

RESOLUTION NO. 15-1303

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING A REQUEST IN ACCORDANCE WITH SECTION 13-303 OF THE TOWN OF MIAMI LAKES LAND DEVELOPMENT CODE FOR A CONDITIONAL USE FOR A SLEEP TESTING CENTER SUBMITTED FOR PROPERTY AT 16420 NW 59TH AVENUE, MIAMI LAKES, FLORIDA, IN THE IU-C, INDUSTRIAL USE-CONDITIONAL ZONING DISTRICT; APPROVING A SITE PLAN SUBJECT TO CONDITIONS, BY MODIFYING CONDITION (d) OF RESOLUTION 07-527Z AS MODIFIED BY RESOLUTION 08-666Z, TO EXPAND THE PERMITTED USES ON THE SUBJECT PROPERTY; PROVIDING FINDINGS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR APPROVAL; PROVIDING FOR CONDITIONS; PROVIDING FOR VIOLATION OF CONDITIONS; PROVIDING FOR APPEAL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, San Marcus Research Clinic, Inc. (the “Applicant”) has applied to the Town for approval of: (1) a Conditional Use, pursuant to Section 13-303 of the Town of Miami Lakes (“Town”) Land Development Code (“LDC”) to allow a sleep testing center in the IU-C (Industrial Use-Conditional) zoning district; and 2) a modification of the conditions of site plan approval provided in Resolution No. 07-527Z, adopted on April 24, 2007, as amended by Resolution No. 08-666Z, adopted on May 20, 2008, for property generally located at 16420 NW 59 Avenue, Miami Lakes, Florida, in the IU-C zoning district, specifically Folio No. 32-2013-057-0060, which is legally described as “Unit 6 of Miami Lakes Professional Center Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 25678 at Page 2249 of the Public Records of Miami-Dade County, Florida, together with an undivided interest in the common elements appurtenant” (hereinafter “the Property”); and

WHEREAS, condition (d) of Resolution No. 07-527Z restricted the use of the property to “office and showroom display uses;” and

WHEREAS, subsequent to the passage of Resolution No. 07-527Z, a Declaration of Restrictions was recorded in the public records of Miami-Dade County, Florida at Official Records Book (hereinafter “ORB”) 26376 Page 1116 on May 13, 2008, and re-recorded at ORB 26612 Page 1436 on October 16, 2008 (hereinafter “Declaration of Restrictions”), and which pertained to several properties, including the property located at 16420 NW 59 Avenue, Miami Lakes, Florida, Folio #32-2013-057-0060; and

WHEREAS, on May 20, 2008, the Town passed Resolution No. 08-666Z pertaining to a request to amend Resolution No. 07-527Z and approving modifications to the conditions of the site plan approval provided in Resolution No. 07-527Z; and

WHEREAS, Resolution No. 08-666Z authorized an expansion of the permitted uses in the IU-C zoning district as applied to the property that was the subject of the request; and

WHEREAS, Section 13-303 of the Town LDC sets forth the authority of the Town Council to consider and act upon an application for a conditional use; and

WHEREAS, in accordance with Section 13-309 of the Town LDC, proper notice was mailed to the appropriate property owners of record and the hearing was duly advertised in the newspaper; the public hearing was noticed for Tuesday, April 14, 2015, at 6:30 P.M. at Town Hall, 6601 Main Street, Miami Lakes, Florida; and all interested parties have had the opportunity to address their comments to the Town Council; and

WHEREAS, Town staff has reviewed the application and recommends approval subject to conditions, of the request for a Conditional Use and approval of the proposed Second Amendment to the Declaration of Restrictions, as set forth in the Town of Miami Lakes Staff

Analysis and Recommendation, a copy of which is on file in the Town of Miami Lakes Clerk's Office and incorporated into this Resolution by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and incorporated herein by this reference.

Section 2. Findings.

In accordance with Section 13-303, the Town Council finds that the Applicant meets the criteria for a conditional use approval which are as follows:

1. Land Use Compatibility; and
2. Sufficient Site Size, Site Specifications, and Infrastructure to Accommodate the Proposed Use; and
3. Compliance with the Comprehensive Plan and Land Development Code; and
4. Proper Use of Techniques; and
5. Hazardous Waste.

Section 3. Approval of Conditional Use. The Conditional Use request to allow a sleep testing center in the IU-C (Industrial Use-Conditional) zoning district is hereby approved.

Section 4. Approval of Modification. The Modification to Condition (d) of Resolution 07-527Z, as modified in section 3 of Resolution 08666Z, is hereby approved to read as follows:

(d) That the Applicant has proffered a Declaration of Restrictions which would restrict the use of the subject property to banks, contractor's offices, day nursery and after school care licensed by the State of Florida, laboratories, overnight clinical research facility, material testing, locksmiths, office building, printing shops – limited to copy centers and excluding any print shop use which emits odors, dust, noise, toxic gases, smoke or other hazards to the

public health, safety and welfare, restaurant, salesrooms and storage showrooms –wholesale, salesrooms and showrooms as per section 33-259.62, technical trade schools as per section 33-259.63 and veterinarians for purposes of preserving the intended use in perpetuity.

proposed Second Amendment to the Declaration of Restrictions, attached hereto as Exhibit “A”, is hereby approved.

Section 5. Conditions. The Conditional Use is approved subject to the following conditions:

1. The approvals granted are based on the plans submitted by the Applicant; Sheets A-1 Site Plan, A-2 Floor Plans, A-3 Elevations and L-1 Landscape Plan by Albert O. Gonzalez, R.A. dated received by the Town on 01-12-15. Improvements and uses approved herein shall be in substantial compliance with these plans, except that the number of parking spaces shall be subject either to further design changes or to further administrative action.
2. Except as modified herein, all conditions of Resolution 07-527Z and Resolution 08-666Z, as applicable, shall remain in full force and effect.
3. The Applicant shall obtain a Certificate of Use, and Business Tax Receipt (BTR), and promptly renew the BTR annually, upon compliance with all the terms and conditions of this approval, the same subject to cancellation upon violation of any of the conditions.
4. Prior to the issuance of a building permit or certificate of use (CU) dependent upon this approval, the Applicant shall submit the Second Amendment to the Declaration of Restrictions to meet with the approval of the Town Attorney and, upon approval by the Town Attorney, shall have said Second Amendment to the Declaration of Restrictions executed and recorded at the Applicant’s expense within 30 days of this approval.
5. The Applicant shall provide, and continuously maintain all landscaping material on the site in compliance with Chapter 18-A Landscaping Requirements. Compliance with the landscape requirements shall be verified by a zoning inspection prior to the issuance of a Certificate of Use (CU).
6. The Applicant shall obtain any and all required approvals or licenses from the State of Florida prior to commencing operations. The Applicant shall promptly notify the Town if any required State approval or license is rescinded, non-renewed or otherwise becomes

non-effective. In such case, the Administrative Official shall have the authority to revoke this conditional use approval.

7. Any signage requires a separate sign permit.
8. The Applicant shall obtain all required building permits and a Certificate of Use (CU) for all request(s) approved herein, within one (1) year of the date of this approval. If all required building permits and a Certificate of Use (CU) are not obtained or an extension granted within the prescribed time limit, this approval shall become null and void.

Section 6. Appeal. In accordance with Section 13-310 of the Town LDC, the Applicant or any aggrieved property owner in the area, may appeal the decision by filing of a Writ of Certiorari to the Circuit Court of Miami-Dade County, Florida, in accordance with the Florida Rules of Appellate Procedure.

Section 7. Violation of Conditions. Failure to adhere to the terms and conditions contained in this Resolution in Section 4, if any, shall be considered a violation of the Town LDC and persons found violating the conditions shall be subject to the penalties prescribed by the Town LDC, including but not limited to, the revocation of any of the approvals granted in this Resolution. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town LDC before it may commence construction or operation, and that the foregoing approvals, if any, in this Resolution may be revoked by the Town at any time upon a determination that the Applicant is in non-compliance with the Town LDC.

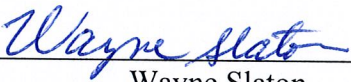
Section 8. Effective Date. This Resolution shall take effect 30 days following the date it is filed with the Town Clerk. If during that time, the decision of the Town Council is appealed as provided in the Town LDC and the Florida Rules of Appellate Procedure, the appeal shall stay the effectiveness of this Resolution until said appeal is resolved by a court of competent jurisdiction.

PASSED AND ADOPTED this 14th day of April, 2015.

Passed and adopted this 14th day of April, 2015.

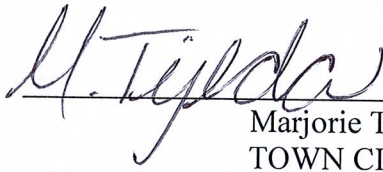
The foregoing resolution was offered by Councilman Mestre who moved its adoption. The motion was seconded by Councilman Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Manny Cid	<u>yes</u>
Councilmember Tim Daubert	<u>yes</u>
Councilmember Tony Lama	<u>yes</u>
Councilmember Ceasar Mestre	<u>yes</u>
Councilmember Frank Mingo	<u>yes</u>
Councilmember Nelson Rodriguez	<u>yes</u>



Wayne Slaton
MAYOR

Attest:



Marjorie Tejeda
TOWN CLERK

Approved as to form and legal sufficiency:

Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

Exhibit A

RECEIVED
03.19.15

This Instrument was prepared by:
Name: Mr. Anthony Escarrá, Esq.
Address: 16400 N.W. 59 Avenue, 2nd Floor
Miami Lakes, FL 33014

SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS

KNOWN ALL BY THESE PRESENTS that the undersigned are the owners ("Owners") of the following described property ("Property"), lying, being and situated in the Town of Miami Lakes, Miami-Dade County, Florida ("Town"), to-wit:

UNITS/LOTS: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of MIAMI LAKES PROFESSIONAL CENTER CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 25678 at Page 2249 of the Public Records of Miami-Dade County, Florida, together with an undivided Interest in the common elements appurtenant.

WHEREAS, the Property is covered by that certain Declaration of Restrictions, recorded on the Property on May 13, 2008 In Official Records Book 26376 at Page 1116, ("Declaration") Miami-Dade County, Florida; and re-recorded on October 16, 2008, In Official Records Book 26612 at Page 1436 of the Public Records of Miami-Dade County, Florida.

WHEREAS, paragraph 2 of the Declaration provided that the use of the Property will be restricted to office and showroom display for purposes of preserving the intended use in perpetuity; and

WHEREAS, by Resolution No: 08-666Z, the Owner and the Town decided to amend the uses described in the Declaration as to certain Units/Lots on the Property.

NOW, THEREFORE, in consideration of the foregoing premises and in compliance with the aforementioned Declaration, the Declaration is hereby modified as follows:

Paragraph (2) of the Declaration shall be amended to read as follows:

(2) That the uses permitted on the subject Property in Units/Lots 2, 3, 4, 5, 8, and 10 will be restricted to office and showroom display only. That the uses Permitted on Units/Lots 6 of the Property will be restricted to: banks, contractor's offices, day nursery, and after school care licensed by the State of Florida, laboratories, overnight clinical research facility, material testing, locksmiths, office building, printing shops -limited to copy centers and excluding any print shop use which emits odors, dust, noise, toxic gases, smoke or other hazards to the public health, safety and welfare-, restaurant, salesrooms and storage showrooms-wholesale, salesrooms and showrooms as per section 33-259.62, technical trade schools as per section 33-259.63 and veterinarians. That the uses permitted on Units/Lots 1, 7, 9, 11 and 12 of the Property will be

Second Amendment to Declaration of Restrictions Page 2:

restricted to: banks, contractor's offices, day nursery, and after school care licensed by the State of Florida, laboratories, material testing, locksmiths, office building, printing shops -limited to copy centers and excluding any print shop use which emits odors, dust, noise, toxic gases, smoke or other hazards to the public health, safety and welfare-, restaurant, salesrooms and storage showrooms-wholesale, salesrooms and showrooms as per section 33-259.62, technical trade schools as per section 33-259.63 and veterinarians for purposes of preserving the intended use in perpetuity.

All other provisions of the Declaration not hereby amended shall remain in full force and effect.

IN WITNESS WHEREOF, the Owners, joined by and with the consent of their Mortgagee of record, have executed this Dedication.

As to Units/Lots 1

Owner:

Second Amendment to Declaration of Restrictions Page 2:

All other provisions of the Declaration not hereby amended shall remain in full force and effect.

IN WITNESS WHEREOF, the Owners, joined by and with the consent of their Mortgagee of record, have executed this Dedication.

As to Unit(s)/Lot(s) 1 and 3

Witnesses:

Print Name: _____

Print Name: _____

As to Unit(s)/Lot(s) 2

Witnesses:

Print Name: _____

Print Name: _____

Witnesses:

Print Name: _____

Print Name: _____

Owner:

ZAHLENE INVESTMENT
INCORPORATED a Florida corporation

By: _____
Jordan Zahlene

Mortgagee: NONE

Owner:

By: _____
Javier Estrada

By: _____
Jose A. Guzman

By: _____
Jose M. Guzman

Mortgagee: Premier American Bank

By: _____

Print Name: _____

Its: _____

Second Amendment to Declaration of Restrictions Page 3:

As to Unit(s)/Lot(s) 4

Owner:
MACADEMIA, LLC a Florida limited
liability company

Witnesses:

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Mortgagee: NONE

As to Unit(s)/Lot(s) 5

Owner:
MACADEMIA, LLC a Florida limited
liability company

Witnesses:

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Mortgagee: Professional Bank

Witnesses:

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

Second Amendment to Declaration of Restrictions Page 4:

As to Unit(s)/Lot(s) 6

Owner:
SAN MARCUS RESEARCH CLINIC, INC
a Florida corporation

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

Mortgagee: NONE

As to Unit(s)/Lot(s) 7

Owner:
ARCH MIAMI LAKES II, LLC a Florida
limited liability company

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

Mortgagee: NONE

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Print Name: _____

Its: _____

Second Amendment to Declaration of Restrictions Page 5:

As to Unit(s)/Lot(s) 8

Witnesses:

Print Name: _____

Print Name: _____

Witnesses:

Print Name: _____

Print Name: _____

As to Unit(s)/Lot(s) 9

Witnesses:

Print Name: _____

Print Name: _____

Owner:

PACIFICA ML PROFESSIONAL CENTER,
LLC a Florida limited liability company

By: _____

Print Name: _____

Mortgagee: Premier American Bank

By: _____

Print Name: _____

Its: _____

Owner:

BELAMANDA INVESTMENTS, LLC a
Florida limited liability company

By: _____

Print Name: _____

Mortgagee: NONE

Second Amendment to Declaration of Restrictions Page 6:

As to Unit(s)/Lot(s) 10

Witnesses:

Print Name: _____

Print Name: _____

Owner:

By: _____
Jose M. Garcia

Mortgagee: NONE

As to Unit(s)/Lot(s) 11

Witnesses:

Print Name: _____

Print Name: _____

Owner:

PEREGRINE PROPERTY MANAGEMENT,
LLLP a Florida limited liability limited
partnership

By: _____

Print Name: _____

Mortgagee: NONE

As to Unit(s)/Lot(s) 12

Witnesses:

Print Name: _____

Print Name: _____

Owner:

BELAMANDA INVESTMENTS, LLC a
Florida limited liability company

By: _____

Print Name: _____

Second Amendment to Declaration of Restrictions Page 7:

As to Unit(s)/Lot(s) 12

Mortgagee: State Farm Bank

Witnesses:

By: _____

Print Name: _____

Print Name: _____

Its: _____

Print Name: _____