

RESOLUTION No. 10 – 20

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE TEMPORARY CONSTRUCTION EASEMENT AGREEMENT WITH TRACT 33 AT DORAL, LLC; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the “City”) desires to proceed with the construction of the City owned portion of N.W. 114th Avenue from N.W. 80th to 81st Street, as well as the construction of the currently privately owned portion of N.W. 114th Avenue from N.W. 81st to 82nd Street (the “114th Avenue Project”); and

WHEREAS, in order to complete the 114th Avenue Project, the City and its contractors will need to encroach upon the adjacent property outside of the right of way limits in order to perform the construction and harmonize the roadway elevations with the surrounding properties; and

WHEREAS, the owner of the adjacent property, Tract 33 at Doral, LLC, is willing to grant a temporary construction easement to the City in order to complete the 114th Avenue Project; and

WHEREAS, the City Council wishes to enter into an easement agreement in order to move forward with the 114th Avenue Project.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. The City Council of the City of Doral hereby approves the Temporary Construction Easement Agreement with Tract 33 at Doral, LLC, a copy of which is attached hereto as Exhibit A.

Section 2. This Resolution shall take effect immediately upon adoption.

The foregoing resolution was offered by Councilman DiPietro who moved its adoption. The motion was seconded by Councilman Cabrera and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Robert Van Name	Yes
Councilman Pete Cabrera	Yes
Councilman Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes

PASSED and ADOPTED this 13th day of January, 2010.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JIMMY MORALES, ESQ., CITY ATTORNEY

EXHIBIT “A”

This Instrument prepared by,
record and return to:
Robert E. Gallagher, Jr., Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33131

**TEMPORARY CONSTRUCTION
EASEMENT AGREEMENT**

This Temporary Construction Easement Agreement (“TCEA”) is made and entered into as of the __ day of January, 2010 (the “Effective Date”) by and between Tract 33, LLC, a Florida limited liability company (the “Grantor”) and the City of Doral, a Florida municipal corporation (the “Grantee”).

RECITALS:

A. Grantor is the owner of that certain parcel of land located in Miami-Dade County, Florida, more particularly described in Exhibit “A” attached hereto, together with the improvements located thereon (the “Grantor’s Parcel”).

B. Grantee desires to construct a road as described on Exhibit “B” attached hereto for public purposes on and over a portion of Grantor’s Parcel (the “Road”).

C. Grantor desires to grant to Grantee, an easement over and across portions of the Grantor’s parcel for the purpose of allowing Grantee, its contractors, subcontractors, agents, permitted assigns, guests and invitees to use a portion of the Grantor’s Parcel as a temporary construction, staging and/or development area for use in the development and construction of the Road.

NOW, THEREFORE, in consideration of the premises, agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as if repeated at length.

2. **Grant of Temporary Construction Easement.** Grantor hereby grants to the Grantee an exclusive temporary construction easement (the “TCE”) for a term to terminate the earlier of six (6) months from the Effective Date or the Grantee’s close out of the construction contracts entered into for the purpose of developing and constructing the Road (the “Term”)

over, across and upon the Construction Easement Parcel as more particularly described on Exhibit "C" attached hereto for the following purposes: use all or a portion of the Temporary Construction Easement Parcel as a temporary construction, staging and/or development area for the purpose of developing and constructing the Road. The TCE shall be in favor of the following parties (collectively the "Beneficiaries"): Grantee, its contractors, subcontractors, agents, engineers and inspectors.

3. Operation, Maintenance and Repair. Grantee shall be responsible, at Grantee's expense, to operate, maintain and repair the Temporary Construction Easement Parcel in good condition and in safe and orderly manner consistent with the uses permitted under this TCEA.

4. Compliance with Laws; Rules and Regulations. Grantee shall use the Temporary Construction Easement Parcel in compliance with all applicable municipal and county ordinances, codes, statutes, rules and regulations.

5. Construction Liens. Grantee shall keep the Temporary Construction Easement Parcel free of mechanics' liens and any other liens for labor, services, supplies, equipment or materials purchased or procured, directly or indirectly, by or for Grantee. Grantee agrees that it will promptly pay and satisfy all liens of Grantee's contractors, subcontractors, mechanics, laborers, materialmen and others of like character, and will indemnify Grantor against all liabilities, expenses, costs and charges, including, without limitation, bond payments for release of liens and reasonable attorneys' fees and costs incurred in and about the defense of any suit in discharging the Temporary Construction Easement Parcel from any liens, judgments or encumbrances, caused or suffered by or through Grantee. In the event any such liens shall be made or filed, Grantee shall bond against or discharge same within ninety (90) days after receiving written notice of the filing of same. In the event that Grantee fails to bond or discharge such liens as provided above, then the Grantor may give written notice to the Grantee, and the Grantee shall have fifteen (15) days following the date of such notice to bond or discharge such liens. In the event that the Grantee fails to bond or discharge such liens within such fifteen (15) day period, then the Grantor may bond and/or discharge the same and thereafter, the Grantee shall pay the Grantor for the reasonable costs incurred by Grantor to bond and/or discharge the lien within thirty (30) days following receipt by the Grantor of a reasonably documented invoice for same. Grantee shall not have any authority to create any liens for labor or material on the Easement Parcel and all persons contracting with Grantee for the performance of any services, supply of any materials or provision of any labor for any work done in, on or around the Temporary Construction Easement Parcel, and all materialmen, contractors, suppliers, mechanics and laborers are hereby charged with notice that they must look solely to Grantee to secure payment of any bill for work done or material furnished at the request or instruction of Grantee. The provisions of this paragraph 5 shall survive the termination of this Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold harmless Grantor from and against any and all liabilities, damages, claims, costs or expenses whatsoever (including all reasonable attorneys' fees and costs whether suit be brought or any appeals be taken therefrom) arising from the failure of Grantee to perform its obligations under this TCEA. This indemnification provisions of this paragraph 6 shall survive the termination of this TCEA.

7. Miscellaneous.

- (a) Enforcement. The provisions of this TCEA may be enforced by all appropriate actions at law and in equity (including, without limitation, injunctive relief) by the Grantor and the Grantee, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at the trial and all appellate levels.
- (b) Counterparts. This TCEA may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.
- (c) Construction. The section headings contained in this TCEA are for reference purposes only and shall not affect the meaning or interpretation hereof. All of the parties to this TCEA have participated fully in the negotiation of this TCEA, and accordingly, this TCEA shall not be more strictly construed against any one of the parties hereto. In construing this TCEA, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.
- (d) Notices. Any and all notices required or desired to be given hereunder shall be in writing and shall be delivered by either hand or sent by FedEx or a comparable overnight service and addressed as follows (or to such other address as either party shall hereafter specify to the other in writing):

If to Grantor:

Tract 33, LLC
3750 N.W. 87th Avenue, #400
Miami, Florida 33178

Attention: _____

With a copy to:

Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131-3224

Attention: Kerri Lew Barsh

If to Grantee:

City of Doral
8300 NW 53rd Street, Suite 200
Doral, Florida 33166

Attention: Eric Carpenter, Public Works Director

With a copy to:

Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200

Attention: Jimmy Morales, Esq.

Notices shall be deemed to have been given upon receipt or refusal of delivery of said notice.

- (e) Severability. In the event any term or provision of this TCEA is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this TCEA shall be construed in full force and effect.
- (f) Exhibits. All of the Exhibits attached to this TCEA are incorporated in, and made a part of, this TCEA.
- (g) Cooperation. Grantor agrees to cooperate with Grantee in connection with the filing of all required permits and agrees to join in (as owner of the Grantor's Parcel) any applications if necessary.
- (h) Waiver of Trial by Jury. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT ANY PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF UNDER OR IN CONNECTION WITH TCEA OR ANY OTHER DOCUMENTS EXECUTED IN CONNECTION HEREWITH, OR IN RESPECT OF ANY COURSE OF CONDUCT, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH OF THE PARTIES TO ENTER INTO THIS TCEA.

8. Amendments; Termination. Subject to the other provisions hereof, this TCEA may not be amended, modified or terminated except by written agreement of all the parties hereto. Further, no modification or amendment shall be effective unless in writing and recorded in the Public Records of Miami-Dade County, Florida.

9. Entire Agreement. This TCEA constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

[The remainder of this page is intentionally left blank.]

EXECUTED as of the date and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

Southern Commerce Park at Doral, LLC,
a Florida limited liability company

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

[Corporate Seal]

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____,
2010 by _____, as _____ of _____,
on behalf of the _____. He/she personally appeared before me, [] is personally
known to me or [] has produced _____, as identification.

Notary: _____

[NOTARIAL SEAL]

Print Name: _____

Notary Public, State of Florida

My commission expires: _____

Print Name: _____

Print Name: _____

GRANTEE:

CITY OF DORAL, a Florida municipal corporation

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2010 by _____, as _____ of _____, on behalf of the _____. He/she personally appeared before me, [] is personally known to me or [] has produced _____, as identification.

[NOTARIAL SEAL]

Notary: _____
Print Name: _____

Notary Public, State of Florida
My commission expires: _____

EXHIBIT "A"

Grantor's Parcel

EXHIBIT "B"

The Road

EXHIBIT "C"

The Temporary Construction Easement Parcel