

**Ordinance 2007-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DORAL , FLORIDA, APPROVING THE REZONING OF 28.53 ACRES GENERALLY LOCATED BETWEEN NW 102<sup>nd</sup> AVENUE AND 107<sup>th</sup> AVENUE AND THEORETICAL NW 68 STREET FROM GU (GENERAL USE) TO RU-TH (TOWNHOUSE DISTRICT); APPROVING A SITE PLAN FOR 315 RESIDENTIAL UNITS; APPROVING THE REZONING OF 3.0± ACRES GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THEORETICAL NW 68<sup>th</sup> STREET AND 104<sup>th</sup> AVENUE FROM GU (GENERAL USE) TO RU-3M (MINIMUM APARTMENT HOUSE DISTRICT) AND TRANSFER OF DENSITY FROM THE AFOREMENTIONED 3.0± ACRE PROPERTY FOR 30 RESIDENTIAL UNITS, TO THE AFOREMENTIONED 28.53 ACRES PROPERTY ;PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Renegade at Doral, LLC, ("Applicant"), has requested approval of a rezoning of 28.53 acres ± generally located between NW 102<sup>nd</sup> Avenue and 107<sup>th</sup> Avenue and theoretical NW 68 Street from GU (General Use) to RU-TH (Townhouse District); and

**WHEREAS**, Renegade at Doral, LLC, ("Applicant"), has requested approval of a site plan for the development of 315 residential units; and

**WHEREAS**, Doral Holdings, LLC, ("Applicant"), has requested approval of a rezoning of 3.0± acres generally located on the Southwest corner of theoretical NW 68<sup>th</sup> Street and 104<sup>th</sup> Avenue from GU (General Use) to RU-3M (Minimum Apartment House District); and

**WHEREAS**, Doral Holdings, LLC, ("Applicant"), has requested approval of a transfer of density from the aforementioned 3.0± property for 30 residential units, to the aforementioned 28.53 acre property; and

**WHEREAS**, on May 23, 2007 the City Council held a quasi-judicial hearing and received testimony and evidence related to the Application from the Applicant and other persons and found as follows:

**WHEREAS**, after careful review and deliberation, staff has determined that this application has complied with the Code, and the City accepts the proffered voluntary restrictions from applicant;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA THAT:**

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption hereof.

**Section 2.** A rezoning of approximately 28.53 acres generally located between NW 102<sup>nd</sup> Avenue and 107<sup>th</sup> Avenue and theoretical NW 68 Street from GU (General Use) to RU-TH (Townhouse District); a site plan dated May 7, 2007, for 315 residential units is hereby approved;

**Section 3.** A rezoning of 3.0± acres generally located on the Southwest corner of theoretical NW 68<sup>th</sup> Street and 104<sup>th</sup> Avenue from GU (General Use) to RU-3M (Minimum Apartment House District) and a transfer of

density from the aforementioned 3.0± property for 30 residential units, to the aforementioned 28.53 acre property.

**Section 4.** The above approvals are subject to the following conditions:

1. The Declaration of Restrictions proffered to the City Council and incorporated herein is recorded in the Public Records of Miami-Dade County
2. The applicant shall provide adequate security (on site) during the entire time of construction between the hours of 7:00 pm and 7:00 am; Monday through Friday, and 24 hours during weekends and holidays.
3. The applicant shall provide ample screening of all external mechanical equipment, subject to final approval by the Planning and Zoning Director
4. The applicant shall provide daily road cleaning from related construction related debris during constructions
5. The applicant must receive approval from Miami-Dade Fire Rescue and the Department of Environmental Resource Management prior to submitting for building permits.
6. Applicant , successors and assigns must place in all land and building transaction documents a notice to buyers, users, lessees and renters informing them the subject property is located adjacent to, or near, the "County's Resource Recovery Facility" and describing the potential unpleasant impacts that could impact the property and submission of a waiver and release of liability.

**Section 5.** This ordinance shall become effective upon its passage and adoption by the City Council.

WHEREAS, a motion to approve the Ordinance was offered by Vice Mayor who moved its adoption. The motion was seconded by Councilwoman Ruiz and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	yes
Vice Mayor Peter Cabrera	yes
Councilmember Michael DiPietro	absent
Councilwoman Sandra Ruiz	yes
Councilmember Robert Van Name	yes

PASSED AND ADOPTED upon first reading the 25th day of April 2007.

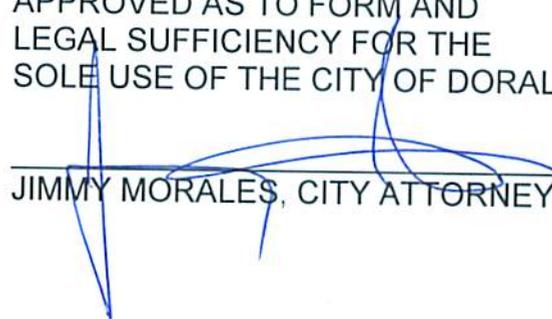
PASSED AND ADOPTED upon second reading the 23<sup>rd</sup> day of May 2007.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
BARBARA HERRERA, CITY CLERK

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

  
\_\_\_\_\_  
JIMMY MORALES, CITY ATTORNEY

# EXHIBIT “A”

This instrument was prepared by:

Name: Felix M. Lasarte, Esq.  
Address: Holland & Knight LLP  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131

(Space reserved for Clerk)

---

**DECLARATION OF RESTRICTIONS**  
(RESIDENTIAL TRACT)

WHEREAS, the undersigned Owner holds the fee simple title to the land in Miami-Dade County, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion, and

IN ORDER TO ASSURE the City of Doral ("City") that the representations made by the Owner during the consideration for the proposed development of Tuscany at Doral Village and Carriage Homes will be abided, the Owner freely, voluntarily and without duress makes the following Declaration of Restrictions covering and running with the Property:

- (1) **Bikeway.** To the extent permitted by Florida Power and Light ("FPL") and/or any other governmental agency having jurisdiction thereof, the Owner shall develop a bikeway underneath the FPL power-lines located along the Western portion of the Property. The bikeway will be built pursuant to the City's bikeway Master Plan and shall be built prior to the issuance of the 150<sup>th</sup> Certificate of Occupancy (CO) for the proposed residential development.
- (2) **Density Limitation - TDR.** Owner is donating to the City a 3± Acre site described in Exhibit "B", attached hereto, and hereinafter called the "TDR Property". The TDR Property has a potential density of 30 units. Said density is being transferred to the Property pursuant to the City's TDR ordinance. The Property will have a maximum density of 315 units, which consists of 285 units, which is the maximum permitted under the City's Low Density Residential Land Use Plan and 30 TDR units.
- (3) **Development of Off Site Educational Facility.** Within six (6) months of the transfer of the TDR Property, the City and Owner will use their best efforts to enter into an Agreement for the Owner to build a turn-key 600 student K-8 Charter School ("Educational Facility") on the TDR Property for the City. In turn, the Charter School Operator will lease the Educational Facility from the Owner to pay the Construction Mortgage. The Educational Facility will have a multi-purpose area that can be used by the City for any use not to conflict with the Educational Facility.

(Public Hearing)

(Space reserved for Clerk)

---

- (4) **Dedication of NW 107<sup>th</sup> Ave. and Sharing of Construction Costs.** Owner agrees to dedicate the western most 40' feet of its Property as right-of-way to the City for the construction of NW 107<sup>th</sup> Ave (107<sup>th</sup> Avenue Expansion Project) within thirty (30) days after the zoning approval and the expiration of any applicable appeal periods. Owner agrees to provide a "Temporary Construction Easement" of 5' feet adjacent to the right-of-way dedication. Owner agrees within thirty (30) days of the recordation of its final plat to pay City its pro rata share of the costs for the 107<sup>th</sup> Avenue Expansion Project. The pro rata share shall be determined by calculating the total cost of the 107<sup>th</sup> Avenue Expansion Project and dividing the costs among the property owners abutting NW 107<sup>th</sup> Avenue. The pro rata payment shall be deemed a contribution over and above impact fees.
- (5) **Notice to Proposed Purchaser of Resource Recovery Facility.** The Owner agrees to provide to each Purchaser at the time of the contract for the purchase of a unit, a notice informing the Purchaser that the Property is located near a Resource Recovery Facility and that it can have unpleasant impacts to the Property such as noise and odor. Owner further agrees to record a Notice in the Public Records of Miami-Dade County.
- (6) **Cleanup of Hazardous Materials.** In the event that the actions of the Owner cause hazardous materials to be found on the TDR Property, Owner shall promptly remove all hazardous materials. Such removal to be performed in accordance with all applicable federal, state and local laws, statutes, rules and regulations. Owner further agrees to provide the City with a mutually acceptable Environmental Indemnity Agreement at the time of transfer.
- (7) **Miscellaneous.**

**City Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

**Covenant Running with the Land.** This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of the City and the public welfare. Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the City.

(Public Hearing)

**Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by the City.

**Modification, Amendment, Release.** This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the City of Doral.

Should this Declaration of Restrictions be so modified, amended or released, the Director of the City of Doral Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

**Enforcement.** Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

**Authorization for City of Doral to Withhold Permits and Inspections.** In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this declaration is complied with.

**Election of Remedies.** All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

**Presumption of Compliance.** Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made and approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

**Severability.** Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the City shall be entitled to revoke any approval predicated upon the invalidated portion

**Recording.** This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost of the Owners following the approval of the Application. This Declaration shall become effective immediately upon recordation. Notwithstanding the previous sentence, if any appeal is filed, and the disposition of such appeal results in the denial of the application, in its entirety, then this Declaration shall be null and void and of no further effect. Upon the disposition of an appeal that results in the denial of the Application, in its entirety, and upon written request, the Director of the Planning and Zoning Department or the executive officer of the successor of said department, or in the absence of such director or executive officer by his/her assistant in charge of the office in his/her absence, shall forthwith execute a written instrument, in recordable form, acknowledging that this Declaration is null and void and of no further effect.

**Acceptance of Declaration.** Acceptance of this Declaration does not obligate the City in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the Doral City Council and/or any appropriate Community Zoning Appeals Board retains its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance or dedication.

**Owner.** The term Owner shall include the Owner, and its heirs, successors and assigns.

[Execution Pages Follow]



**EXHIBIT "A"**

**LEGAL DESCRIPTION  
RENEGADE AT DORAL, LLC**

**Tract 28:**

Tract 28, Less the West 35 feet of "FLORIDA FRUIT LAND COMPANY'S SUBDIVISION No. 1", ACCORDING TO THE Plat thereof as recorded in Plat Book 2, at Page 17, of the Public Records of Miami-Dade County, Florida.

Folio No. 35-3017-001-0280.

**Tracts 29 and 20:**

Tracts 29 and 20, less the East 250 feet of Tract 20, in Section 17, Township 53 South, Range 40 East, FLORIDA FRUIT LAND COMPANY'S SUBDIVISION, according to the Plat thereof as recorded in Plat Book 2, at Page 17, of the Public Records of Miami-Dade County, Florida.

Folio Nos. 35-3017-001-0290 and 35-3017-001-0200, respectively.

# 4360806\_v8