

RESOLUTION No. 10 – 95

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA APPROVING THE AMENDMENT TO THE RIGHT-OF-ENTRY AGREEMENT FOR DEBRIS REMOVAL ON PRIVATE PROPERTY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO RIGHT-OF-ENTRY AGREEMENTS WITH EACH OF THE HOMEOWNERS ASSOCIATIONS WITHIN THE CITY OF DORAL BOUNDARIES FOR THE PROVISION OF ACCESSING PRIVATE NEIGHBORHOODS IN THE EVENT OF AN EMERGENCY OR DISASTER DECLARATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral seeks to ensure the safety of its residents after a major storm and provide a rapid response when removing storm debris within all possible affected areas in the City; and

WHEREAS, City of Doral Resolution No. 06-26 approved a Right-of-Entry agreement with private residential communities within the City of Doral for emergency debris removal; and

WHEREAS, present requirements of the Federal Emergency Management Agency (FEMA) necessitate the removal of Article 3 of the previously approved Right-of-Entry Agreement presented herein in amended form as Exhibit "A;" and

WHEREAS, Staff respectfully requests that the City Council approve the amendment to the Right-of-Entry Agreement for Debris Removal on Private Property; and

WHEREAS, Staff further requests that the City Council authorize the City Manager to negotiate and enter into amended Right-of-Entry Agreements with each of the Homeowner Associations within the City of Doral boundaries for the provision of accessing private neighborhoods in the event of an emergency or disaster declaration.

**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 amendment to the Right-of-Entry Agreement for Debris Removal on Private Property presented herein as Exhibit "A."

Section 2. The City Council further authorizes the City Manager to negotiate and enter into amended Right-of-Entry Agreements with each of the Homeowner Associations within the City of Doral boundaries for the purposes stated in the above "whereas" clause.

Section 3. This Resolution shall take effect immediately upon adoption.

[Section left blank intentionally]

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 9th day of June, 2010.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JIMMY MORALES, ESQ., CITY ATTORNEY

EXHIBIT "A"



Memorandum

Date: May 24, 2010

To: Honorable Mayor and Council Members

Via: Yvonne Soler-McKinley, City Manager

From: Eric Carpenter, Public Works Director

Subject: Right-of-Entry Agreement

Yvonne Soler-McKinley F-YSM

EC

In order to ensure the safety of residents and facilitate the assistance of the City of Doral to remove emergency debris in the possible affected areas in our City, the City of Doral Council approved Resolution 06-26 in May 2006. This resolution was drafted in compliance with the Federal Emergency Management Agency (FEMA) guidelines at that time for the removal of all storm related debris from gated residential communities.

Present requirements from FEMA necessitate removal of article 3 of the current Right-of-Entry Agreement, herewith attached. If the article remains as is we will encounter difficulties to obtain reimbursement from FEMA . The Public Works Department (PWD) respectfully requests authorization from City Council to remove article 3 of the Right-of-Entry Agreement in order to comply with current FEMA guidelines

Right-of-Entry Agreement
For Providing Debris Removal on Private Property

_____, ("Owner") hereby permits the City of Doral, its officers, employees, agents, contractors and subcontractors ("City") to enter upon Owner's property commonly identified as _____ (name of community _____ (street address), Doral, Miami-Dade County, State of Florida ("Premises")), subject to all licenses, easements, encumbrances, and claims of title affecting the Premises upon the following terms and conditions:

1. **Grant of Right-of-Entry:** Owner hereby grants City a right-of-entry over the Premises for the purpose of removing and clearing any or all hurricane-generated debris of whatever nature from the Premises, subject to the terms and conditions set forth in this Agreement. *It is fully understood that this Agreement does not create any obligation on the City to perform debris clearance. Owner acknowledges that debris removal is subject to the approval of the City Manager.* Owner understands that the City will undertake no cleanup action until this Right-of-Entry Agreement is signed and returned.

2. **Private Insurance Coverage:** Most homeowner associations have insurance coverage to pay for the costs of removal of hurricane-generated debris. Owner understands that federal law (42 United States Code 5155, et. seq.) requires Owner to reimburse City for the cost of removing hurricane-generated debris to the extent covered in Owner's insurance policy. Owner also understands that Owner must provide a copy of the insurance policy, proof/statement of loss and settlement agreement from Owner's insurance company to City. If Owner has received payment, or when Owner receives payment, for debris removal from Owner's insurance company, or any other source, Owner shall notify and send payment and proof/statement of loss to City within thirty (30) days. Owner understands that all disaster related funding, including that for debris removal from private property, is subject to audit.

3. **Federal Emergency Management Agency ("FEMA") Approval:** Owner understands and accepts that the City will not enter onto private streets for debris removal unless FEMA has approved the reimbursement for disaster debris removal on private property for the specific disasters.

4. **Owner's Responsibility:** Owner understands and agrees that the ultimate responsibility for debris cleanup on private streets rests with the Owner.

5. **Duplication of Benefits:** Owner (has _____, has not _____) and (will _____, will not _____) receive(d) any compensation for debris removal from any other source including Small Business Administration (SBA), Nation Resource Conservation Service (NRCS), private insurance, individual and family grant program or any other public assistance program. Owner will advise City in writing within ten (10) days of receipt of any insurance settlements for debris removal that has been performed at government expense. Owner further agrees to reimburse the City within thirty (30) days from such insurance proceeds for the cost of the debris removal conducted by the City. In the event the insurance proceeds are less than the cost of debris

Please return signed form to: City Manager, City of Doral
8300 NW 53 Street, #100, Doral, Florida 33166

removal incurred by the City, Owner will not be responsible for the difference. If the insurance proceeds exceed the City's cost of debris removal, Owner will keep any excess proceeds.

6. Hold Harmless: City shall not be liable for, and Owner shall indemnify and hold harmless City, the United States Government, the Federal Emergency Management Agency (FEMA), the State of Florida, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers, against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, personal injury, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to actions arising out of this Agreement, and hereby release, discharge and waive any Claims and action, in law or equity, arising therefrom. Owner shall use its best efforts to mark any sewer lines, utilities, septic tanks and water lines located on the Premises.

7. No City Assumption of Liability for Remediation: In consideration of the assistance City is providing to Owner under this Agreement, at no cost to Owner, City assumes no liability or responsibility, and Owner shall not seek to recover from City, the United State Government, the Federal Emergency Management Agency (FEMA), the State of Florida, or any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers, the costs of any remediation of damages to the Premises incurred due to actions taken pursuant to this Agreement.

8. City Agents: Any person, firm or corporation authorized to work upon the Premises by the City shall be deemed to be City's agent and shall be subject to all applicable terms hereof.

9. Authority: Owner represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Owner are the duly designated agents of Owner and are authorized to do so, and that fee title to the Premises vests solely in Owner.

10. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

11. Modification: The provisions of this Agreement may not be modified, except by a written instrument signed by both parties.

12. Partial Invalidity: If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

**Please return signed form to: City Manager, City of Doral
8300 NW 53 Street, #100, Doral, Florida 33166**

13. Successors & Assigns: This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.

14. Governing Law and Venue: The laws of the State of Florida shall govern the validity, construction and effect of this Agreement. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Eleventh Judicial Circuit in and for Dade County, Florida.

IN WITNESS WHEREOF, Owner and City have executed this Agreement effective as of _____.

CITY:
City of Doral
A political subdivision of the
State of Florida

OWNER:

Print Name of Association

By: _____

By: _____
Print Name

By: _____
Signature

Title: _____

Approved as to Form
Date: _____

Phone#1: _____
Cell Phone#: _____
e-mail address _____

City Attorney

Please supply the following insurance information:

Insurance Company: _____

Agent Name: _____

Policy #: _____

Agent Phone#: _____

Special instructions (i.e., gates, locks, major cross streets and special directions contractors will need for site access):

**Please return signed form to: City Manager, City of Doral
8300 NW 53 Street, #100, Doral, Florida 33166**

Mailing address for Association: _____

Do you have a management company: No: _____ Yes _____ (if yes, list below)

Name of Management Company: _____

Address: _____

Contact Person: _____

Phone Number: _____

Please return signed form to: City Manager, City of Doral
8300 NW 53 Street, #100, Doral, Florida 33166