to have a nice partnership with them moving forward; they are a Magnet School for Environmental Engineering and he feels that it is a great fit. He said that the District invited some of their students and their Magnet Coordinator to the Durban Exchange which was hosted here at the SBDD Headquarters with a group of Engineers, Emergency Managers and Directors from Durban South Africa, to show them how Broward County deals with sea level rise, drainage, climate change, water management, emergencies, etc. There was a field trip to the S-8 Pump Station, and a demonstration of how a grapple truck functions. It was very nice to have the students present.

- *Seminar for Eliminating Unnecessary Flooding on Commercial/Industrial Properties* - This is a workshop geared towards Property Managers, but is open to anyone interested in attending. This will take place here at SBDD Headquarters on Friday, April 4th, 2014 from 8:30 to 11:30 a.m.
- *SFWMD East Coast Protective Levee Broward County Certification* – District Director Hart said the SFWMD has submitted to FEMA their final certification for the East Coast Protective Levee. This is an item that the Board passed a Resolution and sent up to the Governor and State Legislature where the District supported continued funding for the reinforcement of the levee so that it could be certified. This is very important when it comes to the FEMA flood maps because the maps are based on a fully accredited, certified levee, and at the time the maps were updated it was a provisionally accredited levee (PAL) and that has now all been completed.

05. ATTORNEY'S REPORT:

A. UPDATE ON HOT WIRE/PEMBROKE FALLS AGREEMENT

Attorney Bell stated that he is working in coordination with the attorney recommended by Commissioner Good on this matter. He said that the attorney has reviewed the Agreement and had some preliminary comments; and that he brought up some good points. He said that when the City has, for example, Hotwire cable in the City's right-of-way, the City gets money from the State through a Statewide Communications Tax, which the District does not. He suggested that the District include a provision that Hotwire pay a fee just for the right to use the easement in the Agreement. He asked the Board for input.

Commissioner Mersinger asked Attorney Bell, will this be a flat fee or a permit fee? Attorney Bell said that they will pay a permit fee, but that this could be like a franchise fee. He said that the outside attorney also suggested that the agreement not be a covenant running with the land which is part of most District Agreements, and to make sure that they cannot transfer it to someone else. He said that he will be reviewing this and will provide more recommendations.

Commissioner Good said that the amount that the City is getting is in line with the cost referenced by Attorney Bell, which is \$500 per lineal mile. He recommended that yes, when there is infrastructure or other type of improvements within areas that the District is responsible for, there is always that potential where the District has to deal with some problem later. Beyond the element of an annual payment per lineal mile, Attorney Bell does need to research this. He said that if it's available, he would like include a provision that they pay a fee just for the right to use the easement in the agreement. He brought up the topic of bonds. He said that there is a bond that stays in effect for as long as the facility is in existence; for anything that may occur to their system or even abandonment of the system. The other bond is the construction bond or maintenance bond that stays in place for one year or two years after construction. He asked Attorney Bell to consider both these bonds and that way the District will be protected from any damages that may occur during the construction or failure on restoration efforts afterwards.

Commissioner Goggin asked District Director Hart when was the last time any recertification was done at that community?

District Director Hart replied that Pembroke Falls is a huge community and they are in a process of obtaining a pod-by-pod 5-year recertification approval. He said that he would

look at the Hotwire issue separately, because the District is primarily focused on the drainage pipes, and making sure that they are operating properly, in the recertification process. The question regarding the restoration, and making sure that the property owners are satisfied with the way their backyards have been restored, and any other issues that might come up, should be addressed in the Agreement. He said that there is a much greater likelihood that Hotwire will come back due to issues with the cable; and if that is the case, then the District needs to be sure that it is all handled and written into the Agreement; and that the responsibility is placed on Hotwire and the HOA to make the District aware if they have to go in for repair work, or if the District needs to go in there.

Commissioner Goggin had concerns that the employees of Hotwire enter into these private areas without proper identification or notice.

Chair Hodges had concerns on who would be held accountable if, for example, five years from now Hotwire goes out of business, and the District has an issue where there is erosion, etc.? Attorney Bell replied that the HOA is responsible; and that the property owner is not involved in the agreement at all. He said that he does have a provision in the agreement that the property owner has to be notified and agreeable for someone to go in their backyard, so that they cannot just go in and place anything without the homeowner being involved in the process.

Chair Hodges said that if, for whatever reason, the District has to do work in the easement, the District would want to recuperate that cost from the property owner.

Attorney Bell said that the HOA documents should have a provision that the homeowner or the HOA is responsible to restore the lake bank if it collapses. He said that if the District were to have a situation where the lake bank were exposed, the company involved, would be responsible there. That could be a problem because the District would have to go back in and restore the easement and make sure the improvements (cable) don't get damaged; and that could get expensive. Chair Hodges also had concerns regarding erosion issues. He asked what, if for whatever reasons, there was an erosion issue, doesn't the District have to assess the situation? He said that he wants to make sure that the District is covered.

District Director Hart said that this might be a separate issue with Hotwire and the cable. He said that if there is an erosion issue on any property within Pembroke Falls, whether or not there is cable, it is a decision that has to be made on a case-by-case basis; on who would be responsible. If it is only benefitting that one single property, he believes the homeowner would be responsible. Sometimes the HOA gets involved on behalf of the entire community, and if the District took that on, then the District would have to evaluate and determine how that would be funded. He said that as it relates to this issue, the District is getting as much control as they can as far as responsibilities and protection against the District, in saying that, if anything happens within this LME, the HOA would be responsible. The HOA will be a party to this Agreement.

Chair Hodges has concerns that the District already has these Agreements in place, where the HOA is responsible for lake bank maintenance, and it does not seem to hold water; and he feels that maybe it would be better to have more bonding rights.

Commissioner Good commented that the District should include a \$500 per lineal mile fee to be applied on an annual basis so that the District can create an account. It may not mitigate everything, but it helps. He added that on Commissioner Goggin's concern

regarding a notification provision, whether for new construction or repair, within the Agreement there should be a provision that allows the District to determine the magnitude of that notification and how it is delivered. That way, the District is better able to ensure that those notifications are done properly.

Chair Hodges suggested that Attorney Bell give a draft copy of the Agreement to the Board of Commissioners so that the Board can make a better determination as to what the Agreement entails.

Commissioner Goggin asked District Director Hart if because Hotwire did all the work ahead of time, and did not come to SBDD to ask where culverts were located, did they place structures in places where they do not belong? District Director Hart replied “not that he is aware of.” He said that they have worked with the District very closely to make sure that their system is compatible with the District’s facilities and criteria.

Attorney Bell suggested that the annual fee of \$500 per mile be added to the Criteria Manual. Chair Hodges agreed.

B. UPDATE ON LEGISLATIVE BILLS

Attorney Bell updated the Board on various pending legislation that may affect Special Districts.

06. APPROVAL OF LEGAL FEES

Commissioner Minnaugh moved for approval of the legal bills. Motion was seconded by Commissioner Goggin and it was carried unanimously.

07. BOARD MEMBER’S QUESTIONS/COMMENTS

None.

08. MEETING DATE(S)

A. The Next Regular Board Meeting will be held on **Thursday, April 24th at 8:00 a.m.**

Adjournment at 9:50 A.M.

Respectfully submitted,

Robert E. Goggin IV, Secretary
South Broward Drainage District

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MEMORANDUM

DATE: April 17, 2014
TO: South Broward Drainage District Commissioners
FROM: Kevin M. Hart, P.E.
District Director
Subject: Request to Vacate the Surface Water Management Area Previously Designated on the Property Owned by Rodriguez Family Group, LLC

Comments:

The owner of the property located at 5340 Hawkhurst Avenue, Southwest Ranches, FL 33332 is requesting that SBDD vacate the Surface Water Management Area (SWMA) that was previously designated and recorded under OR Book 50522, Pages 943-946, Broward County Records. All properties in the SW Ranches are required to set aside 20% of their property at elevation 5.0' (or an equivalent storage area) as a SWMA.

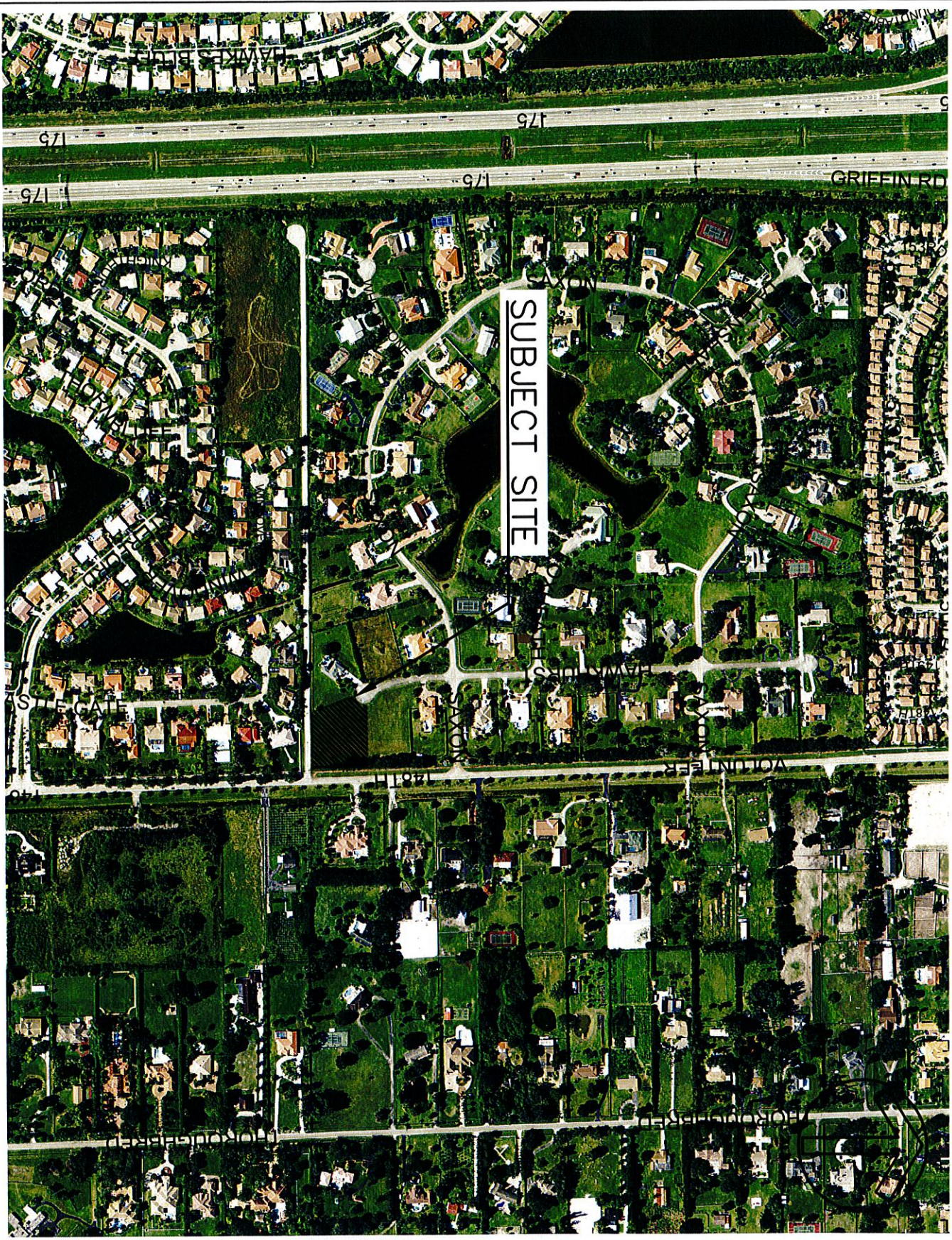
The property owner, Rodriguez Family Group, LLC, will dedicate a new SWMA over the property to comply with the 20% SWMA requirement (see attached sketch).

SBDD staff has reviewed the request and has no objections.

Financial impacts to this Agenda Item: none, other than SBDD administrative costs; all other costs will be incurred by the property owner.

The request is for SBDD to vacate and release its interest in the Surface Water Management Area on the property located at 5340 Hawkhurst Avenue, Southwest Ranches, FL 33332, as described in the attached "Release and Vacation of Surface Water Management Area Designation" and recorded under OR Book 50522, Pages 943-946. This request is subject to the dedication of a new Surface Water Management Area in accordance with SBDD Criteria.

KH
Attachments



SUBJECT SITE

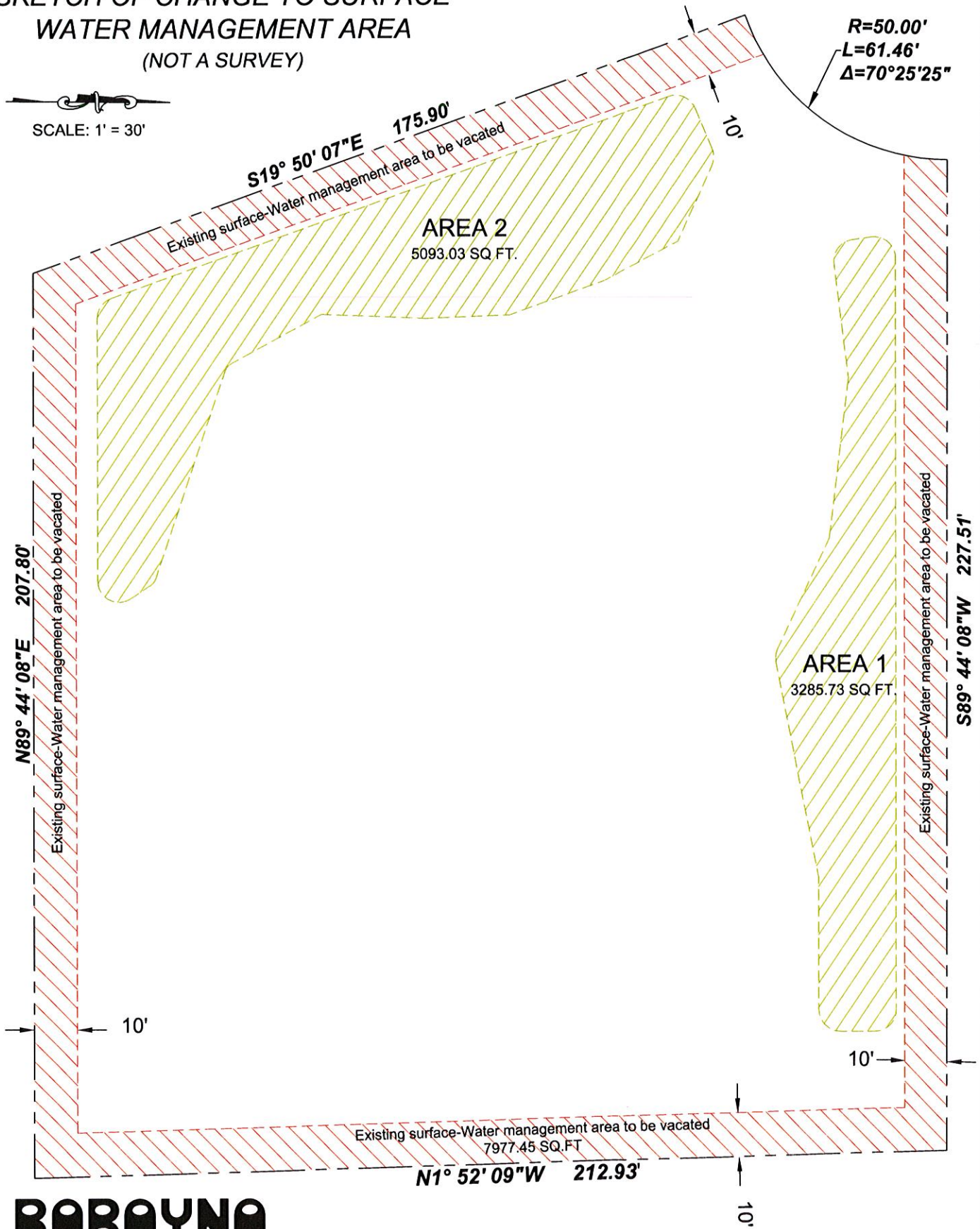
SHEET 1 OF 1	DRAWING NAME: 5340 HAWKHURST AVE LOCATION SKETCH	ROBAYNA AND ASSOCIATES INC. ENGINEERS - PLANNERS - SURVEYORS 5723 NW 158th STREET MIAMI LAKES, FL 33014 PH: (305) 823-9316 E.B. # 5004	DESIGNED: OER	CERTIFICATION: NOT VALID WITHOUT ENCLOSED SEAL	APPROVALS:	DATE:	REVISIONS:	DATE:
	PROJECT: MR. RODRIGUEZ RESIDENCE		DRAWN: RG					
	PREPARED FOR: DENNIS RODRIGUEZ		CHECKED: OER					
			SCALE: 1" = 500'					

**SKETCH OF CHANGE TO SURFACE
WATER MANAGEMENT AREA
(NOT A SURVEY)**



SCALE: 1" = 30'

$R=50.00'$
 $L=61.46'$
 $\Delta=70^{\circ}25'25''$



ROBAYNA
AND ASSOCIATES INC.
ENGINEERS - PLANNERS - SURVEYORS
5723 NW 158th STREET
MIAMI LAKES, FL 33014
PH. (305) 823-9316
LICENSED BUSINESS No. LB 5004

JOB No. 140014

Prepared by: South Broward Drainage District
6591 S. W. 160 Avenue
Southwest Ranches, Florida 33331

Return to: South Broward Drainage District
6591 S. W. 160 Avenue
Southwest Ranches, Florida 33331
(954) 680-3337

Folio No.: 504033020130

**RELEASE AND VACATION OF
SURFACE-WATER MANAGEMENT AREA DESIGNATION**

THIS RELEASE AND VACATION OF SURFACE-WATER MANAGEMENT AREA DESIGNATION executed this ____ day of _____, 2014, by SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, having its principal place of business at 6591 Southwest 160 Avenue, Southwest Ranches, Florida, 33331, first party, to **RODRIGUEZ FAMILY GROUP, LLC., A FLORIDA LIMITED LIABILITY COMPANY**, whose post office address is **5340 Hawkhurst Avenue, Southwest Ranches, Florida 33332**, their successors and assigns as their interest may appear of record, second party:

(Wherever used herein, the term "first party" shall include singular and plural, heirs, legal representatives, assigns of individuals, the successors and assigns of corporations, wherever the context so admits or requires.)

WITNESSETH, that the first said party, for and in consideration of the sum of \$10.00, in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the SURFACE-WATER MANAGEMENT AREA DESIGNATION located on the following described lot, piece or parcel of land situate, lying and being in the County of Broward, State of Florida, to-wit:

The North 10 Feet, the South 10 Feet, the East 10 Feet and the West 10 Feet of the following-described property:

Lot 13, Ivanhoe Estates, according to the map or plat thereof as recorded in Plat Book 100, Page(s) 17, of the Public Records of Broward County, Florida.

(SEE EXHIBIT "A" ATTACHED HERETO)

(This is intended to vacate the surface-water management area dedication recorded on February 4, 2014, in the Broward County Public Records OR Book 50522, Pages 943-946.)

The purpose of this Release and Vacation of SURFACE-WATER MANAGEMENT DESIGNATED AREA is to release and vacate the first parties interest in and to the SURFACE-WATER MANAGEMENT DESIGNATED AREA located on second parties property as described above. No other interest of the first party is being released or vacated by this document.

TO HAVE AND TO HOLD, the same together with all singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

IN WITNESS WHEREOF, the said first party has caused these presents to be executed in its name, and its seal to be hereunto affixed, by its proper officers thereunto duly authorized the day and year first above written.

Signed, sealed and delivered
in the presence of:

SOUTH BROWARD DRAINAGE DISTRICT

Witness Signature

SCOTT HODGES, Chairperson

Witness Printed Name †

Witness Signature

ROBERT E. GOGGIN, IV, Secretary

Witness Printed Name †

District Seal:

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

The foregoing instrument was executed before me this ____ of _____, 2014 Scott Hodges and Robert E. Goggin, IV, as Chairperson and Secretary, respectively of the SOUTH BROWARD DRAINAGE DISTRICT, first party. They are personally known to me.

WITNESS my hand and official seal in the County and State lat aforesaid this ____ day of _____, 2014.

(NOTARY SEAL & STAMP)

NOTARY PUBLIC: STATE OF FLORIDA AT LARGE

EXHIBIT "A"

THE NORTH 10 FEET, THE SOUTH 10 FEET, THE EAST 10 FEET AND
THE WEST 10 FEET OF THE FOLLOWING-DESCRIBED PROPERTY:

LOT 13, IVANHOE ESTATES, ACCORDING TO THE MAP OR PLAT
THEREOF AS RECORDED IN PLAT BOOK 100, PAGE(S) 17, OF THE
PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. SAID
LANDS SITUATE AND BEING IN BROWARD COUNTY, FLORIDA

REPLACEMENT SWMA

Prepared by: South Broward Drainage District
6591 S. W. 160 Avenue
Southwest Ranches, Florida 33331

Return to: South Broward Drainage District
6591 S. W. 160 Avenue
Southwest Ranches, Florida 33331
(954) 680-3337

Folio No.: 5040 3302 0130

SURFACE-WATER MANAGEMENT AREA DESIGNATION

THIS SURFACE-WATER MANAGEMENT AREA DESIGNATION is granted this ___ day of _____, 2014, by **RODRIGUEZ FAMILY GROUP, LLC., A FLORIDA LIMITED LIABILITY COMPANY**, whose address is 5340 Hawkhurst Avenue, Southwest Ranches, FL 33332, hereinafter referred to as "Grantors", to **SOUTH BROWARD DRAINAGE DISTRICT**, a political subdivision of the State of Florida, located at 6591 Southwest 160 Avenue, Southwest Ranches, Florida 33331, hereinafter referred to as "District".

WITNESSETH

That the Grantors, for and in consideration of the sum of ten dollars (\$10.00) and other goods and valuable consideration in hand paid by District, the receipt whereof is hereby acknowledged, do hereby grant and convey to District, its successors and assigns, a perpetual and exclusive SURFACE-WATER MANAGEMENT AREA for the storage and flowage of surface water together with any necessary appurtenances incidental and necessary thereto, over, across and through the following described property of Grantors:

SEE EXHIBIT "A" ATTACHED HERETO

of such character and sufficient size as to make a proper and adequate drainage system that District, its successors and assigns may establish.

Together with free ingress, egress and regress across said lands for the purpose of maintaining and repairing the drainage system and appurtenances therein.

The Grantors further acknowledge that the SURFACE-WATER MANAGEMENT AREA shall be used for storage and flowage of storm water, shall not be filled in and shall not be raised to an elevation above normal ground elevation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of:

"GRANTORS"

Witness Signature

**CASEY RODRIGUEZ, MANAGER OF
RODRIGUEZ FAMILY GROUP, LLC., A
FLORIDA LIMITED LIABILITY COMPANY**

Witness Printed Name

Witness Signature

Witness Printed Name

STATE OF FLORIDA)
) §
COUNTY OF BROWARD)

THE FOREGOING SURFACE-WATER MANAGEMENT AREA DESIGNATION WAS ACKNOWLEDGED
BEFORE ME THIS _____ DAY OF _____, 2014, BY CASEY RODRIGUEZ, MANAGER
OF RODRIGUEZ FAMILY GROUP, LLC, A FLORIDA LIMITED LIABILITY COMPANY
AS GRANTOR, WHO IS PERSONALLY KNOWN TO ME (OR) HAS PRODUCED _____
_____ (TYPE OF IDENTIFICATION).

WITNESS MY HAND AND OFFICIAL SEAL IN THE COUNTY AND STATE LAST AFORESAID THIS
_____ DAY OF _____, 2014.

NOTARY SEAL AND STAMP
↓

NOTARY PUBLIC

PRINTED OR STAMPED NAME OF NOTARY PUBLIC

SAID LANDS SITUATE AND BEING IN BROWARD COUNTY, FLORIDA

Prepared by: South Broward Drainage District
6591 S. W. 160 Avenue
Southwest Ranches, Florida 33331

INSTR # 112078758
OR BK 50522 Pages 943 - 946
RECORDED 02/04/14 08:19:50 AM
BROWARD COUNTY COMMISSION
DEPUTY CLERK 2015
#2, 4 Pages

Return to: South Broward Drainage District
6591 S. W. 160 Avenue
Southwest Ranches, Florida 33331
(954) 680-3337

Folio No.: 5040 3302 0130

SURFACE-WATER MANAGEMENT AREA DESIGNATION

THIS SURFACE-WATER MANAGEMENT AREA DESIGNATION is granted this 28th day of January 2014, by **RODRIGUEZ FAMILY GROUP, LLC., A FLORIDA LIMITED LIABILITY COMPANY**, whose address is 5340 Hawkhurst Avenue, Southwest Ranches, FL 33332, hereinafter referred to as "Grantors", to SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, located at 6591 Southwest 160 Avenue, Southwest Ranches, Florida 33331, hereinafter referred to as "District".

WITNESSETH

That the Grantors, for and in consideration of the sum of ten dollars (\$10.00) and other goods and valuable consideration in hand paid by District, the receipt whereof is hereby acknowledged, do hereby grant and convey to District, its successors and assigns, a perpetual and exclusive SURFACE-WATER MANAGEMENT AREA for the storage and flowage of surface water together with any necessary appurtenances incidental and necessary thereto, over, across and through the following described property of Grantors:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO

of such character and sufficient size as to make a proper and adequate drainage system that District, its successors and assigns may establish.

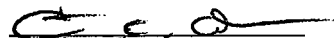
Together with free ingress, egress and regress across said lands for the purpose of maintaining and repairing the drainage system and appurtenances therein.

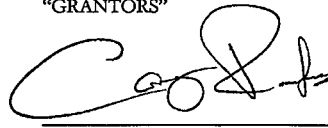
The Grantors further acknowledge that the SURFACE-WATER MANAGEMENT AREA shall be used for storage and flowage of storm water, shall not be filled in and shall not be raised to an elevation above normal ground elevation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

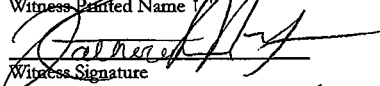
Signed, sealed and delivered
in the presence of:

"GRANTORS"


Witness Signature



CASEY RODRIGUEZ, MANAGER OF
RODRIGUEZ FAMILY GROUP, LLC., A
FLORIDA LIMITED LIABILITY COMPANY

Carilo C. Ardona
Witness Printed Name

Witness Signature
Katherine M. f. c
Witness Printed Name

Casey Rodriguez
Grantor Printed Name

SOUTH BROWARD DRAINAGE DISTRICT

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

THE FOREGOING SURFACE-WATER MANAGEMENT AREA DESIGNATION WAS ACKNOWLEDGED BEFORE ME THIS 28th DAY OF January, 2014, BY CASEY RODRIGUEZ, MANAGER OF RODRIGUEZ FAMILY GROUP, LLC, A FLORIDA LIMITED LIABILITY COMPANY AS GRANTOR, WHO IS PERSONALLY KNOWN TO ME (OR) HAS PRODUCED personally known (TYPE OF IDENTIFICATION).

WITNESS MY HAND AND OFFICIAL SEAL IN THE COUNTY AND STATE LAST AFORESAID THIS 28th DAY OF January, 2014.

NOTARY SEAL AND STAMP

Zachary Exposito
NOTARY PUBLIC



Zachary Exposito
PRINTED OR STAMPED NAME OF NOTARY PUBLIC

SAID LANDS SITUATE AND BEING IN BROWARD COUNTY, FLORIDA

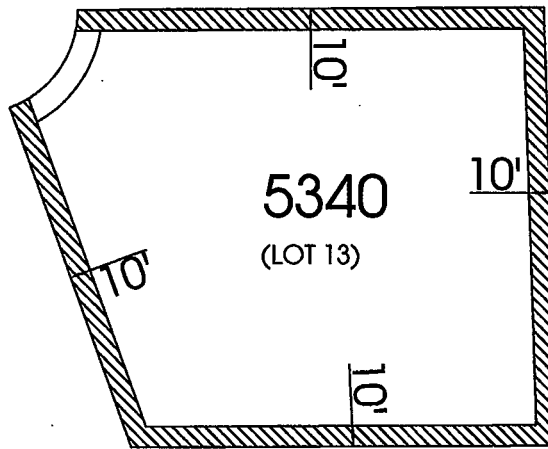
EXHIBIT "A" TO
SURFACE-WATER MANAGEMENT AREA DESIGNATION

THE NORTH 10 FEET, THE SOUTH 10 FEET, THE EAST 10 FEET AND THE WEST 10 FEET OF THE FOLLOWING-DESCRIBED PROPERTY:

LOT 13, IVANHOE ESTATES, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 100, PAGE(S) 17, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID LANDS SITUATE AND BEING IN BROWARD COUNTY, FLORIDA

HAWKHURST AVE.



**SURFACE-WATER MANAGEMENT AREA (7,931 SF)
TO BE MAINTAINED AT ELEVATION 5.00' N.G.V.D.**

THIS DRAWING IS FOR INFORMATIONAL
PURPOSES ONLY. THIS IS NEITHER A
SURVEY NOR AN ENGINEERING PLAN.

SCALE = N.T.S.
RODRIGUEZ FAMILY GROUP
5340 HAWKHURST AVENUE
PROP. ID # 5040 3302 0130

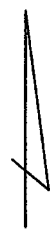


EXHIBIT B

MEMORANDUM

DATE: April 22, 2014
TO: South Broward Drainage District Commissioners
FROM: Kevin M. Hart, P.E.
District Director
Subject: Request to Use SBDD Lake Property for Kayak Against Cancer Event

Comments:

South Broward Drainage District has received a request from Mr. Charles H. Noonan to use a SBDD lake property for a Kayak Against Cancer (KAC) kick-off event to be held on Saturday, May 17, 2014. The actual fund raising event for KAC will take place on June 14th at Fort Lauderdale beach and will be the 14th year that KAC has organized and run this event while raising over \$200,000 for the American Cancer Society (ACS).

The kick-off event will be held at Bokampers Restaurant located at 15500 SW 29th Street, Miramar Florida, and the kayak racing would take place in the lake behind Bokampers Restaurant. The KAC event is part of the ACS's Relay for Life, which is a 501c3 not-for-profit organization.

A detailed description of the event and the various organizations and sponsors involved is attached to this memo.

Financial impacts to this Agenda Item: none, other than SBDD administrative costs.

This is to request approval for the Kayak Against Cancer organization, under the umbrella of the American Cancer Society Relay for Life, to hold a charity kayaking event in SBDD's lake property located behind Bokampers Restaurant at 15500 SW 29th Street, Miramar, Fl. on May 17, 2014.

KH
Attachments

Kevin Hart

From: Charles Noonan [kayuba@hotmail.com]
Sent: Tuesday, April 22, 2014 7:57 AM
To: kevin@sbdd.org; Chuck INEOA; Roxi
Subject: Kayak Against Cancer
Attachments: Google Map of Event Area.jpg; Google Expanded View of Event Area.jpg; Launch Zone 1.JPG; Kayak Against Cancer Day.pdf

Kevin,

Thank you for taking the time yesterday to discuss Kayak Against Cancer. Here is the basic information and background of our event as well as the explanation and photos of what we hope to do at Bokampers. If you need additional information please let me know. Please respond to this e-mail confirming receipt. Thanks!

My name is Charles H. Noonan. I am one of the founding members of the Kayuba Dive Club of Florida (Kayuba), and the founder and coordinator of Kayak Against Cancer (KAC). Kayuba is a kayak scuba diving club based out of Fort Lauderdale, Florida and KAC is a 100% volunteer run charity event which donates all funds, minus expenses, to the American Cancer Society of Broward County (ACS). Our Kayuba members routinely help plan and coordinate KAC. KAC is not its own independent 501c3 charity. However, we are part of the ACS Relay for Life, Air and Sea and fall under the ACS's 501c3.

I am writing to the South Broward Drainage District because, in addition to our actual event on June 14, 2014, we also promote KAC by hosting a kick-off event. The kick-off event serves as a fund raiser, a pre-registration/question and answer session for new participants, volunteers and sponsors, as well as a chance for like minded people to get together and discuss the event. This year we have coordinated the kick-off event with Bokampers Restaurant, 15500 SW 29 St, Miramar, FL and it is scheduled for May 17, 2014. Because Bokampers is located on a lake, we wanted to attempt to add a new twist to this event. We hope to invite our participants, local businesses, schools, and kayaking enthusiasts to help us begin our funds drive by entering in kayak sprint races at Bokampers. We are seeking your approval to use a small area of the lake adjacent to Bokampers for this purpose. In addition to providing a fun new way of kicking off our funds drive, we believe this will also promote interest in the healthy outdoor activity of kayaking. I have attached a map and photos of the area of Bokampers that we hope to use for our event. This would all take place near the entrance to Bokampers on the Southwest corner of the building. The sprint race would consist of heats of two four member team relay races starting from the shoreline to buoys 50 meters off shore and returning to the start. Teams would raise money by donating funds and/or collecting pledges. Plaques would be awarded for the top three teams to finish and for the top three teams that raises the most monies.

Although the majority of Relay for Life will take place this Saturday, April 26, 2014, our event still stands alone taking place on June 14, 2014 on the ocean along the beautiful beaches of Fort Lauderdale, Florida. Over the past 13 years KAC has raised over \$200,000.00 for the ACS. In addition to KAC, Kayuba participates in numerous waterway clean up and civic and social events in Broward County. I have attached a copy of the proclamation from the mayor of the city of Fort Lauderdale designating June 19, 2010 as Kayak Against Cancer Day. I am also providing you with the contact information for Monique Stephens, Associate Director Florida Division, ACS. I encourage you to contact her if you have any questions for the ACS regarding our event.

Monique Stephens, Associate Director Florida Division, American Cancer Society of Broward County. 3363 W. Commercial Blvd, Suite 100, Ft. Lauderdale, Fl 33309, Phone: 954-564-0880 ext. 7519, Mobile: 954-593-2365, Fax: 954-561-8072, <http://www.cancer.org>.

KAC takes place on the ocean beginning at the north end of Southbeach Park proceeding north to Oakland Park Boulevard and returning to the start location. This is our intermediate course which is approximately 7.4 miles. Those who participate in the advanced course continue south along the beach entering Port Everglades and proceeding along the intra-coastal waterway to Bahia Cabana. The advanced course is 12.6 miles. We coordinate our event in Fort Lauderdale with the City of Fort Lauderdale, which includes Police and Fire Departments, as well as the U.S. Coast Guard, the Florida Water Commission and the Broward Sheriff's Office.

KAC has an excellent safety record over the past 13 years as we have not had one injury to our participants or volunteers. Our event planning includes power boats for safety as well as numerous beaching locations/safety check points, snacks and refreshments and a post event results party at Bahia Cabana. The majority of this would not be needed for what we are planning at Bokampers. However, we would contact local lifeguard personnel to be on scene and we would have a minimum of two safety vessels (kayaks and rafts) on the lake during each of the races. I am also a former lifeguard and a certified rescue and SRT police scuba diver and I will have full scuba gear on standby in an abundance of caution. We also plan to coordinate to have a paramedic volunteer and/or pay a paramedic to be present on shore during the races and would coordinate with the City of Miramar to include their Police and Fire Departments. Memorial West Hospital is also located just a few miles from the event at the corner of Pembroke Road and SW 172 Avenue. I plan to coordinate our event with the hospital emergency room personnel so that they are aware of the purpose and location of the event.

I also secure event insurance each year and include all entities, which would include the South Broward Drainage District, as covered parties. Participants are also required to sign a liability

waiver releasing KAC and all entities from legal responsibility for their voluntary participation in our event.

If you have any questions and/or need additional information feel free to contact me via e-mail at kayuba@hotmail.com or call 954-541-0509. Your consideration regarding this request to conduct the kick-off event on the lake adjacent to Bokampers is greatly appreciated.

Charles H. Noonan





SW 29 St

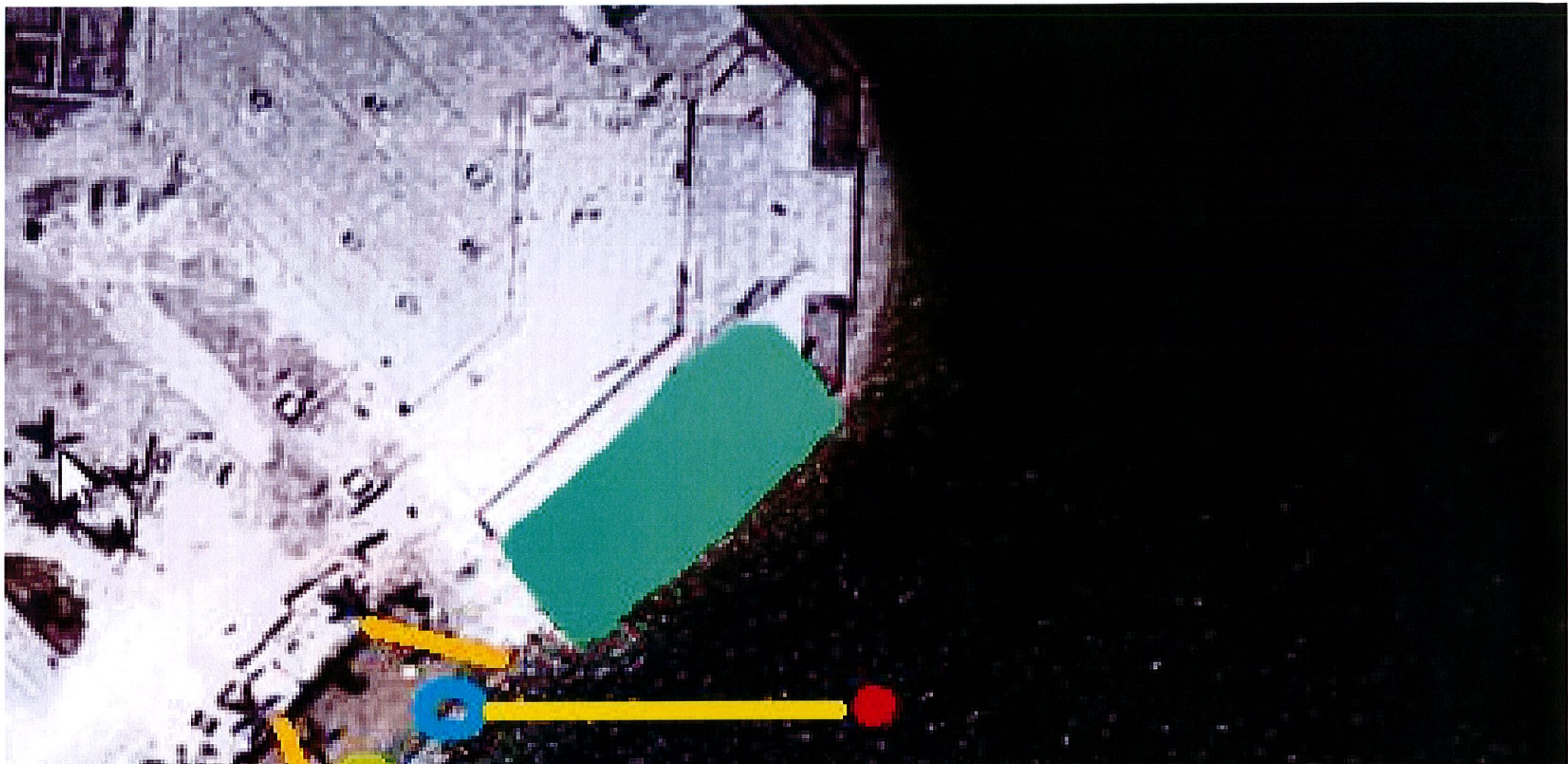
91


75


S 35th St

Miramar Pkwy

Miramar Pkwy




Kayak Launch Area - 

Start Team 1 - 

Start Team 2 - 

Course - 

Turn Buoys - 

Kayak Against Cancer Event Zone - 

Office of the Mayor
City of Fort Lauderdale

Proclamation


- WHEREAS,** *In 1997, Chuck Noonan and Dick Trodick established the Kayuba Dive Club of Florida in Coral Springs and, a year later, relocated the club to Fort Lauderdale to promote the sports of kayaking and scuba diving together; and*
- WHEREAS,** *The Kayuba Dive Club of Florida began with approximately 20 members and, today, has grown to more than 40 diving and kayak enthusiasts, many of whom have enjoyed diving excursions across the globe and all of whom agree that Fort Lauderdale is one of the best, first-class diving locations in the world; and*
- WHEREAS,** *Through Chuck Noonan's dedicated leadership, the Kayuba Dive Club of Florida developed the innovative event, "Kayak Against Cancer" in 2000 to raise funds for the American Cancer Society and support the fight against this incurable disease; and*
- WHEREAS,** *Kayak Against Cancer features a 12-mile kayak or a 3.5-mile walk, designated as the Seashell Stroll by the Seashore, with both events taking place in the morning hours along picturesque Fort Lauderdale Beach; and*
- WHEREAS,** *Chuck Noonan has been the driving force behind the popularity and growth of the Kayuba Dive Club since its inception 13 years ago, and has been instrumental in the success of the Kayak Against Cancer event; and*
- WHEREAS,** *During the past 10 years, the Kayak Against Cancer event has raised more than \$179,000 to support the American Cancer Society in its mission to eliminate cancer as a major health problem through research, education, advocacy and service; and*
- WHEREAS,** *The City of Fort Lauderdale is proud to recognize the outstanding commitment and contributions of the Kayuba Dive Club of Florida to this worthy cause;*
- NOW, THEREFORE, WE,** as City Commissioners of the City of Fort Lauderdale, Florida, do hereby proclaim Saturday, June 19, 2010 as:

KAYAK AGAINST CANCER DAY

in the City of Fort Lauderdale and encourage all citizens to join us in recognizing the Kayuba Dive Club of Florida's commitment to raising funds and awareness for the American Cancer Society, while promoting the healthy outdoor sports of kayaking and scuba diving.

DATED *this, the 19th day of June 2010.*




John P. "Juck" Seiler
Mayor



****MEMORANDUM****

DATE: April 17, 2014
TO: South Broward Drainage District Commissioners
FROM: Kevin M. Hart, P.E.
District Director
Subject: Resolution No. 2014-02 Update to the SBDD Employee Policy Handbook

Comments:

Attached for the Board's review and approval is proposed SBDD Resolution No. 2014-02 to update the South Broward Drainage District Employee Policy Manual for the purpose of updating the District's Drug Free Workplace Policy, including the addition of a new provision for Commercial Driver License (CDL) holders. The proposed changes will bring these policies in line with current Florida Statutes and Federal and State laws that are applicable to government employees.

The proposed updates are consistent with the District's current practices and will not result in any reductions or changes to SBDD employee benefits.

Financial impacts to this Agenda Item: none, other than SBDD administrative costs.

This is to request approval of SBDD Resolution No. 2014-02 to update the South Broward Drainage District Employee Policy Manual for the purpose of updating the District's Drug Free Workplace Policy, including the addition of a new provision for Commercial Driver License (CDL) holders.

KH
Attachments

SOUTH BROWARD DRAINAGE DISTRICT RESOLUTION No. 2014-02

RESOLUTION OF THE SOUTH BROWARD DRAINAGE DISTRICT
ADOPTING AN UPDATE TO THE SOUTH BROWARD DRAINAGE
DISTRICT'S EMPLOYEE POLICY MANUAL FOR THE PURPOSE OF
UPDATING THE DISTRICT'S DRUG FREE WORKPLACE POLICY,
INCLUDING THE ADDITION OF A NEW PROVISION FOR COMMERCIAL
DRIVER LICENSE (CDL) HOLDERS; PROVIDING FOR SEVERABILITY
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the South Broward Drainage District, a political subdivision of the State of Florida, and an independent water management district hereinafter referred to as "District", is charged with the responsibility of effecting drainage and water management within its geographical boundaries; and

WHEREAS, the District's Director has submitted to the District Board of Commissioners a proposal to update the District's Employee Policy Handbook by updating the District's Drug Free Workplace Policy, including a provision for Commercial Driver License (CDL) holders; and

WHEREAS, the District Board of Commissioners has determined that the District's Employee Policy Handbook should be updated and amended to incorporate the revisions proposed by the District Director as stated herein; and

WHEREAS, the District's Drug Free Workplace Policy as contained within the District's Employee Policy Handbook is recommended to be updated and revised as shown in the attached Exhibit "A"; and

WHEREAS, the proposed update to the District's Drug Free Workplace Policy as shown in the attached Exhibit "A" will contain a provision for CDL holders; and

WHEREAS, the Employee Manual shall be updated and revised to incorporate the changes recommended by the District Director and reflected in the attached Exhibit "A"; and

WHEREAS, a public hearing was held at the offices of the South Broward Drainage District located at 6591 S.W. 160th Avenue, Southwest Ranches, Florida 33331 at 8:00 A.M. on Thursday, the 24th day of April, 2014 for the purpose of approving and adopting the updates, revisions, amendments, deletions and additions to the Employee Policy Handbook for the District;

NOW, THEREFORE, be it resolved by the Board of Commissioners of the South Broward Drainage District in meeting assembled that:

1. The foregoing statements are true and correct and are incorporated herein by reference as if fully stated herein.

2. The proposed updates, revisions, amendments, deletions and additions to the South Broward Drainage District Employee Policy Handbook as stated above and reflected in the attached Exhibit "A" are approved and adopted.

3. If any one or more of the covenants, agreements or provisions of this Resolution shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be separate from the remaining covenants, agreements or provisions and shall in no way affect the validity of all other provisions of this Resolution.

4. The updates, revisions, amendments, deletions and additions to the Employee Policy Handbook shall apply to and shall be in effect for all employees of the District as of the 24^h day of April, 2014 and shall be effective until revised or changed by the District Board of Commissioners by subsequent resolution.

5. This Resolution shall take effect on the 24th day of April, 2014.

IN WITNESS WHEREOF, the Chairperson of the Board of Commissioners of the SOUTH BROWARD DRAINAGE DISTRICT has hereunto set his hand and the Secretary of the Board of Commissioners of the SOUTH BROWARD DRAINAGE DISTRICT has caused to be set its seal.

ADOPTED AND DATED the _____ day of _____, 2014.

SOUTH BROWARD DRAINAGE DISTRICT

(SEAL)

By: _____

Scott Hodges, Chairperson

Attest:

Robert E. Goggin, IV, Secretary

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

The foregoing Resolution No. 2014-02 was acknowledged before me this ____ day of April, 2014 by SCOTT HODGES and ROBERT E. GOGGIN, IV, as Chairperson and Secretary, respectively of the SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, on behalf of SOUTH BROWARD DRAINAGE DISTRICT. They are personally known to me.

WITNESS my hand and official seal in the county and state last aforesaid this _____ day of April, 2014.

(NOTARY SEAL OR STAMP)

Notary Public - State of Florida at Large

EXHIBIT "A"

**SOUTH BROWARD
DRAINAGE DISTRICT
EMPLOYEE POLICY HANDBOOK**



Date: April 2014

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OPEN DOOR POLICY - COMPLAINT/GRIEVANCE RESOLUTION

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EXHIBITS:

"A" - VEHICLE TAKE-HOME POLICY

"B" - DRUG-FREE WORKPLACE PROGRAM

"C" - COMMERCIAL DRIVER'S LICENSE (CDL) DRUG TESTING POLICY

1.09 DRIVING RECORD STATUS

Employees who drive on District business are required to have a valid driver's license and proper automobile insurance. In addition, due to the job duties of certain positions, employees may be required to possess a Class A, B, or C Commercial Driver's License (CDL).

Employees driving on District business must report any vehicle violation, whether in a District or personal vehicle, and any change in their insurance coverage, to their department head/supervisor within 24 hours of the event.

Employees who possess a Commercial Driver's License (CDL) and whose job duties include the operation of District equipment that qualify as Commercial Motor Vehicles as defined by the Federal Motor Carrier Safety Regulations (FMCSR) shall comply with the District's CDL Drug Testing Policy as defined in Exhibit "C" of this Employee Policy Handbook.

6.02 DRUG AND ALCOHOL USE/DRUG-FREE WORKPLACE POLICY (SEE EXHIBIT "B")

The District is committed to maintaining a Drug-Free Workplace.

Substance abuse, which includes the possession, use or sale of illegal drugs or the unlawful use or misuse of lawful substances, including alcohol and prescription drugs, will not be tolerated. The District also prohibits the illicit use, possession, sale, attempted sale, purchase, attempted purchase, conveyance, distribution, cultivation or manufacture of illegal drugs, intoxicants, or controlled substances in any amount or in any manner. It is a condition of employment at the District to refrain from using illegal drugs and unlawfully using lawful substances, including alcohol and prescription medicines, and to abide by the guidelines of the District's Drug-Free Workplace Policy.

Certain employees of the District who operate commercial motor vehicles, and must be subjected to enhanced drug testing standards pursuant to the regulations of the Federal Motor carrier Safety Administration contained in 49 C.F.R. parts 40 and 382. The District will provide these employees with a copy of the District's Commercial Driver's License Drug Testing Policy and are expected to comply with the Policy's enhanced requirements in all respects (See Exhibit "C").

EXHIBIT "B"

DRUG-FREE WORKPLACE POLICY

INTRODUCTION

This is your official notification that South Broward Drainage District ("SBDD" or "Organization") complies with Florida's Drug-Free Workplace program requirements as authorized by Florida Statutes §§ 440.101-440.102. The District employees are absolutely prohibited from unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances in the workplace. It is a condition of employment with the District to refrain from taking drugs on or off the job and to abide by the guidelines of this Policy and the District's Drug-Free Workplace program.

Drug Tests: The following is a list of drugs the District may test for:

<u>CHEMICAL NAME</u>	<u>BRAND NAME</u>	<u>COMMON NAME</u>
Alcohol (ETOH)		Liquor, Booze, Wine, Beer, Distilled Spirits
Amphetamines	Obetrol, Biphетamine, Desoxyn, Dexedrine, Didrex, Ionamine, Fastin	Uppers, Speed, Bennies, Crystal, Black Beauties
Barbiturates	Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butabarbital, Butalbital, Phrenilin, Triad	Barbs, Goofballs, Reds, Rainbows, Downers, Yellows, Blues
Benzodiazepines	Ativan, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril	Downers
Cannabinoids (THC) (Tetrahydrocannabinol)	Marinol (Dronabinol, THC)	Pot, Marijuana, Weed, Grass, Joint, Hashish, Maryjane
Cocaine (Benzoylcegonine)	Cocaine HCl topical solution (Roxanne)	Freebase, Crack, Blow, Snow, Nose Candy, Coke
Opiates	Paregoric, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid, M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin	Downers, Smack, Heroine
Methadone	Dolophine, Mathadose	Junk, Jungle Juice
Methaqualone	Quaaludes	Ludes
Phencyclidine (PCP)		PCP, Angel Dust, THC
Propoxyphene	Darvocet, Dolene, Darvon N	

In accordance with, Florida Statutes § 440.102(4), the Organization shall conduct the following types of drug tests:

- 1) **Job Applicant Testing**: All job applicants applying for a mandatory-testing or specialty-risk position will submit to pre-employment drug testing. In accordance with applicable Florida law, a mandatory-testing position and a special-risk position are defined as follows:
 - A. “Mandatory-testing position” means, with respect to a public employer, a position in which a drug impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations, or work with controlled substances; a position subject to employee security checks in accordance with Section 110.1127, Fla. Stat.; or, a position in which a momentary lapse in attention could result in injury or death to another person.
 - B. “Special-risk position” means, with respect to a public employer, a position that is required to be filled by a person who is certified under Chapter 633, Fire Prevention and Control, or Chapter 943, Department of Law Enforcement.

- 2) **Reasonable-Suspicion Drug Testing**: All employees will submit to reasonable-suspicion drug testing. Reasonable-suspicion drug testing is based on a belief that an employee is using or has used drugs in violation of this Policy. Such a belief must be drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:
 - A. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug;
 - B. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
 - C. A report of drug use, provided by a reliable and credible source;

- D. Evidence that an individual has tampered with a drug test during his employment with the Organization;
 - E. Information that an employee has caused, contributed to, or been involved in an accident while at work; or,
 - F. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the Organization's premises or while operating the Organization's vehicle, machinery, or equipment.
- 3) **Routine Fitness-For-Duty Testing:** Employees will submit to drug testing if such testing is conducted as part of routinely scheduled fitness-for-duty medical examinations in accordance with the Organization's established policy or routinely scheduled for all members of an employment classification or group.
- 4) **Followup Drug Testing:** Employees, who in the course of their employment with the Organization, enter an employee assistance program for drug-related problems or a drug rehabilitation program, will submit to followup drug tests, unless they voluntarily enter the program. When an employee voluntarily enters a program, this Organization has the option to not require followup drug testing. If followup drug testing is required, it must be conducted at least once a year for a two (2)-year period after completion of the program. Advance notice of a followup drug testing date will not be given to the employee to be tested.

Additional testing may be conducted as required by applicable state and federal laws, rules or regulations or as deemed necessary by the Organization.

Consequences of a Positive Confirmed Drug Screen: This Organization will not hire any applicant who tests positive on a drug test. This Organization separates all employees who test positive on their drug tests. Any employee who is separated on the basis of a positive drug test will be ineligible to collect unemployment compensation. In addition, if the employee is asked to submit to a drug test as a result of the employee's involvement in a work-related accident and tests positive on a drug or alcohol test, the employee will be separated, ineligible to collect unemployment and may be denied related workers' compensation benefits.

Consequences of Refusal to Allow Testing: An applicant who refuses to submit to a drug test will not be hired. Employees who refuse to submit to reasonable-suspicion drug testing will lose their jobs and their unemployment benefits. In addition, if an employee is requested to submit a drug test as a result of the employee's involvement in a work-related accident and refuses to submit to a test, the employee will lose his job, unemployment benefits and may be denied related workers' compensation benefits.

Consequences of a Diluted Test Result: If an employee/job applicant's drug test result is diluted, the employee/job applicant must submit to retesting. If an employee refuses to submit to a retest, the employee will be separated; if a job applicant refuses to submit to a retest, the job applicant will not be hired.

Confidentiality: Employers and their agents and laboratories must keep drug test results and other related information confidential. If information is released, it shall be done solely under a written consent form voluntarily signed by the person tested unless a release is compelled by a hearing officer or a court or unless it is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must meet the criteria set by the State of Florida and in accordance with Florida Statutes § 440.102(8).

Reporting Use of Prescription or Non-Prescription Medications: An employee/job applicant can confidentially report the use of all prescription or non-prescription medications to a Medical Review Officer ("MRO"), both before and after being tested, as presence of those medications in the body may affect the outcome of the test. A list of the most common medications by brand name, common name and by chemical name, which may alter or affect a drug test, accompanies this Policy.

Collection of Specimens: All specimens collected and tested for drugs shall be collected with the privacy interests of the individual in mind and shall be documented according to those procedures prescribed in Florida Statutes § 440.102(5). Moreover, collection and testing will be accomplished by a licensed clinical laboratory and according to those procedures provided by Florida Statutes § 440.102(9). In accordance with Florida Statutes § 440.102(5)(g), the laboratory is required to preserve the specimen that produces a positive confirmed test result for a period of at least 210 days after the results of the positive confirmation are mailed or otherwise delivered to the MRO. Within 180 days after written notification of a positive test result, the employee or job applicant may have a portion of the specimen retested at the employee or job applicant's expense at another laboratory. The second laboratory test must be of equal or greater sensitivity as the first laboratory test,

licensed and approved by the agency for Health Care Administration. The first laboratory shall be responsible for the transfer of a portion of the specimen to be retested to the second laboratory and for the integrity of the chain of custody doing the transfer.

Education: Each year this Organization will post or circulate a list of locations offering educational courses to help our employees identify the personal and emotional problems that may result from the misuse of drugs and alcohol. The offered classes will also provide information on legal, social, physical and emotional consequences on the misuse of alcohol and drugs.

Employee Assistance Program: A list of Employee Assistance Programs and Drug and Alcohol Rehabilitation Programs available locally accompanies this Policy. The cost of these programs is the responsibility of the employee. Public employees in mandatory-testing or special-risk positions must not the following:

- a) If an employee, who is employed by a public employer in a mandatory-testing position, enters an employee assistance program or drug rehabilitation program, the employer must assign the employee a position other than a mandatory-testing position or, if such position is not available, place the employee on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated leave credits before leave may be ordered without pay.
- b) An employee, who is employed by a public employer in a special-risk position, may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under Section 893.03, Fla. Stat. A special-risk employee, who is participating in an employee assistance program or drug rehabilitation program, may not be allowed to continue to work in any special-risk or mandatory-testing position of the public employer, but may be assigned to a position other than a safety-sensitive position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

Explanation for Employee/Job Applicant: Within five (5) working days after receipt of notice of a positive confirmed test result, the employee/job applicant may submit information to the MRO and the employer explaining or contesting the test

results and stating why the test results do not constitute a violation of the employer's policy. If this explanation is unsatisfactory, the Organization must, within fifteen (15) days of receipt of the explanation or challenge, provide the employee/job applicant with a written explanation as to why the employee's explanation is unsatisfactory along with the report of the positive confirmed test results. This documentation shall be kept confidential by the Organization and shall be retained by them for at least a year. If the employee wishes to challenge a confirmed drug test result that was requested as a result of a work place accident, the employee may file an administrative challenge by filing a claim for benefits with a Judge of Compensation Claims. If no workplace accident occurred, the confirmed positive test result of the employee/job applicant may be challenged in a court of competent jurisdiction.

Administrative or Civil Action: An employee/job applicant must notify the drug testing laboratory of any administrative or civil action brought pursuant to Florida Statutes § 440.102. The laboratory will maintain the sample until the case or administrative appeal is settled.

Right to Consult with Laboratory: If any initial drug test of an employee/job applicant is confirmed as positive, the Organization's MRO shall provide technical assistance for the purpose of interpreting the test results to determine whether the result could have been caused by prescription and non-prescription medication taken by the employee/job applicant.

Policy Guidelines: The contents of this Policy may be changed and updated at anytime. This Policy is not intended to create a contract for term between the Organization and any employee. Nothing in this Policy binds this Organization to a specific or definite period of employment or to any specific policies, procedures, actions, rules, or terms and conditions of employment.

EXHIBIT "C"

COMMERCIAL DRIVER'S LICENSE DRUG TESTING POLICY

The Omnibus Transportation Employee Testing Act of 1991 requires certain drug testing of South Broward Drainage District ("SBDD") employees who must maintain a Class A, B or C Commercial Driver's License ("CDL") as a valid condition of their employment ("CDL Drivers").

SBDD designates District Director Kevin Hart as the person(s) to whom all CDL Drivers should direct questions about this Policy.

SBDD shall comply with all procedures specified by Title 49, Parts 40 and 382, to protect its CDL Drivers and the integrity of its testing processes. In no event will any testing be conducted that might in any way endanger the life of any CDL Driver.

SBDD shall comply with all required procedures to safeguard the validity of all test results and to ensure that those results are attributed to the correct CDL Driver, including post-accident information, procedures and instructions.

SBDD shall maintain all records in accordance with federal law, including but not limited to all records regarding SBDD's alcohol and controlled substances abuse prevention programs. All SBDD records shall be maintained in a secure location with controlled access.

All CDL Drivers performing safety-sensitive functions are required to comply with this Policy at all times. A CDL Driver is considered to be performing a safety-sensitive function during any period in which he is actually performing, ready to perform, or immediately available to perform such function.

Safety-sensitive functions include, but are not limited to all time spent by CDL Drivers:

1. At SBDD headquarters, or other SBDD property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by SBDD;
2. Inspecting equipment or otherwise inspecting, servicing, or conditioning any Commercial Motor Vehicle ("CMV") at any time;
3. At the driving controls of a CMV in operation;
4. Other than driving times in or upon any CMV, except when resting in a sleeper berth that conforms to the requirements of applicable federal law;
5. Performing, supervising, assisting or attending to the loading or unloading of a vehicle, or all time spent in readiness to operate a vehicle; and,
6. Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

CDL Drivers are prohibited from performing safety-sensitive functions if they:

1. Have an alcohol concentration of 0.04 or greater;
2. Are under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse;
3. Have consumed alcohol within four (4) hours;

4. Have used any controlled substances except when such use is pursuant to instructions of a licensed medical practitioner who has advised the CDL Driver that it will not adversely affect his ability to safely work; or,
5. Refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol or controlled substances test.

If a CDL Driver or SBDD violates any part of this Policy, or the requirements of 49 C.F.R. Part 40, either or both may be subject to the civil and criminal penalties imposed under 49 U.S.C. § 521(b); criminal penalties include fines and/or a term of imprisonment.

SBDD shall make the following available to all CDL Drivers: information concerning the effects of alcohol and controlled substances on an individual's health; information about signs and symptoms of alcohol or controlled substances problems; and, information about Employee Assistance Programs ("EAP").

SBDD shall conduct the following drug tests on CDL Drivers:

1. Job Applicant Testing for CDL Drivers
CDL employee candidates who refuse to submit to a drug test or produce a positive confirmed drug test shall not be hired.
2. Reasonable-Suspicion Testing
 - a. Reasonable-suspicion testing for CDL Drivers shall occur based upon specific, contemporaneous, articulable observations of a trained supervisor or a trained SBDD official concerning the appearance, behavior, speech or body odors of a CDL driver; such observations may include indications of the chronic and withdrawal effects of controlled substances.
 - b. With respect to reasonable suspicion regarding alcohol testing of CDL Drivers:
 - i. The person who makes the determination that reasonable-suspicion exists shall not be the person to conduct the alcohol test.
 - ii. Alcohol testing is authorized only if the required observations are made while the CDL Driver is performing safety-sensitive functions, just before he is to perform safety-sensitive functions, or just after he has ceased performing such functions.
 - iii. Alcohol testing may not be administered more than 8 hours following the reasonable-suspicion determination and if no test is given, SBDD will prepare a record stating the reasons.
 - iv. If alcohol testing cannot be administered within two (2) hours of a reasonable-suspicion determination, SBDD will prepare a record stating why testing could not be promptly administered.
 - c. If reasonable-suspicion is observed, but a test cannot be administered, SBDD will not permit a CDL Driver to perform safety-sensitive functions unless and until:
 - i. a test is conducted and the alcohol concentration is determined to be less than 0.02; or,
 - ii. twenty-four (24) hours have passed from the time of the initial observation.
 - d. A CDL Driver subjected to reasonable-suspicion testing shall be placed on

leave without pay pending the results of the test. A CDL Driver whose reasonable-suspicion test is negative shall be retroactively paid for time spent on leave without pay pending the results of the test.

3. Random Testing

- a. Random, unannounced testing shall be spread reasonably throughout the calendar year. Upon being notified of being selected for testing, a CDL Driver shall immediately report to the test site.
- b. SBDD shall select CDL Drivers for random testing using a scientifically valid method. Each CDL Driver shall have an equal chance of being tested each time selections are made.
- c. A CDL Driver is only subject to random testing for alcohol while the CDL Driver is performing safety-sensitive functions, just before he is to perform safety-sensitive functions, or just after he has ceased performing such functions.
- d. At least 10 percent of the average number of CDL Driver positions, randomly selected, shall be tested for alcohol each year. At least fifty (50) percent or half (1/2) the average number of CDL Driver positions shall be randomly tested for controlled substances each year.

4. Post-Accident Testing

Post-accident testing on CDL Drivers shall occur as soon as practicable following an accident.

- a. SBDD will test each surviving CDL Driver:
 - i. Who was performing a safety sensitive function with respect to the vehicle, if the accident involved the loss of human life.
 - ii. For alcohol, if he receives a citation within eight (8) hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or,
 - (b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
 - iii. For controlled substances if he receives a citation within thirty-two (32) hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or,
 - (b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- b. CDL Drivers are prohibited from using alcohol within eight (8) hours following an accident requiring a post-accident test, or until a post-accident alcohol test is taken, whichever occurs first.

- c. Testing must be performed in a timely manner.
 - i. Post-accident alcohol testing shall be done within two (2) hours of any accident; if alcohol testing is not administered by SBDD within eight (8) hours following the accident, SBDD shall not conduct alcohol testing.
 - ii. Post-accident controlled substances testing shall be conducted as soon as possible, but no later than thirty-two (32) hours following an accident.
 - iii. SBDD shall document those instances when testing is not conducted in accordance with established timeframes.
 - iv. A CDL Driver subjected to post-accident testing shall remain readily available for such testing or may be deemed by SBDD to have refused to submit to such testing.
- d. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a CDL Driver from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- e. A CDL Driver subjected to post-accident testing shall be placed on leave without pay pending the results of the test. A CDL Driver whose post-accident test is negative shall be retroactively paid for time spent on leave without pay pending the results of the test.

5. Return to Duty Testing

- a. If a CDL Driver violates this Policy, he will not be permitted to perform any safety-sensitive functions unless and until he has:
 - i. Been evaluated by a Department of Transportation (“DOT”) qualified Substance Abuse Professional (“SAP”) who shall determine what assistance, if any, the CDL Driver needs in resolving problems associated with alcohol misuse and controlled substances use;
 - ii. Been advised of the availability of and provided with the names, addresses and telephone numbers of SAPs and counseling treatment programs; and,
 - iii. Undergone requisite return-to-duty testing with a verified negative result.
- b. Neither SBDD nor a CDL Driver shall seek a second SAP’s evaluation.

6. Follow-Up Testing

- a. Follow-up testing shall occur following a CDL Driver’s completion of an EAP for drug-related problems or a drug rehabilitation program.
 - i. Follow-up testing shall be conducted a minimum of six (6) times during the first twelve month period following completion of the program.
 - ii. Follow-up testing can last up to sixty (60) months.
 - iii. Follow-up testing will include an evaluation by a SAP to determine that the CDL Driver has properly followed any prescribed rehabilitation program.
 - iv. Advance notice of any follow-up testing date shall not be given to the CDL Driver to be tested.

- b. CDL Drivers who refuse to submit to follow-up testing or produce a positive confirmed drug test shall be separated from SBDD.
- c. A CDL Driver subject to follow-up testing will continue to be subject to SBDD's random testing program.

SBDD shall provide required training on alcohol misuse and use of controlled substances to all persons designated to supervise drivers.

CDL Drivers who refuse to submit to testing required by applicable state and federal laws, rules or regulations or produce a positive confirmed drug test shall be separated from SBDD.

1. Obstruction and lack of cooperation with the testing process is considered refusal to submit to the required testing.
2. Any verified adulterated or substituted drug test result shall be treated as a refusal to test.

DRIVER CERTIFICATE OF RECEIPT
SOUTH BROWARD DRAINAGE DISTRICT
POLICY ON COMMERCIAL DRIVER'S LICENSE DRUG TESTING

By signing this statement, I certify that I have received a copy of South Broward Drainage District's ("SBDD") Commercial Driver's License Drug Testing Policy in accordance with the Regulations of the FMCSA, contained in 49 C.F.R. Parts 40 and 382. This Policy is separate from and in addition to any other controlled substance and/or alcohol testing policies enacted by SBDD.

I understand that, as a covered driver, I am subject to the provisions of this policy and it is my responsibility to be in compliance with its provisions. My signature below acknowledges my receipt of this Policy and of all related materials.

Employee Name -- Print or Type

Employee Signature

Date

Supervisor Signature

Date

The original version of this document must be maintained by SBDD.

ATTORNEY'S REPORT

Prepared By & Return To:

Douglas R. Bell, Esquire
Cumberland Building - Suite 505
800 East Broward Boulevard
Fort Lauderdale, Florida 33301

DRAFT NO. ONE

AGREEMENT

THIS AGREEMENT ("Agreement"), made and entered into this ___ day of _____, 2014, by and between SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, whose address is 6591 S.W. 160th Avenue, Southwest Ranches, Florida 33331 (hereinafter referred to as "District"), HOTWIRE COMMUNICATIONS, LTD., a Pennsylvania Limited Partnership, whose principle address is One Belmont Avenue, Suite 1100, Bala Cynwyd, PA 19004, (hereinafter referred to as "Hotwire"), and PEMBROKE FALLS HOMEOWNERS ASSOCIATION, INC., a Florida not for profit Corporation, whose address is 1651 Northwest 136th Avenue, Pembroke Pines, Florida 33028, (hereinafter referred to as "Association").

WITNESSETH:

WHEREAS, District is a political subdivision of the State of Florida charged with the responsibility of effecting drainage and water management within its geographical boundaries and approving all subdivision plats and development plans affecting lands within its geographical boundaries; and

WHEREAS, Hotwire is a communications company licensed by the State of Florida and is in the business of providing cable TV, internet and other communications services (hereinafter referred to as "Communication Services"); and

WHEREAS, Association is the Pembroke Falls Homeowners Association and said Association has the authority to approve the construction of improvements within the Pembroke Falls Development, including, but not limited to the improvements proposed by Hotwire; and

WHEREAS, Hotwire proposes to provide Communication Services to residents of Pembroke Falls; and

WHEREAS, Association has contracted with Hotwire to provide bulk communication services to individual homes of Pembroke Falls; and

WHEREAS, Hotwire proposes to install or has installed armored fiber optic distribution cables (the "Communication System") within Lake Maintenance Easements (hereinafter referred to as "LME" or

"LMEs") located on the property within the Pembroke Falls Development which is depicted on Exhibit "A", attached hereto; and

WHEREAS, Hotwire and Association have notified the underlying property owners of the Exhibit "A" property of the proposed Hotwire Communication System in accordance with applicable law; and

WHEREAS, Hotwire and Association are responsible to ensure that said property owners consent to and have no objection to the construction of the Communication System by Hotwire within the LME's on their property and shall satisfy and address all concerns and obligations associated with said Communication System in accordance with applicable law; and

WHEREAS, prior to accessing or encroaching on any LME, Hotwire shall notify the underlying Property Owner(s) that Hotwire representatives will be installing or making repairs to the Communications System on said property, such type and method of the notification process shall be approved by the District; and

WHEREAS, Hotwire and Association represent that said property owners have no objection to the construction or repairs of the Communication System by Hotwire within the LMEs on their property; and

WHEREAS, the LMEs are dedicated to the District for use by the District to access and maintain adjacent water bodies; and

WHEREAS, at Hotwire's sole cost and expense, Hotwire proposes to install and maintain within the LMEs a state of the art fiber distribution system consisting of armored fiber distribution wiring installed at a minimum depth of twenty-four (24) inches or drop fiber installed in conduit at a minimum depth of twelve (12) inches (referred to herein as "Communication System"); and

WHEREAS, subject to conditions of this Agreement and as permitted by applicable law, District agrees to convey the right to use the LME's as stated in this Agreement and the District has no objection to Hotwire installing the Communication System as stated herein; and

WHEREAS, it is Hotwire's intention to place the distribution wiring and conduit within a hand dug trench located within the LMEs; and

WHEREAS, the installation of the Communication System will not interfere with or change the lake bank slopes and none of Hotwire's facilities will be permitted or allowed above ground within the LMEs; and

WHEREAS, the District has no objection to Hotwire installing armored fiber optic cable at a depth of 24 inches or drop fiber installed within a conduit at a minimum depth of 12 inches within the LMEs and no closer than ten (10) feet of the property owners back (lake tract) property line. All trenches will be hand dug, back-filled and compacted and the property, including any sod (grass) within the LMEs will be restored to its original condition. There will not be any heavy equipment placed on or near the LMEs or in, on, within or over any of the adjacent lake tracts; and

WHEREAS, Hotwire has obtained or will obtain a permit and all necessary approvals from the City of Pembroke Pines, Florida for all Communication Systems placed within the LMEs by Hotwire; and

WHEREAS, Hotwire has obtained or will obtain all other Governmental approvals and permits required for placement of the Communication Systems within the LMEs by Hotwire; and

WHEREAS, Hotwire desires a permit from the District for itself, its successors and assigns for the purpose of constructing and maintaining the Communication System within the LMEs; and

WHEREAS, the Communication System is more fully described and shown on Engineering Plans for _____ prepared by _____, for Project No _____ (hereinafter referred to as the "Plans"), and approved by District Permit No _____ which are incorporated herein in their entirety and subject to approval of this Agreement; and

WHEREAS, a copy of a drawing depicting the Communication System to be constructed within the LMEs is attached hereto as Exhibit "B"; and

WHEREAS, Hotwire and Association acknowledge that the District may at some date in the future utilize the LMEs for maintaining the adjacent lakes or water bodies and that the Communication System constructed by Hotwire within the LMEs may be damaged; and

WHEREAS, Hotwire acknowledges that Hotwire has the sole responsibility to maintain the Communication System constructed within the LMEs and that the District has no obligation to maintain said Communication System; and

WHEREAS, as a condition for approval of Hotwire and Association's request to utilize the LMEs as stated herein, the District requires Hotwire and Association to enter into an indemnification and hold harmless agreement indemnifying and holding harmless the District from any and all liability as a result of the construction and placement of the Communication System within the LMEs and District's subsequent use of the LMEs; and

WHEREAS, the District, Hotwire and Association are desirous of entering into an Agreement to provide for approval to permit the installation and maintenance of the Communication System within the LMEs; and

NOW, THEREFORE, in consideration of the premises and Ten and No/100 (\$10.00) Dollars and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by District, Hotwire and Association, each intending to be legally bound, do hereby represent, warrant, covenant and agree as follows:

1. The foregoing statements are true and correct and are incorporated herein by reference as though set forth verbatim.
2. District, subject to approval of the Association agrees to allow Hotwire the right and authority to enter upon the LMEs from time to time, at such times as Hotwire shall deem necessary for the construction, installation, maintenance and operation of its Communications facilities, on, about and

within the LMEs, together with such rights to place, replace, remove, upgrade, repair, improve and maintain the wiring and equipment used or suitable for the provision of telephone and cable television services and other Communication Services in, over, across and under the LMEs (the "Facilities"). The rights granted, herein, to Hotwire specially, and without limitation, include: (a) the right of Hotwire to patrol, inspect, alter, improve, repair, build and rebuild, the Facilities; (b) the right for Hotwire to change the quantity and type of the Facilities; (c) the right for Hotwire to clear, with advance notice to and approval from the District and the Association or Residents, the LME area of trees, limbs, undergrowth and other physical objects which, in the opinion of Hotwire, endanger or interfere with the safe and efficient installation, operation and maintenance of the Facilities; and (d) all other rights and privileges reasonable, necessary for Hotwire's safe and efficient installation, maintenance, operation and use of said LME areas for the purposes described herein. Unless specifically authorized by the District in writing, no improvements except as described in this Agreement, may be constructed or placed within the LME's by Hotwire and plans for any additional improvements by Hotwire must be submitted to and be approved by District prior to construction.

3. All successors to the District, Hotwire and Association shall be bound by this Agreement. However, Hotwire shall not assign this Agreement to a successor without the approval of the District Board of Commissioners and any purported assignment without said approval will be null and void and of no force or effect.

4. (a) This Agreement shall be effective on June 1, 2014 ("Effective Date"); provided, however, the initial term of this Agreement (the "Initial Term") is five (5) years, commencing on the Effective Date. This Agreement will automatically renew for four (4) additional terms (each a "Renewal Term") of five (5) years each, unless either party provides written notice of its intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. If at the end of the fourth (4th) five (5) year Renewal Term, this Agreement has not been terminated by either party by giving to the other written notice of an intention to terminate the Agreement at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) and for one (1) year terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term.

(b) Hotwire shall pay an annual Use of Easement Fee ("Fee") to be paid on or before June 1st of each year to the District which will be based on \$500.00 per linear mile and any fraction of a mile of Hotwire's communication system within the LMEs ("Annual Rent") as rent for the first year of the Initial Term. On each anniversary of the Effective Date during the Initial Term and the Renewal Term(s), the Annual Rent will be increased by five percent (5%) of the Annual Rent payable with respect to the immediately preceding one (1) year term. Any partial months will be prorated.

5. Hotwire agrees that Hotwire shall be responsible for such work as may be necessary to maintain the Communication System in the condition required by the District, and other governmental agencies other than the District, which have jurisdiction over the Communication System.

6. Hotwire agrees that all maintenance of the Communication System within the LMEs shall comply with all requirements and conditions of the District and other applicable laws.

7. District shall retain the right to move Hotwire's equipment and Facilities in the case of an emergency, provided, however, District shall have first made a reasonable attempt to notify Hotwire of the emergency. If Hotwire does not respond to said emergency within a reasonable time period as determined by the nature of the emergency, District shall cooperate with Hotwire to ensure that the relocated equipment is operational and fully compliant with all applicable building, electrical and fire codes.

8. In addition to the foregoing annual fee, Hotwire shall deposit with the District two (2) separate bonds as follows:

- i. A Maintenance Bond in the amount of \$50,000 (Maintenance Bond), which will remain in place for a minimum period of one year after completion of all construction activities and until the District has approved all required restoration work.
- ii. A Permanent Bond in the amount of \$100,000 (Permanent Bond), which will remain in place for as long as the facilities remain in existence.

(a) These bonds shall be available for use by the District to pay for any restoration of the LME that is not performed by Hotwire or the Association as required under the terms of this Agreement or any other work that may be required as a result of the Facilities being placed within the LME including, but not limited to, restoration, regrading, stabilization, or abandonment of said Facilities.

(b) These Bonds shall be in a form acceptable to District and shall be available to the District for any and all expenses incurred by the District regarding the Facilities, and to repair, restore or modify the LMEs due to the failure of Hotwire or the Association perform such work as required.

(c) Should Hotwire declare bankruptcy or cease to operate as an on-going entity, these funds shall remain with the District and shall not be subject to any bankruptcy or similar proceedings.

(d) At the end of one year after the work by Hotwire associated with this Agreement has been completed, a final inspection shall be performed with a representative of the District and a representative of Hotwire within the two (2) month period after the one year has passed.

(e) Hotwire shall be responsible to repair, restore, modify or otherwise correct any and all deficiencies associated with the installation of the Facilities as determined during the final inspection including, but not limited to, sod replacement and correction of any trench settlement.

(f) If Hotwire fails to correct these deficiencies within 30 days of written notification from the District, the District is authorized to correct said deficiencies and to pay for work and expenses incurred by the District out of the Maintenance Bond. Hotwire or its successor shall remain liable for all expenses in excess of the Bond amount and shall replenish the Bond to its original amount after the work performed by the District is complete and all District expenses have been paid in full.

(g) The Maintenance Bond shall be released after written approval and acceptance by the District of all required maintenance work as identified during the final inspection.

(h) The Permanent Bond shall not be released without approval by the District Board of Commissioners.

9. In the event any portion of the LME area is vacated by the District, this Agreement shall terminate and be of no force or effect as to said areas. Notwithstanding the foregoing, Hotwire shall remain liable for all damages and expenses which are the result of Hotwire's work within the vacated LME area and Hotwire shall notify the affected property owner(s).

10. At any time after the District has utilized the LMEs, Hotwire shall reconstruct and restore the Communication System to its previous condition, said reconstruction and restoration shall be at the cost of Hotwire and all construction shall be in accordance with all District rules, criteria and regulations. In addition, Hotwire shall submit as-built drawings to the District for the reconstructed and restored Communication System within the LMEs which must be approved by the District.

11. Hotwire shall maintain insurance which indemnifies the District and District agrees that District shall first direct its claim against the insurance which is provided, however, in the event said insurance is not in place or is insufficient to cover all claims of the District, the District may proceed directly against Hotwire and Association pursuant to the indemnification provisions in this Agreement. Hotwire further agrees that Hotwire will, upon request provide District with copies of all applicable insurance policies pursuant to this paragraph and that District shall be a named insured. Hotwire shall provide copies of such insurance policies to District upon thirty (30) days written notice. District shall be given notification in writing from the insurance company of any changes in the status of the insurance obtained by Hotwire at least thirty (30) days prior to the effective date of said change in status and also at least thirty (30) days prior to cancellation of said insurance.

12. In the event Hotwire fails to commence reconstruction or restoration of the Communication System within the LMEs within thirty (30) days after receiving notification from the District and complete same within sixty (60) days of said notification, the District may provide for such maintenance of the LMEs as is necessary at the cost of the District, which cost shall be reimbursed to the District by Hotwire or Association in accordance with this Agreement. However, nothing stated in this Agreement shall obligate the District to restore any of the Communication System constructed within the LMEs or any restoration associated therewith.

13. Hotwire and Association hereby agrees for itself, and its successors, assigns, and heirs, with respect to the Communication System which is constructed within the LMEs to indemnify the District and hold District harmless from any claims, losses, damages or expenses, arising out of the construction and maintenance of the Communication System within the LMEs and also for any and all claims, losses, damages or expenses, arising out of the damage or obstruction of the Communication System by the District as a result of the maintenance activities of the District conducted pursuant to this Agreement.

14. This indemnification includes but is not limited to any and all personal injuries which may be suffered by any individuals or property damage which may be incurred by any individuals or entities as a result of the construction and maintenance of the Communication System within the LME's.

15. Hotwire, Association, their successors, assigns and heirs agree to indemnify District from any and all liability, loss or damage District may suffer, other than that which is the result of reckless or willful acts or gross negligence of District's employees or agents, as a result of such claims, demands, costs or judgments and further agrees to take over and defend any such claims brought or such actions filed against District with respect to the subject of the indemnity contained in this Agreement. The foregoing indemnity shall include reasonable attorneys' fees and court costs incurred by District including court costs and reasonable attorneys' fees incurred at the trial and all appellate levels. Nothing contained herein shall be deemed, however, to constitute a waiver by District of any limitations of its liability that may be accorded District by virtue of Section 768.28 Florida Statutes, as amended, or any subsequently enacted similar law.

16. Hotwire and Association agree to indemnify District from any and all claims by the property owners of the Exhibit "A" property alleging that neither Hotwire nor Association have their permission to utilize the LME on their property for construction of the Communication System or any other activities related to the installation and use of the lake maintenance easement by Hotwire and Association. In this event, both Hotwire and Association agree to reimburse District for any expenses incurred by District, including reasonable attorneys' fees and costs, in responding to and defending against said claims. In addition, Hotwire and Association shall be jointly and severally liable for any and all damages alleged to have occurred to the property owners' property which is described on Exhibit "A".

17. Hotwire and Association and its successors and assigns agree that they shall comply with all District rules, regulations and criteria and hold the District harmless for any violations of same, in the event of any loss or damage suffered by the District.

18. Hotwire and Association acknowledge that District has no obligation or responsibility regarding any of the construction associated with the Communication System and that any damage which may be caused to the Communication System shall be repaired by Hotwire. Hotwire further acknowledges that the District shall have no obligation to repair or be responsible for any damage which may be caused to the Communication System by the District or any other party.

19. This Agreement does not and is not intended to release third parties from any damage that third parties may cause to the Communication System.

20. Hotwire shall provide to District as-built drawings of the Communication System including appurtenances and fixtures associated therewith; provided that such as-built drawings shall include the location of the Communication System at such intervals as determined necessary by the District along the LMEs and lake boundary. As-built drawings prepared for Hotwire which are approved by the District shall satisfy this requirement.

21. Hotwire, its successors, assigns and heirs agree that during construction and maintenance of the Communication System and reconstruction and restoration of the Communication System within the LMEs, they shall take all reasonable and necessary steps to prevent pollution or damage to the adjacent lake and adjacent drainage systems as a result of said construction, maintenance and restoration. In addition, Hotwire, its successors, assigns and heirs agree to be responsible for and reimburse District for all expenses arising out of damage to the adjacent lakes and LMEs and the adjacent drainage systems.

22. Hotwire agrees to maintain the Communication System constructed within the LMEs and to fully and completely indemnify and hold harmless the District, its successors and assigns for damages because of bodily injury or death resulting therefrom, sustained by any person or persons, or because of any damage to real property, personal property of District or to any person or entity due to any act or omission of Hotwire, its employees, subcontractors, designees or agents and its successors, assigns or heirs in or on the LMEs.

23. Notwithstanding any other provision of this Agreement, if an emergency condition or situation arises which requires District's immediate use of the LMEs, as solely determined by the District, Hotwire and Association acknowledge that District may proceed with such work as is necessary within the LMEs to alleviate said emergency condition or situation without being liable to Hotwire and Association for any damage which may occur to the Communication System including, but not limited to, loss of communications services by Hotwire's subscribers, credits for outages, or any other interruption to Hotwire's services. In this event, District agrees to make a reasonable effort to contact Hotwire and Association to give Hotwire and Association the opportunity to protect the Communication System or assist District in the work necessary to alleviate said emergency condition or situation.

24. Hotwire and Association agree that Hotwire and Association will keep the adjacent lake area and the LME's clear of any debris associated with the construction, maintenance or use of the Communication System.

25. Hotwire agrees to install and maintain signs at a maximum of one hundred foot (100') intervals within the LMEs, said signs stating that "THERE IS AN UNDERGROUND CABLE/COMMUNICATION SYSTEM LOCATED WITHIN THE TWENTY FOOT LAKE MAINTENANCE EASEMENT ADJACENT TO THE LAKE. CONTACT HOTWIRE COMMUNICATIONS AT _____ TO

DETERMINE THE LOCATION OF SAID SYSTEM". The proposed signs must be approved by District prior to installation and can be installed on any fence which traverses the LME's. The requirements under this paragraph can be modified as agreed to by the parties.

26. Association acknowledges that they or the underlying property owners or their successors and assigns shall be responsible for maintenance of the LME Area and that District shall have the right but not the obligation to maintain said LME Area.

27. Association acknowledges and affirms that they or the underlying property owner and their successors and assigns shall be responsible for maintaining the lake bank slope located within the LME Area and within the adjacent lake to the lake deep cut line. Any erosion or change in grade of the lake bank slope from design grade within the LME Area and between the LME Area and the lake deep cut line shall be repaired/corrected by the Association, or the underlying property owner to the satisfaction of the District.

28. Association, its successors and assigns acknowledge and affirm the responsibility to maintain the water bodies (lakes) and associated drainage system within the Pembroke Falls Development and that the District has the right but not the obligation to maintain said water bodies and associated drainage system.

29. If the future orderly development of the LME area physically conflicts with the location of the Facilities, Hotwire shall, within ninety (90) days after receipt of written request from District, relocate the Facilities to another mutually agreed upon area within the LME. Hotwire shall pay the full cost of the relocation and upon relocation of the Facilities, the LME area granted herein shall be deemed abandoned as to only that portion of LME area formerly occupied by the Facilities.

30. Any expenses including reasonable attorney's fees incurred by District as a result of the indemnifications contained in this Agreement and in reconstructing or restoring the LME's, the lake bank or the adjacent water body property shall be paid to District by Hotwire, Association or the underlying property owner, their successors, assigns and heirs within thirty (30) days after receiving a bill. In the event payment is not received within thirty (30) days of billing, then the District shall be entitled to file a lien in the Broward County Public Records upon all Association property for all expenses including reasonable attorney's fees, together with interest thereon at 18% per year or the highest non-usurious rate allowed by law, whichever is less, and all costs of collection, including reasonable attorney's fees at all trial and appellate levels. In the further event the District is required to foreclose this lien, then and in such event the District will be entitled additionally to receive its reasonable attorney's fees and costs expended in connection with such foreclosure or collection procedures. District further acknowledges that any lien rights hereunder shall become effective only upon the District recording said lien in the Public Records of Broward County, Florida. In the further event the District elects to foreclose this lien, then and in such event the District will be entitled additionally to receive its reasonable attorney's fees and costs expended in connection with such foreclosure or collection procedures, which shall be filed, in

accordance with Chapter 713, Florida Statutes, as amended. Upon payment in full of any lien filed hereunder, the District will within a reasonable period of time discharge said lien as a matter of record in the Broward County Public Records.

31. Hotwire and Association, by signing this Agreement, acknowledge that District is only permitting occupancy of the LME's by the Communication System and that District has not reviewed and will not review, acknowledge, or comment on the structural integrity or sufficiency of the Communication System.

32. Hotwire further acknowledges that the Communication System has been or will be constructed in substantial compliance with the Plans and Exhibit "B".

33. To the extent that Hotwire or Association is determined to be the cause of any damage to adjacent property owners as a result of construction, maintenance or repair of the Communication System, Hotwire and Association agree to take responsibility for such damage, without waiving any defenses or admitting any liability thereto or absolving any of Hotwire or Association's contractors or subcontractors or third parties from liability for their own actions.

34. Hotwire hereby undertakes to indemnify and hold harmless, the District and its agents, employees and commissioners, from any and all liability, loss or damage the District, its agents, employees or commissioners, may suffer as a result of claims, demands, costs, attorney's fees, judgments, liens, penalties, or interest, as a result of any damage caused by the District, its agents or employees, to the Communication System, except for such damages which are caused by the willful or wanton acts or gross negligence of the District, its agents, employees or commissioners. In addition, Hotwire, Association and District acknowledge that:

A. After receipt of notification of a claim or action against the District, the District shall notify Hotwire and Association in writing within fifteen (15) calendar days or as reasonably practical, by registered or certified mail, of any such claim made or action filed against the District of the obligations indemnified against hereunder.

B. Hotwire and Association agrees to defend any such claims brought, or actions filed against the District, its agents, employees or commissioners, with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim should be brought or an action filed with respect to the subject of the indemnity herein, the District agrees that Hotwire and Association may employ attorneys of its own selection to appear and defend the claim or action on behalf of the District at the expense of Hotwire or Association. Hotwire or Association shall have the primary authority for the direction of the defense and may make recommendations to the District concerning the acceptability of any compromise or settlement of any claims or actions against the District. The District retains the right to reject any settlement offer which may be proposed pursuant to this Agreement and no settlement shall be made without approval by the District's Board of Commissioners, provided, however, District does not have the right to reject a

settlement, and neither Hotwire nor Association shall not be required to obtain District's approval of a settlement involving only the payment of money by Hotwire or Association pursuant to the indemnity contained in this Agreement, provided that the settlement releases the District and its agents, employees and commissioners from any and all liability arising out of the proceeding being settled. Copies of all correspondence and pleadings associated with any litigation arising out of this paragraph shall be mailed to District and District's attorney and as directed by the District; and

35. Hotwire and Association shall at all times provide the District with the name and phone number of an individual or individuals who shall be available to answer questions and complaints regarding the responsibility of maintenance of the Communication System.

36. Notwithstanding any provision stated herein, should Hotwire violate any terms or requirements of this Agreement, upon sixty (60) days written notice from the District to correct said violation and Hotwire fails to correct said violation, Hotwire shall remove the Communication System placed within the LMEs within an additional sixty (60) days following the sixty (60) day notice. Should Hotwire fail to correct said violation and also fail to remove the Communication System within the LMEs, the District is hereby authorized to remove the Communication System within the LMEs, Hotwire shall reimburse District for all costs incurred by District in removing the said Communication System within the LMEs, and District may terminate this Agreement. These costs shall include, but not be limited to reasonable attorney's fees and legal expenses incurred by the District.

37. All notices of request, demand and other communications hereunder shall be addressed to the parties as follows:

As to District:

South Broward Drainage District
Attn: District Director
6591 S.W. 160th Avenue
Southwest Ranches, Florida 33331
email: kevin@sbdd.org

with copy to:

Douglas R. Bell, Esquire
Cumberland Building, Suite 505
800 East Broward Boulevard
Ft. Lauderdale, Florida 33301
email: bell8526@bellsouth.net

As to Hotwire:

HOTWIRE COMMUNICATIONS, LTD.
One Belmont Avenue, Suite 1100
Bala Cynwyd, PA 19004

As to Association:

PEMBROKE FALLS HOMEOWNERS ASSOCIATION, INC.
1651 Northwest 136th Avenue
Pembroke Pines, Florida 33028

unless the address is changed by a party by notice given to the other parties. Notice shall be in writing, mailed certified mail, return receipt requested, postage prepaid and shall be deemed delivered when mailed or upon hand delivery to the address indicated. Notwithstanding the foregoing, in the event of any mail disruption by virtue of any stoppage of mail service performed by the United States Postal Service due to strike or labor difficulty, notice, request or demands or other communications referred to in this Agreement may be sent by facsimile, electronic mail, telegraph or private courier, but shall be deemed to have been given when received.

38. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

39. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which will constitute one and the same Agreement.

40. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors, assigns and grantees.

41. This Agreement shall be construed and interpreted according to the laws of the State of Florida and the venue with respect to any litigation with respect to this Agreement shall be Broward County, Florida.

42. All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

43. This Agreement shall not be modified (and no purported modification thereof shall be effective) unless in writing and signed by all parties .

44. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld.

45. This Agreement shall be severable and if any part or portion of this Agreement shall be found to be invalid or unenforceable, such findings shall not affect the remainder of this Agreement.

46. This Agreement merges and supersedes any and all previous Agreements on this subject matter between the parties, whether oral or written, and constitutes the entire Agreement between the parties.

47. This Agreement shall be recorded in the public records of Broward County, Florida with Hotwire to pay the full cost thereof.

48. Grantor shall not interfere with the Facilities or knowingly permit any third party to interfere with the Facilities.

49. A failure or delay of District to enforce any provisions of the Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement shall in no way be construed to be a waiver of such provisions, rights, remedies or options.

50. Hotwire or the Association shall reimburse District and pay for any and all reasonable costs incurred by District incidental to the preparation of this Agreement and entering into or enforcing the terms of this Agreement, including but not limited to engineering fees, surveying costs, attorneys' fees, recording costs and any other necessary expenses.

51. Notwithstanding any of the foregoing, the District has the right to approve other uses within the LMEs and to issue permits for other uses within the LMEs. Section 9 of the District's Criteria Manual shall apply hereto.

52. This Agreement is non-exclusive and is for the non-exclusive right of Hotwire to use the LMEs as stated herein and for no other uses.

53. Notwithstanding any other provision in this Agreement, Hotwire's right to utilize the LMEs as stated herein shall be subject to the Associations agreement with Hotwire or if Hotwire is no longer authorized by any applicable governmental authority to provide communication services, this Agreement shall terminate except that Hotwire shall continue to be responsible for any and all expenses which have been and which may be incurred as a result of the Communication System facilities being placed within the LMEs.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of:

"District" (SOUTH BROWARD DRAINAGE DISTRICT)

Witness Signature

By: Scott Hodges, Chairperson

Witness Printed Name

Attest:

Witness Signature

Robert E. Goggin, IV, Secretary

Witness Printed Name

STATE OF FLORIDA)
)§
COUNTY OF BROWARD)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014 by SCOTT HODGES and ROBERT E. GOGGIN, IV, as Chairperson and Secretary, respectively of the SOUTH BROWARD DRAINAGE DISTRICT, a political subdivision of the State of Florida, on behalf of SOUTH BROWARD DRAINAGE DISTRICT. They are personally known to me.

WITNESS my hand and official seal in the county and state last aforesaid this ____ day of _____, 2014.

(NOTARY SEAL OR STAMP)



Notary Public

"Hotwire"

HOTWIRE COMMUNICATIONS, LTD., a Pennsylvania
Limited Partnership

Witness Signature ↑

Witness Printed Name ↑

Witness Signature ↑

Witness Printed Name ↑

By: _____
Kristen Johnson, General Partner

STATE OF _____)

) §

COUNTY OF _____)

The foregoing Agreement was acknowledged before me this ___ day of _____, 2014 by **Kristen Johnson** as General Partner of HOTWIRE COMMUNICATIONS, LTD., a Pennsylvania limited partnership, as Hotwire, who is personally known to me or has produced _____ as identification.

Witness my hand and official seal in the county and state last aforesaid this ___ day of _____, 2014.

(NOTARY SEAL OR STAMP)

↓

NOTARY PUBLIC:

.....
"Association"
PEMBROKE FALLS HOMEOWNERS ASSOCIATION, Inc., a
Florida not for profit Corporation

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

By:

Print Name and Title

STATE OF FLORIDA)

)§
COUNTY OF BROWARD)

The foregoing Agreement was acknowledged before me this ____ day
of _____, 2014 by _____ as
_____ of Pembroke Falls Homeowners Association, Inc., a Florida not for profit
Corporation, as Association, who is personally known to me or has produced _____ as
identification.

WITNESS my hand and official seal in the county and state last aforesaid this ____ day
of _____, 2014.

(NOTARY SEAL OR STAMP)



Notary Public