

**RESOLUTION No. 10 – 21**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE DECLARATION OF EXCLUSIVE IRREVOCABLE 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. 114<sup>th</sup> Avenue from N.W. 80<sup>th</sup> to 81<sup>st</sup> Street, as well as the construction of the currently privately owned portion of N.W. 114<sup>th</sup> Avenue from N.W. 81<sup>st</sup> to 82<sup>nd</sup> Street (the “114<sup>th</sup> Avenue Project”); and

**WHEREAS**, the owner of the private portion of the right of way, Tract 33 at Doral, LLC (“Tract 33”), has a recorded covenant that upon commencement of the City portion, they will dedicate and construct their portion of the roadway; and

**WHEREAS**, Tract 33 is unable at this time to complete this work nor is it able at this time to record the plat that would result in the dedication of the roadway, but is willing to grant the City a right of way easement to construct and maintain the roadway, such easement to terminate only when the roadway is in fact platted and dedicated as a public road by Tract 33; and

**WHEREAS**, the City Council wishes to obtain an easement in order to move forward with the 114<sup>th</sup> 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 Declaration of Exclusive Irrevocable Temporary Easement 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 13<sup>h</sup> 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 Was Prepared By, Record  
and Return to:

Robert E. Gallagher, Jr., Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

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**DECLARATION OF EXCLUSIVE IRREVOCABLE EASEMENT**

**THE PARTIES**

This Declaration of an Exclusive Irrevocable Easement (the "Declaration") is made and entered into as of the \_\_\_ day of January, 2010 by and between \_\_\_\_\_, its successors and assigns (hereinafter referred to as the "Grantor") and City of Doral, a Florida municipal corporation, its successors and assigns (the "Grantee")

**RECITALS**

**WHEREAS**, the Grantor is the owner in fee simple of that certain parcel of real property more particularly described in Exhibit "A" attached hereto and made a material part hereof (the "Grantor's Land"); and

**WHEREAS**, Grantor is in the process of but has not yet platted the Grantor's Land, however when platted, the plat will provide among other items, a platted roadway running approximately \_\_\_ ( ) feet in width running northeasterly and southwesterly (the "Road") over a portion of the Grantor's Land, which Road is legally described on Composite Exhibit B attached hereto and made a part hereof; and

**WHEREAS**, it is in the interest of both the Grantor and the Grantee to assist in the orderly flow of vehicular traffic in this geographic area of the City of Doral for the Grantee to construct the Road prior to the Grantor completing the application for and recording of its plat for the Grantor's Land; and

**WHEREAS**, Grantor desires and by this declaration does hereby grant to Grantee, an irrevocable easement for the Road all the terms and conditions hereinafter set forth.

## CONSIDERATION

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

### TERMS, AGREEMENTS, COVENANTS AND CONDITIONS

1. Recitals. The above recitals are true and correct and incorporated herein.
2. Grant of Easement. Grantor hereby grants and conveys to Grantee and its successors and assigns and its Authorized Users (as hereinafter defined), a perpetual exclusive easement over, across and under the Road. As used in this Declaration, "Authorized Users" refers to the Grantee, guests, licensees, contractors, invitees and members of the public and each of their respective agents, contractors, consultants, officers and suppliers. The easement herein granted is an easement appurtenant and is for the purposes of (i) constructing and maintaining the Road; (ii) ingress and egress for persons, motor vehicles, trucks, bikes, motorcycles, material, equipment and trailers, and (iii) installing, constructing, maintaining, repairing, removing and replacing, as necessary, any and all utility services, including but not limited to, mains, lines, pipes, conduits, poles, wires, lift stations and junction boxes for sewer, water, electric, telephone, gas and cable television or other communication service (the "Utility Services"). The Grantee shall have the right, from time to time, to install, maintain and replace on, over and under the Easement Parcel, the Utility Services.
3. Operation, Maintenance and Repair. Grantee shall be responsible at Grantee's expense for the initial cost to plan, provide engineering, construct, maintain and repair the Road and the Utility Services, subject to the responsibilities and obligations of the Grantor to reimburse the Grantee pursuant to the terms and requirements of a development agreement or agreements heretofore or hereinafter entered into between the Grantor and the Grantee
4. Construction Liens. Grantee shall keep the Road 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 Road 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 Road 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 Road, 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 shall survive the termination of this Agreement.

5. Termination of Easement. Upon the Grantor's Land being platted, which plat provides among other items, for the dedication of the Road, the Grantor and Grantee agree that the easement granted herein shall terminate without the requirement for further written documentation in regard thereto which termination shall be reflected on the plat and replaced by the dedication of the Road on the plat.

6. No Public Dedication. Nothing contained in this grant of easement shall, in any way, be deemed or constitute a gift of or dedication of any portion of the Easement Parcel to the general public or for the benefit of the general public whatsoever, it being the intention of the parties hereto that this grant of easement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

7. Indemnity and Insurance Requirements. Grantee hereby indemnifies and holds harmless the Grantor from any and all actions, causes of action, claims, liabilities, demands and losses of any kind whatsoever which may be filed or made against Grantor by reason of the Grantee's use of the Easement Parcel and the rights granted hereunder.

8. Enforcement. The terms and conditions of this Declaration shall run with the Easement Parcel and shall inure to the benefit of and be enforceable by the Grantee and the Grantor, their respective legal representatives, successors and assigns, and the Grantee and the Grantor, each shall have a right of action to enforce by proceedings at law or in equity all conditions and covenants imposed by the provisions of this Declaration, or any amendment thereto, including the right to prevent the violation of such conditions and covenants and the right to recover actual damages for such violation (but not consequential or punitive damages).

9. Liens. Grantee shall not permit any mechanics lien or similar lien arising by reason of Grantee's work relating to the Easement Parcel to remain an encumbrance against the Easement Parcel. Grantee may bond over and contest the validity of any such mechanics lien in lieu of payment thereof.

10. Grantor's Representations and Warranties. Grantor hereby represents and warrants to the Grantee as follows:

10.1 Grantor's existence. Grantor is a \_\_\_\_\_ in good standing and authorized to transact business in the State of Florida and has full power and authority to comply with the terms of this Declaration.

10.2 Authority. The execution and delivery of this Declaration by Grantor or within Grantor's capacity, and all requisite action has been



If to Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

With a copy to  
Grantor's Attorney: Greenberg Traurig, P.A.  
1221 Brickell Avenue  
Miami, Florida 33131-3224  
Attention: Kerri Lew Barsh, Esq.  
Phone: (305) 579-0772

Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand delivered, or (ii) sent by Federal Express or a comparable overnight mail service. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

15. Captions. Captions used in this Declaration are for information purposes only and do not alter, modify or add to the terms of this Declaration.

16. Governing Law. This Declaration will be governed and interpreted pursuant to the laws of the State of Florida. Grantor and Grantee, their successors and assigns, shall perform all of their respective obligations under this Declaration in compliance with all applicable laws.

17. Modification/Entire Agreement. This Declaration may be modified only in a writing executed by the parties to this Declaration or their respective successors or assigns. This Declaration constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. Counterpart. This Declaration may be executed in any number of counterparts, any one and all which shall constitute the Contract of the parties and each of which shall be deemed an original.

19. Waiver of Jury Trial. Grantor and Grantee hereby knowingly, voluntarily and intentionally, waive trial by jury in any action brought by one against the other in connection with any matter arising out of or in any way connected with this easement agreement. This waiver shall apply to any original claim, counterclaim, cross claim, or other claim of any kind asserted by either party in any such action. Neither party nor any representative of either party, including counsel, has represented to the other that it would not seek to enforce this waiver of



right to jury trial in any such action. The parties acknowledge that the provisions of this section are a material inducement to their entering into this easement agreement.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

As to the Grantor:

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

STATE OF FLORIDA     )  
                                  )  
COUNTY OF DORAL    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, as \_\_\_\_\_, on behalf of the \_\_\_\_\_, who is personally known to me or produced a \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:

As to the Grantee:

City of Doral, a Florida municipal corporation

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Yvonne Soler-McKinley  
Its: City Manager

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2010  
Yvonne Soler-McKinley as the City Manager of The City of Doral, a Florida Municipal  
Corporation on behalf of the City, who is personally known to me or produced a  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:

**COMPOSITE  
EXHIBIT "A"**

**LEGAL DESCRIPTION OF  
THE GRANTOR'S LAND**

[\_\_\_\_\_ pages]

**EXHIBIT "B"**

**LEGAL DESCRIPTION  
THE ROAD**