

**RESOLUTION No. 15-122**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING A GRADING AND NON-EXCLUSIVE, TEMPORARY, AND REVOCABLE LICENSE AGREEMENT, IN SUBSTANTIALLY THE FORM PROVIDED, WITH MS LAND DEVELOPMENT, LLC FOR THE GRADING AND SODDING OF A CERTAIN PORTION OF DORAL CENTRAL PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL APPROVAL AS TO FORM AND LEGAL SUFFICIENCY BY THE CITY ATTORNEY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Doral (the “City”) is the fee simple owner of certain real property within the City of Doral, Florida, commonly known as Doral Central Park, located at 3000 NW 87<sup>th</sup> Avenue, Doral, Florida 33172 (the “Park”); and

**WHEREAS**, the Park is located within the vicinity of a project that an affiliate of MSLD intends to develop at NW 91st Avenue and NW 33rd Street; and

**WHEREAS**, MSLD, its affiliate and the City mutually desire to make certain improvements to the Park for the benefit of the entire community; and

**WHEREAS**, there is an area within the Park that needs to be regraded, and, at the City’s suggestion, MSLD is willing to regrade and sod the subject area within the Park, pursuant to the terms and conditions set forth in a Grading and Non-Exclusive, Temporary, and Revocable License Agreement, in substantially the form attached hereto as Exhibit “A”, which is incorporated herein and made part hereof by this reference.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

**Section 2. Approval of Agreement.** The Grading and Non-Exclusive, Temporary, and Revocable License Agreement, in substantially the form attached hereto as Exhibit "A" (the "Agreement"), is hereby approved.

**Section 3. Authorization.** The City Manager is hereby authorized to execute the Agreement, upon final approval by the City Attorney as to form and legal sufficiency.

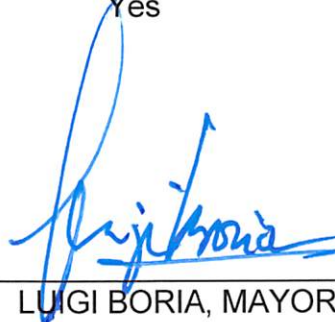
**Section 4. Implementation.** The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

**Section 5. Effective Date.** This resolution shall take effect immediately upon adoption.

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

Mayor Luigi Boria	Yes
Vice Mayor Sandra Ruiz	Yes
Councilman Pete Cabrera	Absent/Excused
Councilwoman Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED and ADOPTED this 15th day of June, 2015.



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LUGI BORIA, MAYOR

ATTEST:



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CONNIE DIAZ, CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE SOLE USE  
OF THE CITY OF DORAL



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WEISS, SEROTA, HELFMAN, COLE, & BIERMAN, PL  
CITY ATTORNEY

**EXHIBIT "A"**

**Grading and Non-Exclusive, Temporary, and Revocable License Agreement**

**GRADING AND NON-EXCLUSIVE, TEMPORARY, & REVOCABLE  
LICENSE AGREEMENT**

This GRADING AND NON-EXCLUSIVE, TEMPORARY, & REVOCABLE LICENSE AGREEMENT (“Agreement”) is made and entered into effective as of this \_\_\_ day of March, 2015 (“Effective Date”) by and between MS Land Development, LLC, a Delaware limited liability company (hereinafter “MSLD”), and the City of Doral, a political subdivision of the State of Florida (hereinafter the “City”). MSLD and the City may be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

**WHEREAS**, the City is the fee simple owner of certain real property within the City of Doral, Florida, commonly known as Doral Central Park, located at 3000 NW 87<sup>th</sup> Avenue, Doral, Florida 33172 (the “Park”), as more particularly described in Exhibit “A”, which is attached hereto and by this reference made a part hereof; and

**WHEREAS**, the Park is located within the vicinity of a project that an affiliate of MSLD intends to develop at NW 91st Avenue and NW 33rd Street; and

**WHEREAS**, MSLD, its affiliate and the City mutually desire to make certain improvements to the Park for the benefit of the entire community; and

**WHEREAS**, there is an area within the Park which needs to be regraded, and, at the City’s suggestion, MSLD is willing to regrade the subject area within the Park, pursuant to the terms and conditions set forth herein.

**WITNESSETH**

**NOW THEREFORE**, for and in consideration of the foregoing recitals, which are incorporated herein and made a part hereof by this reference, the mutual covenants of the set forth in this Agreement, the sum of TEN DOLLARS AND NO CENTS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. Scope of Work. MSLD shall perform, and shall be solely responsible for the cost of certain improvements to the Park (the “Work”), which shall include:
  - a) Regrade and compact, to the specifications of the City, the subject area identified in the attached Exhibit “B” (the “Premises”), in accordance with the survey plan that is attached hereto as Exhibit “C”, both of which are incorporated herein and made a part hereof by this reference;
  - b) Furnish all labor, services, materials and equipment associated with the Work, at no cost to the City;

- c) Remove and dispose of all excess fill in the Premises at no expenses to the City;
- d) Purchase and install sod, as specified in Exhibit “D”, the Sod Specifications, over the Premises for the purposes of the City hosting soccer fields in and on the Premises; and
- e) Perform the Work in compliance with all governmental laws, ordinances and regulations applicable to the Work.

2. Time for Completion. Upon the full execution and delivery of this Agreement, and upon a notice to proceed from the City, MSLD shall be authorized to immediately proceed with the Work. MSLD shall complete the Work within one hundred and fifty (150) days from the City’s notice to proceed. During that time, the City shall provide MSLD with continuous access to the Park in order to perform the Work in accordance with the license granted below.

3. Grant of License and Use. The City grants to MSLD a non-exclusive temporary, and revocable license for the Premises so as to complete the Work. The Premises and such means and ingress and egress incidental to the use of the Premises shall constitute the limited area to which MSLD shall have permission to carry-on its permitted use. The Premises shall exclude, without limitation, other areas of the Park. The Premises shall not be subject to change without the express written consent of the City Manager or his designee. MSLD shall be entitled to go on to the Premises beginning immediately after receiving a notice to proceed from the City for the Work and such other time as expressly permitted in writing by the City between the hours of 7:00 a.m. and 5:00 p.m. (“Permitted Time”) for the purposes of conducting the Work. All set-up and break-down actions that MSLD may require shall occur within the Permitted Time. This License shall continue in effect until the Work is completed or until revoked by the City. The City shall grant MSLD, its contractors, its agents, employees, and invitees such access to the Premises as may be needed during the Permitted Time to accomplish the Work. This License is being granted in consideration for the improvements that MSLD will be completing on the Premises.

4. Termination/Modification/Change or Revocation of License. The Parties acknowledge and understand that this Agreement may be terminated upon fifteen (15) day notice for convenience and immediately if the activity of MSLD poses a risk of harm to the public welfare. This Agreement may only be modified only by a mutual executed writing. MSLD acknowledges and understands that the permission to use the Premises being granted herein is limited to the Permitted Time and the Work and is revocable at any time. The City reserves the right to change the time of MSLD’s use of the Premises and/or modify the scope of the Premises if there is a conflict with a previously approved, emergency and/or necessary City function that is or will be occupying the same area. In the event of emergency circumstances or in the event the City or City Manager finds a threat to the public health or safety is involved, this Agreement may be cancelled by City verbally, effective immediately, followed by prompt written confirmation. In the event of any such change, MSLD may request a different time and/or location to perform the Work. The Agreement shall terminate automatically at the expiration of the Permitted Time

or pursuant to written notice given hereunder by either Party, effective upon the earlier of receipt or three days after transmittal by sender

5. Insurance. MSLD, or its contractor(s) performing any portion of the work under this Agreement, shall furnish insurance certificates indicating satisfactory insurance coverage at its sole cost and expense and maintain in full force and effect during the Permitted Time with City, policies of insurance of the type and in the minimum amounts stated below. Such policy(s) shall be issued by an insurer of recognized responsibility and rated no less than "A-" by the A.M. Best Company or similar insurance rating firm. Such policy(s) shall contain appropriate cross liability clauses, be primary without right of contribution, and will provide that the City shall be given thirty (30) days advance written notice in the event of cancellation, termination or modification which materially restricts the coverage thereof. Prior to the execution of any Agreement with City, MSLD shall provide the City with a certificate of insurance and a copy of the policy endorsement naming the City of Doral, its employees, directors, officers, agents, and successors and assigns, and other authorized representatives as additional or named insured. The certificate shall show a waiver of subrogation and hold harmless agreement in favor of the City, its employees, directors, officers, agents, and successors and assigns, and other authorized representatives. The following minimum insurance coverage is required:

**A. Commercial General Liability (Primary & Non Contributory)**

Limits of Liability

Bodily Injury & Property Damage Liability	
Each Occurrence	\$1,000,000
Policy Aggregate	\$1,000,000
Personal & Adv. Injury Liability	\$1,000,000
Products/Completed Operations	\$1,000,000

Endorsements Required

City of Doral listed as an additional insured  
Primary Insurance Clause Endorsement

Contingent & Contractual Liability  
Premises and Operations Liability

**B. Automobile Liability (If Applicable) \$300,000**

Owned or Scheduled Autos, including  
Hired and Non Owned Auto Exposures  
City of Doral listed as an additional insured

**C. Workers Compensation (If Applicable)**

Statutory- State of Florida

Employer's Liability - Limits of Liability

\$100,000 for bodily injury caused by an accident, each accident

\$100,000 for bodily injury caused by disease, each employee

\$500,000 for bodily injury caused by disease, policy limit

6. Indemnification. To the fullest extent permitted by law, MSLD hereby agrees to indemnify and hold the City, and its respective heirs, personal representatives, successors and assigns harmless from and against any and all claims, liability, liens, costs, losses, damages, expenses and demands, including attorneys' fees and costs at trial and all appellate levels, arising from, growing out of, or in connection with, the Work. Without limiting the generality of the foregoing, the indemnity shall include, but not be limited to: (i) any claims, liability, liens, costs, losses, damages, expenses and demands resulting from third-party claims relating to injury or death to persons, or loss of or damage to property, (ii) any damages from the breach of this Agreement by MSLD, and (iii) any liens claimed or filed against the Park. The indemnity obligation set forth herein shall survive termination of this Agreement. In connection with any work performed by or on behalf of MSLD, its successors or assigns, including, but not limited to, design, engineering and construction related to the Work, MSLD agrees to promptly pay all contractors, laborers, suppliers and materialmen performing any work or furnishing any labor, services, or materials in order to avoid any claims against the City for non-payment. In the event any claim is made against City in connection with the Grading Work, MSLD shall exercise commercially reasonable efforts to resolve the claim within ten (10) days after notice of a request from the City. Notwithstanding the foregoing, or anything else to the contrary, no party performing labor or service or providing materials for MSLD on the Park shall have a right to place a lien on the Park pursuant to Chapter 713 of the Florida Statutes, or otherwise.

In no event shall the City be liable or responsible for injury, loss, or damage to the property, improvements, fixtures, and/or equipment belonging to, in the care of, or rented by the MSLD, its officers, agents, employees, invitees, or patrons, resulting from, or in connection with the performance, or non-performance of the provisions of this Agreement, which may arise as a result of theft, destruction, or damage of any kind, or nature whatsoever, including without limitation, any direct, or indirect physical loss, or damage to the premises from any peril whatsoever, and loss of electricity, explosion, release of gas, steam, vapors, water damage, leakage or seepage, from, or into any part of the premises, including breakage, obstruction, or other defects of any kind within the premises, such as pipes, sprinklers, wires, air conditioning, plumbing, appliances, lighting fixtures, and acts of God. In addition, the City will not be held liable for any act of negligence by any user of the Premises, or any occupants, or any person whomsoever, whether such damage, or injury results from conditions arising upon the area, or upon other portions of the area, or from other sources.

7. Security. MSLD shall ensure appropriate security and safety measures are provided in the area of the Premises to ensure the safety of its employees, agents and that of third parties, including, without limitation, the presence of a City of Doral Law Enforcement Officer, if requested by the City.

8. Approvals and Authority.



A. To the extent the City has the right to approve plans or other matters under this Agreement, such approval shall be for the City's consent only and shall not be a representation or warranty, express or implied, as to the adequacy or sufficiency of any plans or other matters approved by the City.

B. The City has full power and authority to execute, deliver and perform all of City's duties and obligations under this Agreement, and such execution, delivery and performance of this Agreement have been duly authorized by all requisite action on the part of City.

10. Non-Interference. During its use hereunder and during the conduct of its business in the area, MSLD agrees to make all reasonable efforts to minimize interference with the business of City. MSLD shall not block or otherwise obstruct the public vehicular or pedestrian traffic in the area of City Hall in any way; nor shall MSLD provide or allow any impediment to free passage in or near the Premises. MSLD shall take reasonable measures so as to prevent or minimize MSLD's impact on traffic volume and congestion.

11. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), or sent by email and addressed as follows:

Notices to MSLD: MS Land Development, LLC  
3470 NW 82<sup>nd</sup> Avenue, Suite 988  
Doral, Florida 33122  
Attn: Masoud Shojaee  
E-mail: mshojaee@shomagroup.com

with a copy to: The Lasarte Law Firm  
3250 NE 1<sup>st</sup> Avenue  
Miami, Florida 33137  
Attn: Felix M. Lasarte, Esq.  
felix@lasartelaw.com

Notices to the CITY: Edward Rojas  
City Manager  
City of Doral  
8401 Northwest 53rd  
Terrace, Doral, FL 33166

Copy to: Daniel A. Espino, Esq.  
Weiss Serota Helfman  
City Attorney  
2525 Ponce De Leon Boulevard, Suite 700  
Coral Gables, FL 33134  
Telephone: 305-854-0800  
Facsimile: 305-854-2323

12. Public Records. MSLD acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of Chapter 119, Florida Statutes. MSLD agrees to maintain public records in MSLD's possession or control in connection with MSLD's performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. MSLD shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law. Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, MSLD, whether finished or unfinished, shall become the property of City and shall be delivered by MSLD to the City Manager, at no cost to the City, within seven (7) days of termination of this Agreement. All such records stored electronically by MSLD shall be delivered to the City in a format that is compatible with the City's information technology systems. Upon termination of this Agreement, MSLD shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to MSLD shall be withheld until all documents are received as provided herein. MSLD's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

13. No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture, partnership or any other similar arrangement between City and MSLD. Nothing in this Agreement will be construed to affect in any way the City's rights, privileges, and immunities, including the provisions and monetary limitations of Section 768.28(5), Florida Statutes, which limitations are applicable regardless of whether such provisions would otherwise apply.

14. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof and, accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In the event any term or provision of this Agreement 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 Agreement shall be construed in full force and effect. Time is of the essence with respect to all dates set forth herein. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of such counterparts together shall be deemed to constitute one original agreement. This Agreement shall not be recorded in the Public Records.

15. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity. Notwithstanding

anything herein to the contrary, MSLD shall have no right to assign its rights or obligations under this Agreement. This Agreement shall not create an association, partnership, joint venture or principal and agency relationship between the City and MSLD.

16. Attorneys' Fees. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity, including the right to seek specific performance of the terms and conditions of this Agreement and the right to seek damages upon the breach of this Agreement. The prevailing party in any action brought to enforce the terms and provisions of this Agreement shall be entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels.

17. Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

18. Entire Agreement. This Agreement, which includes any Exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement between the City and MSLD relating to the subject matter of this Agreement. No prior agreement, discussions or understanding pertaining to the same shall be of any force or effect, the same having been superseded by this Agreement. This Agreement cannot be altered, changed, or supplemented, except in writing signed by the City and MSLD.

19. Counterparts. This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]

**ATTEST:**

\_\_\_\_\_  
**Connie Diaz**  
City Clerk

**CITY OF DORAL**

**By:** \_\_\_\_\_  
**Edward A. Rojas**  
**City Manager**  
**Dated:** \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY FOR THE USE AND  
RELIANCE OF THE CITY OF DORAL ONLY**

\_\_\_\_\_  
**Weiss Serota Helfman Cole & Bierman, PL**  
City Attorney

**WITNESSES:**

\_\_\_\_\_  
**Print Name:** \_\_\_\_\_

\_\_\_\_\_  
**Print Name:** \_\_\_\_\_

**MS LAND DEVELOPMENT, LLC**

**By:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_  
**Dated:** \_\_\_\_\_

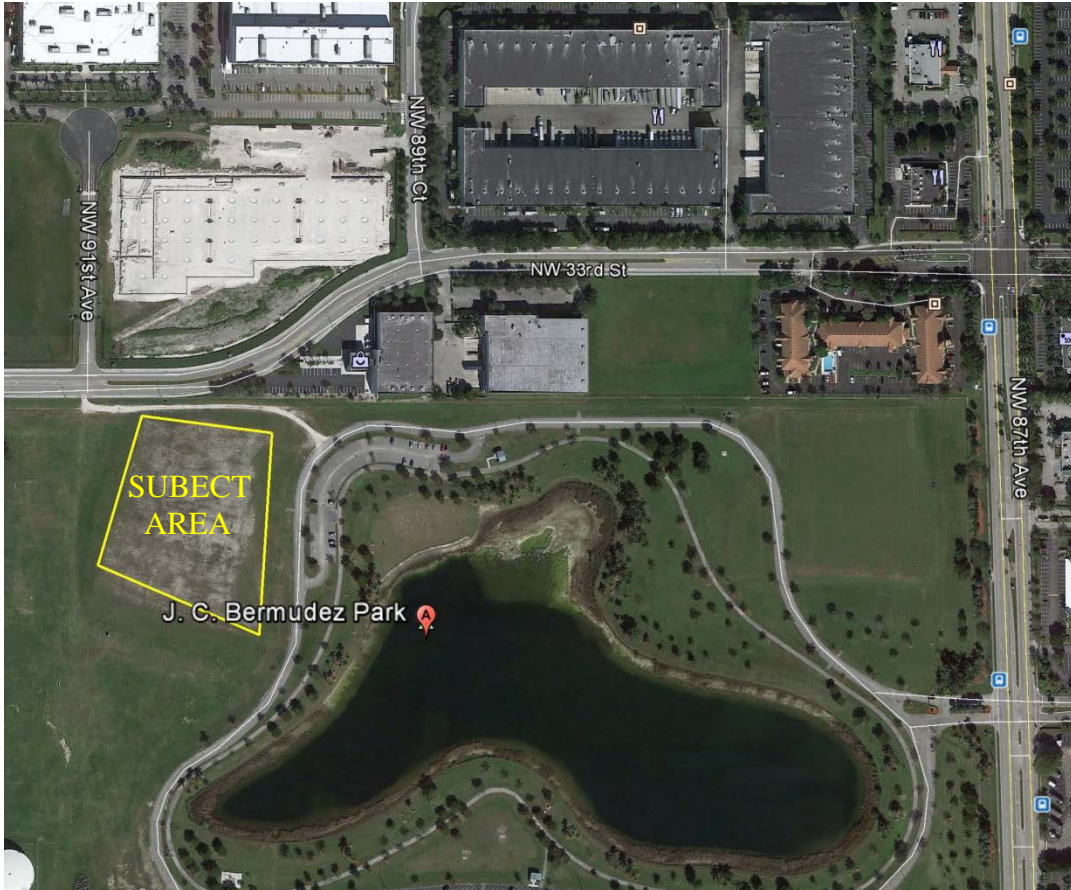
**Exhibit "A"**

**LEGAL DESCRIPTION**

Folio Number: 30-3028-020-0010

**Exhibit "B"**

**SUBJECT AREA**  
DORAL CENTRAL PARK



**Exhibit “C”**

**Survey**

**Exhibit “D”**

Sod Specifications