ORDINANCE NO. 08-12

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR EXEMPTIONS; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") recognizes the importance of environmental stewardship in a variety of media, which include, but are not limited to, water, energy, air, and waste; and

WHEREAS, the State of Florida also recognizes the importance of environmental stewardship through Executive Order 07-126, which provides that all new state buildings shall be Leadership In Energy and Environmental Design (LEED) certified and such buildings shall strive for a Platinum level of certification; and

WHEREAS, the Town is committed to providing a sustainable community for its residents and has applied to the Florida Green Building Coalition, Inc. to become a certified Green Local Government; and

WHEREAS, in furtherance of this commitment, the Town has earmarked $200,000 for green building initiatives, which include, but are not limited to, the creation of a Green Plan; and

WHEREAS, the Town is presently working to select a qualified consultant or consulting firm to prepare a Green Plan which, upon completion, when coupled with any necessary amendments to the Town's Comprehensive Plan and Land Development Regulations, shall serve to further guide land use and development, so that development within the Town will further the Town's goal of creating a sustainable environment; and

WHEREAS, permitting significant amounts of development which are not Leadership In Energy and Environmental Design (LEED) or Florida Green Building Coalition, Inc Certified prior to the establishment of the Green Plan and implementing Land Development Regulations is contrary to providing a sustainable community; and

WHEREAS, the Town Council, in its capacity as the Local Planning Agency, has reviewed this Ordinance and has recommended approval; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Town's Comprehensive Plan and Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. **Findings.** The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. **Moratorium Imposed**. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a moratorium on the issuance of site plans. The following categories of site plans shall be exempt from this moratorium:

1. One (1) to thirteen (13) residential units per acre. Any residential development that consists of one (1) to thirteen (13) residential units per acre, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification or a Certification from the Florida Green Building Coalition. The applicant's commitment shall be demonstrated as follows:

   Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 2% of the total cost of the building(s) in order to secure performance and fulfillment of the of the applicant's obligation to obtain a Certification. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or Florida Green Building Coalition and provides the certification letter to the Town.

   If the project fails to meet the criteria required for a Certification within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

   In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

2. Fourteen (14) to thirty (30) residential units per acre. Any residential development that consists of fourteen (14) to thirty (30) residential units per acre, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

   Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver

Certification or Certification by the Florida Green Building Coalition. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a certification by the Florida Green Building Coalition within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

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3. Thirty-One (31) units per acre or greater. Any residential development that consists of thirty-one (31) units per acre or greater, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

   Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure performance and fulfillment of the of the applicant's obligation to obtain a LEED Silver Certification. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) and provides the certification letter to the Town.

   If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) within two (2) years after receiving the Town's Certificate of Occupancy, the applicant shall forfeit one hundred (100) percent of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

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4. Institutional Uses. Any Institutional use that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

   Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or certification by the Florida Green Building Coalition. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or the Florida Green Building Coalition and provides the certification letter to the Town.

   If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a Certification by the Florida Green Building Coalition within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

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5. Nonresidential or mixed use buildings consisting of 50,000 gross square feet or less. Any nonresidential or mixed use building that consists of 50,000 gross square feet or less that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

   Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 3% of the total cost of the building(s) in order to secure

performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or Certification by the Florida Green Building Coalition. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) or the Florida Green Building Coalition and provides the certification letter to the Town.

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6. The construction of one (1) single family home; and

7. Any development that has received final site plan approval from the Town or the County prior to the enactment of this Ordinance.

Section 3. **Waivers.** Any property owner seeking a waiver under this Section 3 must file an application with the Town Council, for a determination within 90 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the proposed site plan requested by the waiver application will not detrimentally affect or be inconsistent with the regulations that will be created and adopted in relation to the Green Plan, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

Section 4. **Determination of Vested Rights or Denial of All Economic Use.**

(A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

(1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and

(2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and

(3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

(C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 90 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of $1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 5. **Judicial Review.** Judicial review of final decisions by the Town Council under Section 3 or Section 4 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 6. **Exhaustion of Administrative Remedies.** No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in Sections 3 and 4 of this Ordinance.

Section 7. **Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 8. **Term.** The moratorium imposed by this Ordinance is temporary and shall be effective for a period of nine (9) months from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the Green Plan and implementing land development regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 9. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 21st day of May, 2008.

PASSED AND ADOPTED on second reading this 18th day of June, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

TOWN OF CUTLER BAY
INCORPORATED
2005
FLORIDA

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF THE
TOWN OF CUTLER BAY ONLY:

WEISS, SEROTA, HELFMAN, PASTORIZA,
COLE & BONISKE, P.L.
Town Attorney

Moved By: Councilmember Bell
Seconded By: Councilmember Sochin

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	YES
Vice Mayor Edward P. MacDougall	YES
Councilmember Peggy R. Bell	YES
Councilmember Timothy J. Meerbott	YES
Councilmember Ernest N. Sochin	YES