

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL NO.: 15-005277-CA-20

**SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,**
a public corporation,

Plaintiff,

vs.

SKYWAY TRAP & SKEET CLUB, INC.,
a Florida not-for-profit corporation,

Defendant.

Settlement Agreement

1. This Settlement Agreement (“Agreement”) is made and entered into as of the Effective Date provided in Section 51 hereof. The Parties, Plaintiff, **Southwest Florida Water Management District** (“District”), and Defendant, **Skyway Trap & Skeet Club, Inc.** (“Skyway”), by and through their authorized representatives, for and in consideration of the mutual promises and covenants herein contained, and for the money paid, agree as follows:

Historical Information

2. The District is a public corporation operating under Chapter 373, Florida Statutes, and is an administrative agency of the State of Florida;
3. Skyway is a Florida corporation recognized by the Internal Revenue Service as a not-for-profit entity under Section 501(c) of the United States Internal Revenue Code;
4. Since 1947, Skyway has owned and operated a Sport Shooting and Training Range as defined in Chapter 790.333(3)(h), Florida Statutes, located at 3200 74th Avenue North, St. Petersburg, Florida 33702 (the “Skyway Property”);
5. The District was initially established in 1961 as a flood protection government agency. Thus, Skyway’s operations and land uses predate the creation of the District;

6. Since the time the District was first created, it has methodically accumulated property, including “taking” the property of Skyway. Today, the District owns approximately 300 acres of land and water immediately adjacent to the Skyway Property, known as the Sawgrass Lake Water Management Area (the “District Property”);
7. The District filed an eminent domain “takings” lawsuit against Skyway styled *Southwest Florida Water Management District v. Leon H. Sellers, et. al* (Sixth Judicial Circuit Court Case No. 75-44807) (the “1975 Lawsuit”). The District acquired fee simple absolute title to 14.2 acres of the Skyway Property, which Skyway used for target and shot pellet drop. The portion of Skyway Property that was “taken” by the District is identified as SWF Parcel No. 16-560-113.5, described in the attached **Exhibit A**;
8. The Order of Taking in Connection with SWF Parcel No. 16-560-113.5 granted a perpetual right and easement to Skyway to utilize the entire 14.2 acres as a “drop zone or fallout zone for expended shotgun ammunition” (herein referred to as the “Drop Zone Easement”) and to continue to deposit shot pellets on the Drop Zone Easement. The Order of Taking is attached as **Exhibit B**;
9. The Drop Zone Easement was ratified, mandated and confirmed in a Final Judgment entered on November 2, 1976 in the 1975 Lawsuit;
10. The District filed another lawsuit against Skyway styled *SWFWMD v. Skyway, Case No. 00-2649-CJ-7, Circuit Court, 6th Judicial Circuit of Florida* (the “2000 Lawsuit”) to enjoin and permanently prevent any shooting at the Skyway Property and to eliminate Skyway’s easement rights. The 2000 Lawsuit was dismissed with prejudice pursuant to a Settlement Agreement, attached as **Exhibit C**;
11. The Settlement Agreement required the District to remediate the Drop Zone Easement and to construct an “earthen berm” (the “Berm”) on the District’s Property to prevent shot from entering the District Property. The Settlement Agreement also required Skyway to erect a shot barrier (the “Shot Barrier”) to function in conjunction with the Berm. However, the Settlement Agreement did not prescribe a design for either the Berm or the Shot Barrier;
12. The Berm, designed and constructed by the District entirely on District Property, is of insufficient height to prevent shot pellets from entering the District Property and is insufficient for Skyway to construct a Shot Barrier;
13. Notwithstanding the insufficiency of the Berm for any purpose, the District filed the instant lawsuit styled *SWFWMD v. Skyway, Case No. 15-005277-CA-20, Circuit Court, 6th Judicial Circuit of Florida* (the “2015 Lawsuit”) to enjoin Skyway to

construct a Shot Barrier and to prevent, permanently and completely, Skyway's users from shooting whatsoever;

14. The Florida Legislature enacted Chapter 790.333, Florida Statutes, The Sport Shooting and Training Range Protection Act (the "Act") in 2004;
15. The Act recognizes the important constitutional value of maintaining sport shooting and training ranges across the state of Florida;
16. The Act further recognizes that litigation against, and unnecessary regulation of, sport shooting and training ranges is a deprivation of constitutional liberty guaranteed by the 2nd Amendment to the United States Constitution and by Article 1, Section 8 of the Florida Constitution;
17. The Act protects sport shooting and training ranges from government agency lawsuits, while preserving the rights of owners of private property adjoining a sport shooting and training range;
18. The District is not a private property owner and has no standing to file any lawsuit or other action against any sport shooting and training range, including Skyway; and
19. The District recognizes that filing the 2015 Lawsuit is prohibited by Section 790.333(5)(a) of the Act and the District intends to strictly comply with this Agreement, with all of the provisions of the Act, and with the United States and Florida Constitutions.

Required District Performance

20. **Dismissal of 2015 Lawsuit.** On the Effective Date, the District shall voluntarily dismiss, with prejudice, the 2015 Lawsuit styled *SWFWMD v. Skyway, Case No. 15-005277-CA-20, Circuit Court, 6th Judicial Circuit of Florida*.
21. **Settlement Amount.** Within 5 days after the Effective Date, the District shall pay to Skyway to sum of \$350,000 to restore and reimburse Skyway for the cost of defending the 2015 Lawsuit, the cost of losing members, the cost of having to retain and pay engineers, consultants and attorneys, the cost of negative publicity, the cost of lost business and other costs and damages that are tangible and intangible.
22. **Continuing Maintenance Payment Amount.** The District shall pay Skyway on the first day of the month ____, beginning ____, and on the same day each year thereafter for a period of 20 years, the sum of \$100,000 as compensation for Skyway's cost to manage its shooting activities, train staff and members, implement

special safety measures, educate members and users, prevent rogue shot dispersal, and otherwise change its normal sport shooting and training range activities to accommodate the Berm and the Shot Barrier.

23. **District Responsibility for Shot Barrier.** The District acknowledges that steel shot is not a pollutant or a hazardous waste or hazardous substance. It is an inert, harmless combination of metals that occur naturally in the environment that has value as a recyclable metal. Within 60 days after the Effective Date, the District shall design a permanent Shot Barrier, using any technology deemed acceptable to the District, to prevent shot pellets from traversing the top of the Berm. Within 120 days after the Effective Date, the District shall commence construction of the Shot Barrier and complete construction thereof within 180 days after the Effective Date. The District shall be solely and totally responsible for the design, integrity, construction, maintenance, replacement, repair and management of the Berm and Shot Barrier, in perpetuity. The District shall pay 100% of cost of the design, construction, maintenance, replacement, repair and management of the Berm and Shot Barrier and Skyway shall pay zero.
24. **District Ratification of Drop Zone Easement.** The District affirms, re-affirms, ratifies, agrees with and consents to the Drop Zone Easement and hereby irrevocably and without any limitation consents to, permits and authorizes Skyway to shoot projectiles, including shot pellets, at, into, on and over the Berm, and at and into the Shot Barrier, and on the District Property, whether within or outside the Drop Zone Easement. Simultaneously with the District signing this Agreement, the District shall sign the Extended Easement (which expands the perimeter of the Drop Zone Easement to be co-extensive with the maximum flight distance of a shot pellet fired from the Skyway Property under normal operating conditions), attached as **Exhibit D** and within ten (10) days after the Effective Date, the District shall record the Extended Easement in the public records of Pinellas County, Florida. **Note:** **Need to draft this.**
25. **Encumbrances.** The District shall not grant or convey to any person or entity, any interest, right, easement, lease, license, or permit that touches or concerns or encumbers or creates a lien on the Drop Zone Easement or Extended Easement.
26. **Waiver.** The District irrevocably waives all of its past, present and future claims (including claims for bodily injury, death, property damage or any equitable or legal remedy whatsoever), debts, demands, covenants, contracts, guarantees, promises, agreements (both expressed and implied), warranties (both express and implied), liabilities, damages, injuries, losses, lawsuits, controversies, disputes, costs, interest, expenses, attorney's fees, actions, and causes of action of any nature whatsoever (whether common law, statutory or otherwise) at law or in equity, whether any of the foregoing are foreseen or unforeseen, matured or un-matured,

known or unknown, accrued or not yet accrued, direct or indirect, latent or patent, discovered or undiscovered, collectively or in any combination, associated with, arising out of or related or connected in any way to: (1) the past, present or future use or condition of the Skyway Property, (2) any activity occurring on Skyway Property, (3) any activity of Skyway that affects the District Property or any equipment, fixtures or appurtenances thereon, (4) the dispersion, emission or deposition of shot pellets, particulate material, debris, gasses, or any other matter from the Skyway or District Property, (5) the facts and events alleged in the 2000 Lawsuit, the 2015 Lawsuit, and (6) any activity or operation occurring on the Skyway Property.

27. **District Release.** The District releases Skyway in all capacities whatsoever, from and against any and all past, present and future obligations, claims (including claims for bodily injury, death, property damage or any equitable or legal remedy whatsoever), debts, demands, covenants, contracts, guarantees, promises, agreements (both expressed and implied), warranties (both express and implied), liabilities, damages, injuries, losses, lawsuits, controversies, disputes, costs, interest, expenses, attorney's fees, actions, and causes of action of any nature whatsoever (whether common law, statutory or otherwise) at law or in equity, whether any of the foregoing are foreseen or unforeseen, matured or un-matured, known or unknown, accrued or not yet accrued, direct or indirect, latent or patent, discovered or undiscovered, collectively or in any combination, associated with, arising out of or related or connected in any way to: (1) the past, present or future use or condition of the Skyway Property, (2) any activity occurring on Skyway Property, (3) any activity of Skyway that affects the District Property or any equipment, fixtures or appurtenances thereon, (4) the dispersion, emission or deposition of shot pellets, particulate material, debris, gasses, or any other matter from the Skyway or District Property, (5) the facts and events alleged in the 2000 Lawsuit, the 2015 Lawsuit, and (6) any activity or operation occurring on the Skyway Property.
28. **Covenant Not to Sue.** The District covenants to never file against Skyway, any lawsuit or other action, whether judicial or administrative, in or before any agency, court or public body, seeking any remedy whatsoever, for any activity related to Skyway's operation or ownership.
29. **District Indemnity.** The District shall fully indemnify, protect, and hold harmless Skyway in all capacities whatsoever, from and against any and all past, present and future obligations, claims (including claims for bodily injury, death, property damage or any equitable or legal remedy whatsoever), debts, demands, covenants, contracts, guarantees, promises, agreements (both expressed and implied), warranties (both express and implied), liabilities, damages, injuries, losses, lawsuits, controversies, disputes, costs, interest, expenses, attorney's fees, actions, and

causes of action of any nature whatsoever (whether common law, statutory or otherwise) at law or in equity, whether any of the foregoing are foreseen or unforeseen, matured or un-matured, known or unknown, accrued or not yet accrued, direct or indirect, latent or patent, discovered or undiscovered, collectively or in any combination, associated with, arising out of or related or connected in any way to: (1) the past, present or future use or condition of the Skyway Property, (2) any activity occurring on Skyway Property, (3) any activity of Skyway that affects the District Property or any equipment, fixtures or appurtenances thereon, (4) the dispersion, emission or deposition of shot pellets, particulate material, debris, gasses, or any other matter from the Skyway or District Property, (5) the facts and events alleged in the 2000 Lawsuit, the 2015 Lawsuit, and (6) any activity or operation occurring on the Skyway Property.

30. **Shot Collection & Reclamation Payment.** Annually, the District shall remove all shot pellets that accumulate on, in and around the Berm and the Shot Barrier on District Property. The District shall deliver the material to a licensed recycler for sale at the highest market price achievable. Annually, the District shall pay Skyway an amount equal to the money received from the sale of said shot pellets, plus interest at the highest allowable, annual statutory rate.
31. **Repayment for Recycled Lead Shot.** The District removed and sold thousands of pounds of lead shot pellets during the District's construction of the Berm. The District shall pay Skyway an amount equal to the money it received from the sale of said lead shot pellets, plus interest since the date of the sale of said lead shot pellets, at the highest allowable statutory rate.
32. **Maintenance of District Land.** Skyway shall have no responsibility to do anything related to the District Property, the Berm, or the Shot Barrier.
33. **District Press Release.** Within thirty (30) days after the Effective Date, the District shall publish a press release attached hereto as **Exhibit E**, establishing that Skyway is a unique and important neighbor that provides important constitutionally protected opportunities to the public. The press release shall be integrated into the District's public website. **Note: Need to Draft.**
34. **District Public Apology.** On the Effective Date, the District shall sign the document attached as **Exhibit F** (the "Public Apology") and the District hereby authorizes Skyway to publish the Public Apology in any and all public and private media, including newspapers, websites, magazines, letters and press releases. **Note: Need to Draft.**
35. **Default.** The District's failure to adhere strictly with all mandates and provisions of this Agreement shall be an event of default. The District shall cure the default to the

satisfaction of Skyway within ten (10) days after receipt of Notice from Skyway. The District's failure to cure the result within such time shall be presumed to irreparably and permanently damage Skyway, entitling Skyway to seek injunctive, and all other appropriate remedies from any court of competent jurisdiction. In the event the District fails to perform or comply with any obligation under this Agreement, Skyway shall be entitled to pursue all remedies at law or in equity against the District, and the District shall pay all damages, costs, and attorneys' fees of Skyway in connection therewith, except as provided in Section 36 below.

36. **Non-Disparagement by District.** The District shall not publish or disseminate or make, or knowingly encourage any other person to publish or disseminate or make, any public or private statement, whether written or oral, directly or indirectly, that disparages, defames, denigrates or is harmful to or reflects negatively on Skyway. If the District fails to perform as required by this Section 36, then Skyway shall be entitled to collect, immediately and upon demand, liquidated damages as its sole and exclusive remedy for such failure by the District. The amount of the liquidated damages shall be \$500,000 and the Parties have calculated this amount as reasonable compensation for actual damage resulting from the District's failure to perform this Section 36. The Parties specifically intend that the amount of the liquidated damages not constitute a penalty for the District's breach of this Section 36.
37. **Prior District Misconduct.** If, after the Effective Date, the District discovers that any event, circumstance or action of the District violates Section 36 of this Agreement, the District shall have thirty (30) days from its discovery to correct the violation to the satisfaction of Skyway. In the event the District fails to correct the violation to the satisfaction of Skyway within thirty (30) days of discovery, the District shall pay to Skyway for each such violation, the liquidated damages stipulated in Section 36 of this Agreement.
38. **Insurance.** The District shall purchase an insurance policy insuring Skyway and the District against all liabilities in connection with the Skyway Property, the Berm and the Drop Zone Easement, with coverage terms and limits acceptable to Skyway.
39. **Assignment.** The District shall not assign this Agreement, nor assign any right or interest arising out of this Agreement, to any other person or entity.
40. **Term.** This Agreement shall never terminate.
41. **Waiver.** No waiver by either Party of any of its rights or remedies hereunder or otherwise shall be considered a waiver of any other subsequent right or remedy. No waiver by either Party of any of its rights or remedies hereunder or otherwise

shall be effective unless such waiver is evidenced in a written instrument executed by the waiving Party.

42. **Invalidity.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.
43. **Time of Essence/Computation of Time.** Time is of the essence in the performance of all conditions and covenants to be performed or satisfied by either Party hereto. Whenever a date specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to 5:00 p.m., local time in Florida, the next succeeding business day. Any reference herein to time periods of less than five (5) days shall exclude Saturdays, Sundays and legal holidays in the computation thereof.
44. **Parties Defined.** "Skyway," as used herein, means Skyway Trap & Skeet Club, Inc., and its predecessor business entities, its successor business entities, its administrators, managers, officers, directors, employees, users, members, customers, mortgagees, assigns, subsidiaries, partnerships, agents and representatives, individually and collectively. "District," as used herein, means The Southwest Florida Water Management District, its Governing Boards, its administrators, managers, officers, directors, employees, users, members, successors, assigns, partnerships, agents and representatives, individually and collectively.
45. **Notice.** All Notice must be in writing. All Notice shall be delivered by registered U.S Mail "Return Receipt requested." Notice shall be deemed delivered on the date the Return Receipt evidences that the recipient signed it or that the Notice was delivered.

Delivery of Notice shall be:

If to Skyway: Skyway Trap & Skeet Club, Inc.
3200 74th Avenue North
St. Petersburg, Florida 33702
ATTN: Robert Warren

With a copy to: George F. Gramling, III
Gramling Environmental Law, P.A.
118 South Newport Avenue
Tampa, Florida 33606

If to the District: The Southwest Florida Water Management District

With a copy to:

46. **Attorney's Fees.** If any legal action is commenced by either Party to enforce or to interpret any provision of this Agreement, the Party which does not prevail shall pay to the prevailing Party all costs and expenses of suit, including without limitation attorney, legal assistant, staff and expert fees, incurred by the prevailing Party in all judicial and administrative proceedings and at all levels of such proceedings.
47. **Construction.** The Parties are represented by legal counsel in connection with the matters contemplated herein and each Party fully understands the terms of this Agreement and enters it willingly and voluntarily.
48. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the Agreement of the Parties, and each of which shall be deemed an original, but all of which together shall constitute one and the same document. To facilitate execution, the Parties agree that this Agreement may be executed and telecopied or emailed by PDF to the other Party and the executed telecopy or PDF copy shall be binding and enforceable as an original.
49. **Governing Law and Venue.** The laws of the State of Florida shall govern the validity, enforcement and interpretation of this Agreement. Venue for any legal action in connection herewith shall be in Pinellas County, Florida.
50. **Entire Agreement.** This Agreement together with the Exhibits attached hereto, is the entire Agreement between the Parties with respect to the subject matter addressed herein and this Agreement supersedes and replaces all prior agreements, representations and understandings of the parties, written or oral, except that this Agreement does not supersede or replace the Drop Zone Easement, or the Release provision of section 10(a) of the 2000 Settlement Agreement, and any other agreement which now or later grants to Skyway any entitlement, right, privilege consent or permission in connection with the District or the District Property or any part thereof.
51. **Effective Date.** The Effective Date of this Agreement is _____, 2016.

52. **Court Approval.** Simultaneously, with the filing of the Motion to Dismiss the 2015 Lawsuit, with prejudice, the District shall file a Motion seeking court approval of this Agreement.

[Signatures Contained Below]

Executed by the undersigned duly authorized representatives of the District and Skyway, this Agreement is effective as of the Effective Date described above.

**The Southwest Florida Water
Management District,
a Florida Public Corporation**

By:

Date: _____, 2016

**Skyway Trap & Skeet
Club, Inc.,
a Florida corporation**

By:

Date: _____, 2016