ORDINANCE No. 2007-15-121

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE APPLICATION SUBMITTED BY ALCHEMY, LLC, FOR THE REZONING OF PROPERTY GENERALLY LOCATED EAST OF N.W. 47TH AVENUE JUST SOUTH OF THE INTERSECTION OF N.W. 47TH AVENUE AND NW 167TH STREET, MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO FROM RU-2 – TWO-FAMILY RESIDENTIAL DISTRICT TO RU-4L – LIMITED APARTMENT HOUSE DISTRICT; PROVIDING FOR A DECLARATION OF RESTRICTIVE COVENANTS; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Alchemy, LLC ("Applicant"), owns certain property located east of Northwest 47th Avenue just south of the intersection of Northwest 47th Avenue and Northwest 167th Street, more particularly described on Exhibit "A" attached hereto ("Property"), and

WHEREAS, the Applicant seeks the following approval: District boundary change from RU-2 – Two-Family Residential District to RU-4L – Limited Apartment House District.

WHEREAS, the City Council held a public hearing on the application on June 6, 2007, and

WHEREAS, the City's Planning & Zoning staff has made a determination that the application is consistent with the Comprehensive Development Master Plan, and

WHEREAS, the City's Planning & Zoning staff recommends approval of the application subject to certain conditions, and

WHEREAS, the City Council considered the testimony of the Applicant, if any, and

WHEREAS, the City Council also considered the testimony of the City's Planning & Zoning staff, and the Staff Report attached hereto as Exhibit "B," incorporated herein by reference,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

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

SECTION 2. APPROVAL: The City Council of the City of Miami Gardens, hereby approves the application submitted by the Applicant for the rezoning of property generally located east of Northwest 47th Avenue just south of the intersection of Northwest 47th Avenue and Northwest 167th Street, more particularly described on Exhibit "A" attached hereto from RU-2 – Two-Family Residential District to RU-4L – Limited Apartment House District.

SECTION 3. DECLARATION OF RESTRICTIONS: The City Council of the City of Miami Gardens, Florida, hereby approves the Declaration of Restrictive Covenants attached hereto as Exhibit "C."

SECTION 4. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct

and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 6TH DAY OF JUNE, 2007.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 18TH DAY OF JULY, 2007.

SHIRLEY GIBSON, MAYOR

ATTEST:

RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Williams
SECONDED BY: Vice Mayor Braynon

VOTE: 5-1

Mayor Shirley Gibson	x (Yes)	___(No)
Vice Mayor Oscar Braynon, II	x (Yes)	___(No)
Councilman Melvin L. Bratton	x (Yes)	___(No)
Councilman Aaron Campbell	x (Yes)	___(No)
Councilman André Williams	x (Yes)	___(No)
Councilwoman Sharon Pritchett	___(Yes)	x (No)
Councilwoman Barbara Watson	___(Yes)	___(No) Out of town

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OR Bk 25984 Pgs 4911 - 4917; (7pgs)
RECORDED 10/12/2007 11:39:33
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Return to: (enclose self-addressed stamped envelope)

Name: Ronetta Taylor, City Clerk

Address:

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

This Instrument Prepared by:
Sonja K. Dickens, Esquire
Arnstein & Lehr, LLP
200 East Las Olas Blvd., Suite 1700
Fort Lauderdale, Florida 33301

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DECLARATION OF RESTRICTIONS

WHEREAS, Alchemy, LLC ("Applicant") owns certain property located east of Northwest 47th Avenue just south of the intersection on Northwest 47th Avenue and Northwest 167th Street, more particularly described on Exhibit "A," attached hereto, and

WHEREAS, the Applicant filed an Application with the City of Miami Gardens for a District boundary change from RU-2 – Two-Family Residential District to RU-4L – Limited Apartment House District.

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

1. **Site Plan**. That a site plan be submitted to and meet with the approval of the City upon the submittal of an application for a building permit and/or Certificate of Use and Occupancy; said plan to include among other things, location of structure(s), the type(s), size(s) and location of sign(s), lighting standards, off-street parking areas, exit and entrance drive(s), perimeter walls or fences and the landscaping details.

2. **Approval**. That, in the approval of the Plan, the same be substantially in accordance with that submitted for the public hearing and consisting of the following sheets: Proposed Landscape Site Plan LP-1; Parking and Landscaping Plan Sheet LS-2; Proposed Site Plan SP-1; Two Eight-Unit Buildings Ground Floor, Second Floor, & Roof Plans, Sheet A-1; Two Eight-Unit Buildings Front and Rear Elevations Plans, Sheet A-2; Two Eight-Unit Buildings Ground Floor and Second Floor Model Floor Plans, Sheet A-3 as prepared by Juan Silverio Fernandez Architects and Planners. All sheets dated and stamped 2/10/2006.

3. **Landscaping**. That a landscape plan be submitted to the City of Miami Gardens for its review and approval; said plan should include the type and size of planting material prior to the issuance of a building permit and to be planted prior to the issuance of a Certificate of Use and Occupancy.

4. **Tree Removal Permit**. That, before the removal or relocation of the on-site specimen-sized trees, the Applicant secure a Miami-Dade County Tree Removal Permit, which meets the requirements of Sections 24-49.2 and 24-49.4 of the Code.

5. **Stormwater**. That all stormwater runoff be retained on site utilizing properly designed infiltration or seepage type systems.

6. **Brick Pavers**. That brick pavers along all ingress/egress drives be provided in order to facilitate pedestrian circulation.

7. **Public Potable Water and Wastewater Supply Systems**. That the site be connected to public potable water and wastewater supply systems.

8. **Improvements**. That the applicant improve segments of N.W. 47th Avenue fronting the property with pavement, drainage (curb and gutter), sidewalk, street light and related improvements per City requirements.

9. **Landscaped Buffer**. That, as per plans submitted, adequate landscaped buffer be provided to protect the low-density residential area to the south and east of the project site.

10. **Maintenance and Use Covenants.** The present Owner and any Homeowners Association subsequently created to own and maintain the common areas of the subject property do hereby agree to the following maintenance and use covenants:

a.) All of the exteriors of the units and all of the buildings shall be of uniform colors and such shall be the responsibility of the Association and no individual unit owner will be permitted to have colors different from all other unit owners. The Association shall be responsible to ensure compliance with color uniformity.

b.) All common areas including landscaping shall be maintained by the Homeowners Association.

c.) All units shall be single-family occupancy and these restrictions shall be enforced by the Association to ensure that these limitations are met by all unit owners.

d.) The Homeowners Association must be created prior to the issuance of the certificate(s) of occupancy

11. **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.

12. **Covenant Running With The Land**. This Declaration on the part of the Developer shall constitute a covenant running with the land 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.

13. **Term**. This Declaration is to run with the land and shall be binding on all parties and all persons claiming from the date this Declaration is recorded. This Declaration shall be in effect for a period of thirty (30) years from the date of recordation in the public records of Miami-Dade County, Florida, after which time it shall be automatically extended for periods of ten (10) years. 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.

14. **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, or other procedure permitted under the City's Code, whichever by law has jurisdiction over such matters, after public hearing.

15. **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.

16. **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.

17. **Executed Copy to be provided to the City. Executed Copy to be provided to the City Clerk.** The Applicant shall be fully responsible for providing to the City Clerk an original and fully executed copy of the Declaration of Restrictions within thirty (30) days of the approval of this request by the City Council, unless an appeal is filed or otherwise the Director, for good cause shown, grants a time extension. If this is not accomplished, the approval shall become null and void. If circumstances prevent the Applicant from complying with this timeframe condition, the Applicant may request, in writing, an extension of said thirty-day timeframe in writing to the Development Services Director, who is authorized to take such action upon the request to approve, disapprove or approve with conditions such request.

18. **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.

19. **Recording**. The City, at Developer's expense following the approval of the same by the City of Miami Gardens, shall file this Declaration of record in the Public Records of Miami-Dade County, Florida.

20. **Acceptance of Declaration.** The Owner acknowledge that 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 City Council retains its full power and authority to deny each such application in whole or in part, and to decline to accept any conveyance.

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

22. **Waiver**. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.

23. **Severability**. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

24. **Entire Agreement**. This Agreement and the exhibits attached hereto contain the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement and exhibits supersede any prior correspondence, memoranda or agreements in total hereto.

25. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, Applicant has executed this Dedication.

Miriam Urquiza
Print Name: Miriam Urquiza

Ana G. Rodriguez
Print Name: Ana G. Rodriguez

Print Name:

Print Name:

ALCHEMY, LLC

MANAGER

BY ITS: ~~PRESIDENT~~

Signature

L. Michael OSMAN
Print Name

9/19/07
Date

ACCEPTANCE

The City of Miami Gardens, hereby accepts this Declaration of Restrictions hereby made by Alchemy, LLC.

CITY OF MIAMI GARDENS, FLORIDA

Attest:

City Clerk

By: Mayor Shirley S. Gibson

Date: 10/3/2007

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STATE OF FLORIDA
COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned authority, this day appeared L. Michael Osman being to me well known and known by me to be the Manager of Alchemy, LLC, a limited liability company existing under the laws of the State of Florida, and who is known by me to be the person described in and who executed the foregoing instrument, the said Manager of the said Limited Liability Company being likewise known by me to be the Manager thereof who, in his official capacity as such Manager of said Limited Liability Company executed, signed and delivered the said instrument as the act and deed of said Limited Liability Company, and the said Manager of said Limited Liability Company then and there acknowledged to and before me that he executed the said instrument, acting in his said official capacity, for and as to the act and deed of said Limited Liability Company and in its name, and impressed thereon its Limited Liability Company Seal for the uses and purposes therein mentioned, and after being duly authorized and directed.

WITNESS my hand and official Seal at the City of Hialeah, in County and State aforesaid, on this 19th day of September, 2007.

Miriam Urquiza, Notary Public
In and for the State of Florida

My commission expires:

MIRIAM URQUIZA
Comm# DD0422716
Expires 6/20/2009
1 thru (800)432-4254
Notary Assn., Inc

Exhibit "A"

Legal Description

LOTS 7 & 8 BLOCK 1, OF "VENETIAN ACRES" ACCORDING TO THE PLAT THEROF AS RECORDED IN PLAT BOOK 44 AT PAGE OF PUBLIC RECORDS OF DADE COUNTY, FLORIDA.