

RESOLUTION NO. 2021-036

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A SETTLEMENT AGREEMENT WITH CARLOS AND CINDY PEREZ RELATING TO THE CONSTRUCTION OF A FENCE AND WALL LOCATED WITHIN THE TOWN'S RIGHT OF WAY (QUIET TITLE CASE NO. CACE 19-004382); AUTHORIZING THE MAYOR, TOWN ADMINISTRATOR, AND TOWN ATTORNEY TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Carlos & Cindy Perez, ("Perez") own property located at 13750 E. Palomino Drive, Southwest Ranches, Florida 33330; and

WHEREAS, Town owns, in fee simple, the tract of real estate adjacent to and abutting the Perez Tract ("right of way"). This tract includes an improved right of way approximately 60 feet wide directly adjacent to the south of the Perez Tract; and

WHEREAS, Perez, confirms that the Town's right of way, adjacent to its southern property line, was properly dedicated and is rightfully the property of the Town; and

WHEREAS, Perez confirms that a fence and wall was constructed on the Town's right of way; and

WHEREAS, as it relates to Owner's fence and wall, the Town has agreed to grant Owner a license to allow Owner to keep it within its current location, until such time as the fence and wall is repaired beyond fifty percent (50%) of its value or replaced, provided that Owner abides by the terms and conditions contained within the License, Maintenance, Indemnification and Work Agreement ("MIW") Agreement, attached hereto as Exhibit "A", and incorporated herein by reference; and

WHEREAS, as it relates to Owner's fence and wall, in the event the Town desires to remove the fence and wall, the Town agrees to reimburse Perez the average value of the fence and wall based upon its condition at the time of demolition. The average value of the fence and wall shall be determined by taking the average of three (3) quotes obtained by the Owner and submitted to the Town; and

WHEREAS, Owner agrees to an entry of an Order in the Quiet Title action filed by the Town, confirming the information delineated above; and

WHEREAS, the Parties have agreed that it is in their best interest to settle the Quiet Title action, pursuant to the terms of the MIW Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. That the Town Council hereby approves the MIW Agreement with Carlos and Cindy Perez, attached hereto and incorporated herein by reference as Exhibit "A", resolving with prejudice Circuit Court case CACE 19-004382.

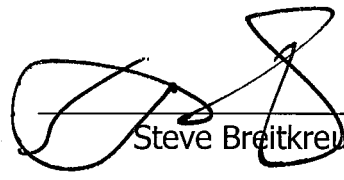
Section 3. The Mayor, Town Administrator and Town Attorney are each authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

Section 4. This Resolution shall become effective immediately upon adoption.

[Signatures on Following Page]


PASSED by the Town Council of the Town of Southwest Ranches, Florida, this 25th day of March 2021, on a motion by Council Member Jablonski and seconded by Council Member Allbritton.

Breitkreuz	<u>Yes</u>	Ayes	<u>5</u>
Hartmann	<u>Yes</u>	Nays	<u>0</u>
Allbritton	<u>Yes</u>	Absent	<u>0</u>
Jablonski	<u>Yes</u>	Abstaining	<u>0</u>
Kuczenski	<u>Yes</u>		



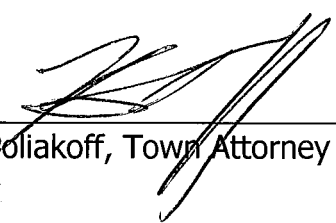
Steve Breitkreuz, Mayor

ATTEST:



Russell Muniz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:



Keith Poliakoff, Town Attorney
38118413.1

Prepared by and return to:
Lee Ann Tranford, Attorney at Law
Saul Ewing Arnstein & Lehr LLP
200 E. Las Olas Boulevard
Suite 1000
Ft. Lauderdale, FL 33301

Property ID: 504034010010

License, Maintenance, Indemnification and Work Agreement

THIS LICENSE, MAINTENANCE, INDEMNIFICATION AND WORK AGREEMENT, (“Agreement”) is made and entered into this 02 day of February, 2021, by and between **Carlos & Cindy Perez**, husband and wife (“Owner”) whose address is 13750 E. Palomino Drive, Southwest Ranches, Florida 33330, and TOWN OF SOUTHWEST RANCHES, whose address is 13400 Griffin Road, Southwest Ranches, Florida 33330 (“Town”).

WITNESSETH:

WHEREAS, Owner owns, in fee simple, the tract of real estate situated in the Town of Southwest Ranches, Florida, described as:

EVERGLADES SUGAR & LAND CO SUB 1-152 D 34-50-40 TR 1 E 330.26 OF W 1/2 AND TR 1 W 198.32 OF E 1/2

said lands situate, lying and being in Broward County, Florida, hereinafter referred to as “Owner Tract;” and

WHEREAS, Town owns, in fee simple, the tract of real estate adjacent to and abutting the Owner Tract (“right of way”). This tract includes an improved right of way approximately 60 feet wide directly to the south of Owner Tract; and

WHEREAS, Owner, confirms that the Town’s right of way, adjacent to its southern property line, was properly dedicated and is rightfully the property of the Town; and

WHEREAS, Owner confirms that the Town’s right of way, adjacent to its southern property line, was established to create a sixty foot roadway and trail, and that such right of way belongs to the Town as indicated by the Broward County Property Appraiser;

WHEREAS, Owner confirms that Owner has not paid any ad valorem taxes for the Town’s right of way; and

WHEREAS, Owner confirms that a fence and wall was constructed on the Town’s right of way; and

WHEREAS, aerial photographs of Owner's property reveals that Owner's southern fence and wall is located approximately 20 feet within the Town's right of way; and

WHEREAS, as it relates to Owner's fence and wall, the Town has agreed to grant Owner a license to allow Owner to keep it within its current location, until such time as the fence and wall is repaired beyond fifty percent (50%) of its value or replaced, provided that Owner abides by the terms and conditions contained herein; and

WHEREAS, as it relates to Owner's fence and wall, in the event the Town is required to remove the fence and wall, the Town agrees to reimburse the average value of the fence and wall based upon its condition at the time of demolition. The average value of the fence and wall shall be based upon its condition at the time of demolition and shall be determined by the average between three (3) quotes obtained by the Owner and submitted to the Town.

WHEREAS, Owner agrees to an entry of an Order in the Quiet Title action filed by the Town, confirming the information delineated above;

NOW, THEREFORE, in consideration of the premises and the sum of Ten (\$10.00) Dollars and other good and valuable consideration, the respective receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Town hereby grants Owner a temporary license to maintain its southern fence and wall within the Town's right of way, approximately 20 feet south of Owner's property line, until such time that the fence and wall needs to be repaired beyond fifty percent (50%) of its value or replaced. At such time Owner shall obtain all necessary permits and shall place its fence along its actual property line.
3. Town grants Owner a temporary license to utilize the Town's right of way adjacent to Owner's southern property line, for passive recreational purposes, and to maintain the Town's right of way until such time that it is needed by the Town.
4. Aside from the fencing and wall stated herein, Owner shall keep the Town's right of way free from any structures or other encumbrances, including, but not limited to lighting or other appurtenances.
5. Owner agrees to pay all costs and expenses of maintaining its fence and wall, located within in the Town's right of way in good condition and repair.
6. In the event the Town is required to remove the fence and wall, the Town agrees to reimburse the average value of the fence and wall based upon its condition at the time of demolition. The average value of the fence and wall shall be based upon its condition at the time of demolition and shall be determined by the average between three (3) quotes obtained by the Owner and submitted to the Town.

7. **Indemnification:** Owner agrees that any liability of Town for personal injury to users of the Town Tract or to any workmen employed with respect to repair or maintenance under this Agreement, as well as any liability for damage to the Town Tract by any person or workman, as a result of or arising out of or under this Agreement, or in any way connected with the use of the Town Tract, shall be borne solely by the Owner and Owner agrees to indemnify, defend, protect same and hold Town harmless from and against any and all costs, losses, liability and expense arising in connection with any liability claim, threatened claim, action, lawsuit or any other matter which Town would be required to reply and/or defend.

8. Owner also agrees to indemnify Town against all liability for injury or damage to the Town Tract when such injury or damage shall result from, arise out of, or be attributable to the negligence, gross negligence, or intentional action of the Town including but not limited to a Town entity, contractee or assignee.

9. **Insurance:** Owner shall secure and maintain, at its own expense, and keep in effect during the full term of this Agreement, a policy or policies of insurance, of at least \$500,000, which shall name the Town as an additional insured.

9.1 This insurance requirement shall not relieve or limit the liability of Owner. Town does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect Owner's interests or liabilities but are merely minimum requirements established by the Town's Administrator. Town reserves the right to require any other insurance coverage that Town deems necessary depending upon the risk of loss and exposure to liability.

9.2 All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against Town with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

9.3 Owner shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against Town for payment or assessments in any form on any policy of insurance.

9.4 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which Town is named as an additional named insured shall not apply to Town. Town shall provide written notice of occurrence within thirty (30) working days of Town's actual notice of such an event.

9.5 The Owner shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved by Town.

9.6 Violation of the terms of this section shall constitute a breach of the Agreement and Town, at its sole discretion, may terminate this Agreement.

10. Owner warrants and represents that Owner has good and marketable fee simple title to the Owner Tract, and has the authority to enter into this Agreement.

11. Either party may enforce this instrument by appropriate action in the courts of Broward County, Florida, and the prevailing party in any such action shall be entitled to attorneys' fees and costs in all levels of trial.

12. This Agreement shall be given a reasonable construction.

13. Notwithstanding anything to the contrary herein contained, if the Town Council finds that there is a public necessity that would require the termination of this Agreement, upon the unanimous vote of the Town Council, the Town may terminate this Agreement by providing the Owner with a Nine (9) month written notice and through the execution and recording of a document setting forth the date of such termination and executed by the Town. In the event of such termination, Owner shall within sixty (60) days of receipt of such notice, submit to the Town's Attorney three (3) quotes, as referenced in paragraph 6, in order to determine the average value of the fence and wall based upon its condition at the time of demolition. Upon receipt of the three (3) quotes, Town has thirty (30) days to review the quotes and approve the amount of reimbursement to Owner. Upon confirmation of payment to Owner, Owner shall have thirty (30) days to submit a permit application to Town in order to begin demolition. For purposes of this paragraph only, a public necessity shall be defined as impacting the health, safety, and welfare of the Town's residents.

14. This Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of the owners or lessees of the Owner Tract, (or any portion thereof), their successors and assigns.

15. If any part of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other or remaining provisions hereof.

16. This Agreement shall be recorded in the Public Records of Broward County, Florida at Owner's expense.

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

THIS SPACE INTENTIONALLY LEFT BLANK

SIGNATURES ON FOLLOWING PAGES

OWNER SIGNATURE PAGE

WITNESSES:

Robert Dominguez
[Signature]
Print name of witness

Kelly Perez
[Signature]
Print name of witness

OWNER:

[Signature]
Carlos Perez

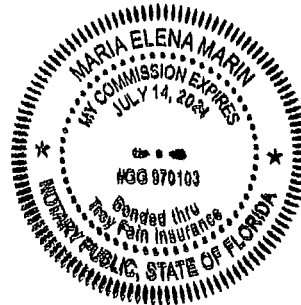
[Signature]
Cindy Perez

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 02 day of March, 2021, by Maria Marin. They are personally known to me.

[Signature]
NOTARY PUBLIC, State of Florida

My Commission Expires:



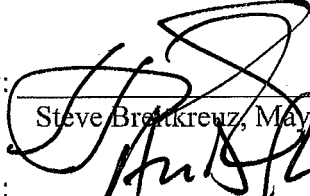
TOWN SIGNATURE PAGE


TOWN OF SOUTHWEST RANCHES

ATTEST:



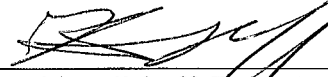
Russell Muñiz, MBA, MPA, MMC
Town Clerk

By: 

Steve Breittkreuz, Mayor
By: 

Andrew Berns, Town Administrator

Approved as to Form and Correctness



Keith Poliakoff, Town Attorney

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 6th day of April, 2021, by Mayor Steve Breittkreuz. He/She is personally known to me.



NOTARY PUBLIC, State of Florida

My Commission Expires:

