

RESOLUTION No. 2008-213-901-Z-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING AN AMENDMENT TO THAT CERTAIN DECLARATION OF RESTRICTIVE COVENANTS RECORDED IN OFFICIAL RECORDS BOOK 24058, PAGE 2539, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TO DELETE CONDITION 3(XV) WHICH PROHIBITED THE APPLICANT FROM RENTING OR LEASING ANY OF THE UNITS IN THE DEVELOPMENT; PROVIDING FOR CONDITIONS; PROVIDING FOR NULL AND VOID EFFECT OF RESOLUTION IF CONDITIONS ARE NOT COMPLIED WITH; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 7, 2005, the City Council approved a rezoning for certain property generally located on the east side of Northwest 14<sup>th</sup> Avenue, between Northwest 168<sup>th</sup> Terrace and Northwest 170<sup>th</sup> Terrace, and

WHEREAS, Lakeside Point, Inc. ("Applicant"), proffered a Declaration of Restrictive Covenants to the City whereby the Applicant agreed that none of the units in the proposed development would be ever rented, but that all units would be owner-occupied, and

WHEREAS, the Applicant is requesting that the rental limitation be eliminated from the Declaration of Restrictive Covenants in light of the current housing market and economic downturn, and

WHEREAS, in order to achieve financial stability for the development, the Applicant believes that some of the units will have to be rental units, and

WHEREAS, staff has reviewed the application and does not have any objections to the granting of the applications, subject to certain conditions, and



WHEREAS, City Council has reviewed the application and heard the testimony, if any, of the Applicant or its representatives, and has further reviewed the staff report in this matter and believe that the application should be granted subject to certain conditions,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes an amendment to that certain Declaration of Restrictive Covenants recorded in Official Records Book 24058, Page 2539, in the Public Records of Miami-Dade County to delete condition 3(xv) which prohibited rental of the units in the development. This approval is subject to the following conditions:

1. Developer may be permitted to lease units in accordance with the execution of valid lease-purchase agreements between Developer and proposed property owners. No leases shall be permitted unless they are part and parcel to a valid purchase agreement. Furthermore, leases-purchase agreements shall only be permitted on the six (6) unoccupied units and the twenty (25) unbuilt units, that are currently on the site. Leasing of units, as allowed herein, shall only be permitted for a period of three (3) years from date of the approval granted herein, after which time all units shall be owner-occupied in accordance with valid, recorded deeds. No lease-purchase agreements as allowed herein shall be entered into for periods longer than one (1) year. No lease terms shall be entered into that would extend beyond the three year expiration. All units shall become owner-occupied within sixty (60) days of the three (3) year expiration. No new lease or lease/purchase agreements shall be entered into sixty (60) days prior to the expiration of the three (3) year period. The City shall have the right to inspect all lease/purchase agreement upon



request and the same shall be provided by Developer to the City within ten (10) days of request.

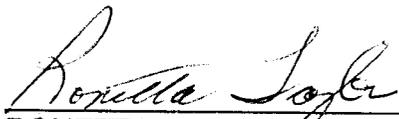
2. That an active building permit be maintained for the construction of the project and that within two (2) years of the approval granted herein, all units obtain a Certificate of Occupancy.
3. The Declaration of Restrictive Covenants shall not be recorded for a period of fourteen (14) days, in order to give the Applicant an opportunity to complete the following improvements to the property:
  - a. Provide construction fence surrounding the portion of the property under construction.
  - b. Remove all construction debris and store all construction materials appropriately meeting the approval of the Director.
  - c. Maintain a safe and clean site, including cutting of grass and overgrowth meeting the approval of the Director.
4. The aforementioned conditions shall survive the expiration of the fourteen (14) day period referenced in Paragraph 3.

Section 3. NULL AND VOID EFFECT: In the event, the applicant does not comply with the condition outlined in Section 3(a) through 3(b), to the satisfaction of the Director, the Declaration of Restrictive Covenants shall not be recorded and this Resolution shall be null and void and of no further force or effect.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR ZONING MEETING HELD ON NOVEMBER 5, 2008.

ATTEST:

  
RONETTA TAYLOR, MMC. CITY CLERK

  
SHIRLEY GIBSON, MAYOR



Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Watson  
SECOND BY: Councilman Bratton

**VOTE:** 7-0

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___ (No)
Councilwoman André Williams	<u>X</u> (Yes)	___ (No)

SKD/teh  
8216080.1



# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Barbara Watson  
Councilman Oliver Gilbert III  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilman André Williams

## Agenda Cover Page – Lakeside Town Homes PH-2008-00030

Date: November 5, 2008

Fiscal Impact: No  Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes  No  Advertising requirement: Yes  No

Sponsor Name/Department: Development Services Director via City Manager

Public hearing

Ordinance

1st Reading

Quasi-Judicial

Resolution

2nd Reading

### RESOLUTION No. 2008-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING AN AMENDMENT TO THAT CERTAIN DECLARATION OF RESTRICTIONS RECORDED IN OFFICIAL RECORDS BOOK 24058, PAGE 2539, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, TO DELETE CONDITION 3(XV) WHICH PROHIBITED THE APPLICANT FROM RENTING OR LEASING ANY OF THE UNITS IN THE DEVELOPMENT; PROVIDING FOR CONDITIONS; PROVIDING FOR NULL AND VOID EFFECT OF RESOLUTION IF CONDITIONS ARE NOT COMPLIED WITH; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

### ATTACHMENTS:

**RESOLUTION**

**EXHIBIT "A" LEGAL DESCRIPTION**

**EXHIBIT "C" DECLARATION OF RESTRICTIONS**

**EXHIBIT "B" STAFF RECOMMENDATION**

**ITEM 10A) RESOLUTION  
PUBLIC HEARING  
Lakeside Town Homes**



## **EXHIBIT “A” LEGAL DESCRIPTION**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of the "Lakeside Subdivision" Plat as recorded in Plat Book 166, page 34, in the official records of Miami-Dade County, Florida, consisting of approximately 3.56 acres.

**EXHIBIT “C”**  
**AMENDED DECLARATION OF RESTRICTIONS**

Return to: (enclose self-addressed stamped envelope)

**Name: Ronetta Taylor, City Clerk**

**Address:**

City of Miami Gardens  
1515-200 N.W. 167<sup>th</sup> Street  
Miami Gardens, Florida 33169

**This Instrument Prepared by:**

Sonja K. Dickens, Esquire  
501 N.E. 8<sup>th</sup> Street  
Fort Lauderdale, Florida 33304

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

### **AMENDED DECLARATION OF RESTRICTIONS**

WHEREAS, Marcial Rodriguez ("Developer") holds the fee simple title to the land described on Exhibit "A" attached hereto and made a part hereof (the "Property"), and

WHEREAS, the Developer has filed an application with the City of Miami Gardens to rezone certain property from BU-2, Special Business to RU-TH, Townhouse, and

WHEREAS, the City of Miami Gardens has agreed to rezone the property, subject to certain conditions,

IN ORDER TO ASSURE the City of Miami Gardens that the representations made by the Developer will be abided by the Developer, subject only to conditions contained herein, freely, voluntarily and without duress, the Developer makes the following Declaration of Restrictions covering and running with the Property:

- (1) **Site Plan.** That the project be construed substantially in accordance with the plans submitted for the hearing entitled "Proposed Townhouse Project Vicinity of Northwest 14<sup>th</sup> Avenue and 170<sup>th</sup> Terrace," Owner: Marcial Rodriguez, Miami, Florida, Phone No: 305-525-0403 by German Arturo Agudelo, R.A., Date: 5-7-05, Sheet SP-1, Job No. 050413.
  
- (2) **City Inspection.** As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City of Miami Gardens, or its duly authorized agents, 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.
  
- (3) **Maintenance Restrictions.** Notwithstanding the approval of the Application, and subject to all applicable code requirements, the owner agrees to the following maintenance restrictions:
  - i) That the exterior of the townhomes, fencing and cabana will be painted no less than once every six (6) years;
  - ii) That an irrigation system be maintained and operated throughout the life of said use;
  - iii) That the landscaping be properly maintained so as to prevent deterioration of green belt and scrubs;
  - iv) That excess parking on a right-a-way be prohibited;
  - v) Closure of garages for living space shall be prohibited;
  - vi) No additional impervious bases shall be added to front lawns that deviate from submitted site plans;
  - vii) Derelict or abandoned vehicles shall be strictly prohibited within confines of property, including all fee simple holdings;

- viii) Parking on lawns is strictly prohibited;
- ix) Common area and front lawns shall be maintained by the Homeowner Association no less than every two (2) weeks;
- x) Graffiti removal shall take place within seven (7) days of incident;
- xi) Pot holes shall be repaired within fourteen (14) days;
- xii) Damage to perimeter fence or wall shall be repaired within 45 days;
- xiii) Only barrel tile roofs shall be permitted;
- xiv) The applicant shall mill and resurface Northwest 170<sup>th</sup> Terrace and Northwest 14<sup>th</sup> Avenue adjacent to the Project ("Site") pursuant to the City's specifications including, but not limited to, the addition of a curb and gutter cross-section with sidewalks adjacent to the site. The street shall also include irrigated landscaping consisting of trees and shrubs to the City's specifications.
- xv) Developer may be permitted to lease units. However, leasing of units shall only be permitted for a period of three (3) years from date of the approval granted herein, at which time all units shall be owner-occupied. No leases shall be entered into for periods longer than one (1) year. Those units that are being occupied by tenants at the expiration of the three (3) year period, may continue to be so occupied until the lease in existence as of that date expires. Month to month leases shall terminate and the leases shall become owner-occupied within sixty (60) days of the three (3) year expiration. No new leases shall be entered into after the three (3) year expiration.
- xvi) That an active building permit be maintained for the construction of the project and that within two (2) years of the approval granted herein, all units obtain a Certificate of Occupancy.

xvii This Amended Declaration of Restrictions shall not be recorded for a period of fourteen (14) days, in order to give the Applicant an opportunity to complete the following improvements to the property:

- a. Provide construction fence surrounding the portion of the property under construction.
- b. Remove all construction debris and store all construction materials appropriately meeting the approval of the Director.
- c. Maintain a safe and clean site, including cutting of grass and overgrowth meeting the approval of the Director.

In the event, the applicant does not comply with the condition outlined in Section 3(a) through 3(b), to the satisfaction of the Director, this Amended Declaration of Restrictions shall not be recorded and the Resolution approving this Declaration shall be null and of no further force or effect.

xviii) The posting of these maintenance covenants shall remain in an open view at either the entrance or cabana area at all times.

(4) **Covenant Running With The Land**. This Declaration on the part of the Developer shall constitute a covenant running with the land and may be recorded in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the Developer, and his 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 public welfare.

(5) **Term**. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under from the date this Declaration is recorded. This Declaration may be modified, amended or released as to the Property or any portion thereof by a written instrument executed by the then Developer(s) of the Property, and applicable mortgagees, if any, provided that same is approved by the City Council after public hearing. In such event, the Mayor or City

Manager shall execute a written instrument suitable for recordation acknowledging such modification, amendment or release.

- (6) **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 judge to be reasonable for attorney fees. This enforcement provision shall be in addition to any other remedies available at law or in equity. Jurisdiction shall be proper in Miami-Dade County.
- (7) **Authorization for Miami Gardens to Withhold Permits and Inspections.** In the event the terms of this Declaration are not 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.
- (8) **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.
- (9) **Severability.** Invalidation of any one of these covenants, by judgment of a court of law, shall not affect any of the other provisions, which shall remain in full force and effect.
- (10) **Recording.** This Declaration shall be filed of record in the Public Records of Miami-Dade County, Florida, by the City, at Developer's expense following the adoption by the City of Miami Gardens a final resolution approving the Application.

**IN WITNESS WHEREOF,** Developer has executed this Dedication.

Witnesses

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

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

By: \_\_\_\_\_  
MARCIAL RODRIGUEZ

Print  
name: \_\_\_\_\_

STATE OF FLORIDA            )  
  )  
COUNTY OF BROWARD        )

The foregoing instrument was signed and sworn to before me on  
this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by Marcial  
Rodriguez, who is (personally known to me) or (who has produced a  
driver's license as identification).

(Notary Seal)

\_\_\_\_\_  
Notary Public State of Florida  
Notarial Seal stamped in black  
ink OR typed, printed or  
stamped name of Notary

Commission No.:  
\_\_\_\_\_

**EXHIBIT “B”**  
**STAFF RECOMMENDATION**

STAFF RECOMMENDATION  
PH-2008-000030 Lakeside Point, Inc.

**APPLICATION INFORMATION**

**Applicant:** Lakeside Point, Inc.  
**Agent:** Robert Holland, Esq.  
**Project Name:** Lakeside Townhomes  
**Site Location:** N.W. 14<sup>th</sup> Ave, between N.W. 168<sup>th</sup> Terr. & N.W. 170<sup>th</sup> Terr.  
**Property Size:** ± 3.56 Acres  
**Future Land Use:** Neighborhood  
**Existing Zoning:** RU-TH, Townhouse District  
**Requested Action(s):**

1. Elimination of Condition 3(xv) of a previously approved Declaration of Restrictions as recorded in Official Records Book 24058, Page 2539, of the Public Records of Miami-Dade County, Florida, which states “None of the town homes in the development shall be rented or leased to any person at any time for any reason. All units shall remain owner-occupied for the duration of existence of the development”; in accordance with Section 33-311(A) (7) of the Zoning Code.

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**RECOMMENDATION:**

Recommend approval of the requested actions subject to the following conditions:

1. Developer may be permitted to lease units. However, leasing of units shall only be permitted for a period of three (3) years from date of the approval granted herein, at which time all units shall be owner-occupied. No leases shall be entered into for periods longer than one (1) year. Those units that are being occupied by tenants at the expiration of the three (3) year period, may continue to be so occupied until the lease in existence as of that date expires. Month to month leases shall terminate and the leases shall become owner-occupied within sixty (60) days of the three (3) year expiration. No new leases shall be entered into after the three (3) year expiration.
2. That an active building permit be maintained for the construction of the project and that within two (2) years of this approval all units obtain a Certificate of Occupancy.
3. This Amended Declaration of Restrictions shall not be recorded for a period of fourteen (14) days, in order to give the Applicant an opportunity to complete the following improvements to the property:
  - a. Provide construction fence surrounding the portion of the property under construction.
  - b. Remove all construction debris and store all construction materials appropriately meeting the approval of the Director.

- c. Maintain a safe and clean site, including cutting of grass and overgrowth meeting the approval of the Director.

In the event, the applicant does not comply with the condition outlined in Section 3(a) through 3(b), to the satisfaction of the Director, this Amended Declaration of Restrictions shall not be recorded and the Resolution approving this Declaration shall be null and of no further force or effect.

**REVIEW AND ANALYSIS**

**Neighborhood Land Use Characteristics**

<b>Property</b>	<b>Zoning</b>	<b>Existing Use</b>	<b>Future Land Use Map</b>
Site	RU-TH, Townhouse District	Town homes	Commerce
North of Site	RU-1, Single Family Residential	Single-Family Dwellings	Neighborhood
South of Site	BU- 2, Business- Special	Offices	Commerce
East of Site	BU- 2, Business- Special	Indoor Manufacturing	Commerce
West of Site	RU-1, Single Family Residential	Single-Family Dwellings	Neighborhood

The site is located in the southeast corner of NW 14<sup>th</sup> Avenue and NW 170<sup>th</sup> Terrace, and is being developed with a townhouse development with 52 units, of which 26 units are completed. Single-family dwellings are located to the north and west of site. Office uses are located on the east and the south sides of the site.

**Consistency with Comprehensive Development Master Plan (CDMP)**

The subject property is designated Commerce on the adopted 2006-2016 Future Land Use Plan Map (FLUP) of the Future Land Use Element (FLUE) of the City’s Comprehensive Development Master Plan (CDMP). The Commerce area is a mixed use designation which provides for multiple family residential uses such as townhouses as well as commercial and office uses. The proposed deletion of Condition 3(xv) does not impact the policies of the CDMP and is consistent with same.

**Zoning Criteria and Additional Analysis**

Lakeside Point, Inc. is requesting the elimination of Condition 3(xv) of a Declaration of Restrictions, which was approved on September 7, 2005 by the City Council in conjunction with Ordinance No. 2005-31-69 which rezoned the property to RU-TH allowing the 52 unit townhouse development. Specifically, the Applicant seeks the elimination of Condition 3(xv) which states:

“None of the town homes in the development shall be rented or leased to any person at any time for any reason. All units shall remain owner-occupied for the duration of existence of the development”

*Section 33-311(A)(7.) Criteria for Modification or Elimination of Conditions imposed by Resolution, states that:*

*The City Council may hear applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution, and to modify or eliminate any provisions of restrictive covenants, or parts thereof, accepted at public hearing, except as otherwise provided in Section 33-314(C)(3); provided, that the Council finds after public hearing that, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned, the modification or elimination would not (a) generate excessive noise or traffic, (b) tend to create a fire or other equally or greater dangerous hazard, (c) provoke excessive overcrowding of people, (d) would not tend to provoke a nuisance, or (f) be incompatible with the area concerned.*

On September 7, 2005, the Applicant was granted a district boundary change to rezone the 3.5-acre property to RU-TH allowing a 52 unit townhouse development. At the same meeting, the Applicant voluntarily proffered a Declaration of Restrictions, which specifically prohibits the rental or leasing of any of the units. Due to the economic downturn and the current housing market situation, and financing situation, the Applicant is requesting the elimination of the aforementioned condition to allow leasing of the units as means of achieving financial stability for the development. When considering the necessity and reasonableness of the termination of this condition in relation to the present and future development of the area concerned, this elimination does not create any burden on the existing, planned or budgeted public infrastructures; does not provoke excessive overcrowding of people or provoke a nuisance; nor is the elimination of the condition incompatible with the area. Furthermore, the elimination of the condition will not conflict with the RU-TH zoning regulations of the property, nor will it change the residential townhouse use on the property.

Staff recommends approval of the requested elimination of the condition provided that new conditions are added that are intended provide a reasonable timeframe for rental-leasing, provide the City with the ability to eliminate unfinished construction, and minimize and limit the visual and dust impacts of the uncompleted onsite construction on the surrounding residential neighborhood.

**CONCLUSION:** The elimination of Condition 3(xv) of the previously approved Declaration of Restrictions is consistent the policies and objectives of the CDMP; and maintains the basic intent and purpose of the Zoning Code while not detrimental to the stability and character of the neighborhood.

#### **ADDITIONAL INFORMATION**

##### **Anticipated Facilities Impact**

This application involves a modification of a previously approved Declaration of Restrictions, and, as such, will not create any additional impact upon the existing urban services and facilities.

**Public Notification/Comments**

In accordance with the zoning code, notification of the applicant's requests was mailed to property owners within a 500 foot radius of the subject site to provide them an opportunity to comment on the application, if they so choose.

**Attachments:**

- Public Hearing Checklist
- Letter of Intent
- Hearing Map-Zoning
- Hearing Map-Aerial
- Mailed Notice Affidavit
- Mailed Notice Radius Map
- Adopted Ordinance/Staff Report/Original Recorded Declaration of Restrictions ORB 24058,  
Page 2539
- Transmittal Notice