

**RESOLUTION NO. 2020-081**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, EXPRESSING ITS INTENT TO TRANSMIT AN APPLICATION REQUESTING A MAP AMENDMENT TO THE FUTURE LAND USE MAP OF A PARCEL OF LAND HAVING APPROXIMATELY A TOTAL OF 28.31 ACRES TO MEDIUM DENSITY RESIDENTIAL; ACCEPTING A DECLARATION OF RESTRICTIONS; REQUESTING STATE LAND PLANNING AGENCY TO REVIEW THE APPLICATION; RESERVING THE RIGHT TO TAKE FINAL ACTION AT A LATER DATE; AND DECLARING INTENT TO CONDUCT ONE OR MORE SUBSEQUENT PUBLIC HEARINGS. **PROPERTY LOCATED AT 7218 WEST 4 AVENUE, HIALEAH, FLORIDA. ZONED K (KENNEL DISTRICT).**

**WHEREAS**, an application to amend the Future Land Use Map was filed by Florida Kennels, Inc. (the "Applicant") in November 2019 (the "Application") requesting to amend the Future Land Use Map for the property located at 7218 West 4 Avenue (the "Property") legally described in Exhibits "A" and "B"; and

**WHEREAS**, Through the Application the Applicant requested to amend the 28.314 acre Property's land use designation as follows: Parcel I, having approximately 22.55 acres, from Kennels to High Density Residential and Parcel II, having approximately 5.76 acres, from Kennels to Medium Density Residential; and

**WHEREAS**, the Planning and Zoning Board sitting as the local land planning agency held a public meeting on January 15, 2020 and recommended approval of an amendment to the Future Land Use Map from Kennels to Low Density Residential for the Property; and

**WHEREAS**, the City Council held a public meeting on March 10, 2020 and voted to overturn the Planning and Zoning Board's recommendation to Low Density Residential; and

**WHEREAS**, the Applicant submitted an amended application requesting to amend the land use designation for the Property (including Parcel I and Parcel II) to Medium Density Residential and included a declaration of restrictions (the “LUPA Covenant”) limiting the density for the Property to a maximum of 642 dwelling units, committing to rezone the Property to R-3-3 and including a townhome liner along the south and west Property boundary; and

**WHEREAS**, the final density calculations for the development will be based on the Property’s current size of 28.314 acres, regardless of any reductions that might result from land dedications for infrastructure purposes which may be required at the time of subdivision; and

**WHEREAS**, the City Council desires to further evaluate, without prejudice, the Application as amended by the Applicant; and

**WHEREAS**, the City Council desires to transmit the Application to reviewing agencies and desires to amend the Property’s land use designation Medium Density Residential.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2:** It is the intent of the City Council to transmit the Application to amend the Future Land Use Map designation for the Property located at 7218 West 4<sup>th</sup> Avenue to Medium Density Residential and accept the LUPA Covenant.

**Section 3:** The City Council reserves the right to take final action, without prejudice, at a later date and to adopt, adopt with changes, or not adopt the Application following receipt of comments by the reviewing agencies, and following one or more public hearings by the City Council, all as authorized by Section 163.3184, Florida Statutes.

**Section 4:**     **Effective Date.**

This Resolution shall become effective until 31 days after approval of the Florida Department of Economic Opportunity, the state planning agency, pursuant to Chapter

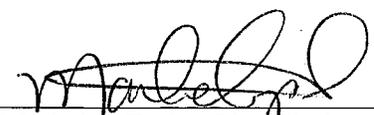
163, Part II, Florida Statutes, or as otherwise provided in section 163.3184, Florida Statutes.

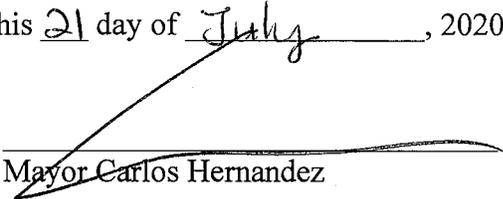
PASSED and ADOPTED this 13 day of July, 2020.

  
\_\_\_\_\_  
Paul B. Hernandez  
Council President

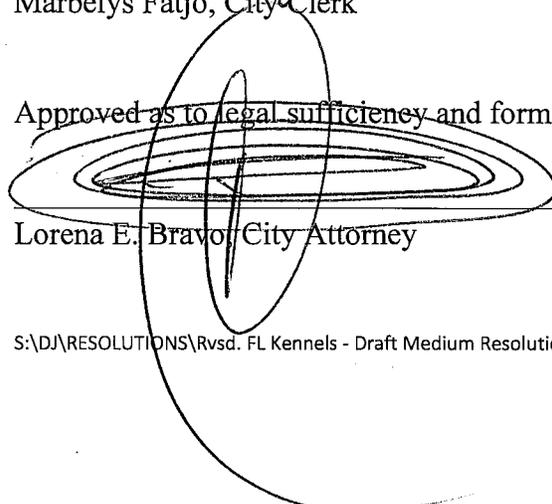
Attest:

Approved on this 21 day of July, 2020.

  
\_\_\_\_\_  
Marbelys Fatjo, City Clerk

  
\_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to legal sufficiency and form:

  
\_\_\_\_\_  
Lorena E. Bravo, City Attorney

Resolution was adopted by a 7-0 vote with Councilmembers, Cuenca, De la Rosa, Hernandez, Garcia-Roves, Perez, Tundidor and Zogby, voting "Yes."

## Exhibit "A"

For Parcel I  
FLS ON 20191247 - A

## LEGAL DESCRIPTION: Parcel I

A portion of TRACTS 50, 51, 52 and 53, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, of Section 25, Township 52 South, Range 40 East, according to the plat thereof, as recorded in Plat Book 2 at Page 17, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said TRACT 53; thence North 89°34'37" East along the South line of said TRACT 53 for 25.02 feet to a point on the East Right-of-Way line of West 6th Avenue, as recorded in Official Records Book 7293 at Page 481, of said Public Records of Miami-Dade County, Florida; thence North 02°39'34" West along said East Right-of-Way line of West 6th Avenue for 1,085.94 feet to the Point of Beginning of the hereinafter described parcel of land; thence continue North 02°39'34" West along said East Right-of-Way line for 68.72 feet to a point on the North line of the South half of said TRACT 50; thence North 89°36'02" East along said North line of the South half of TRACT 50 for 1,247.03 feet to a point on the West line of the 50 foot wide Canal Right of Way as recorded in Official Records Book 3604 at Page 258, of said Public Records of Miami-Dade County, Florida, also being along a line 50.00 feet West of and parallel with the East line of the Southeast 1/4 of said Section 25; thence South 02°40'59" East along said West line of the 50 foot wide Canal Right of Way and parallel line for 712.01 feet; thence South 89°35'11" West along a line being 112.50 feet North of and parallel with the North line of said TRACT 53 for 653.07 feet to a point on a line being 702.55 feet West of and parallel with said East line of the Southeast 1/4 of Section 25; thence South 02°40'59" East along said parallel line for 304.07 feet to a point on a line being 138.09 feet North of and parallel with said South line of TRACT 53; thence South 89°34'37" West along said parallel line for 504.30 feet; thence North 02°39'34" West along a line being 90.00 feet East of and parallel with said East right-of-Way line of West 6th Avenue for 947.71 feet; thence South 89°36'02" West along a line parallel with said North line of the South half of TRACT 50 for 90.07 feet to the Point of Beginning.

## Exhibit "B"

For Parcel II  
FLS ON 20191247 – B

## LEGAL DESCRIPTION: Parcel II

A portion of TRACTS 50, 51, 52 and 53, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, of Section 25, Township 52 South, Range 40 East, according to the plat thereof, as recorded in Plat Book 2 at Page 17, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said TRACT 53; thence North 89°34'37" East along the South line of said TRACT 53 for 25.02 feet to a point on the East Right-of-Way line of West 6th Avenue, as recorded in Official Records Book 7293 at Page 481, of said Public Records of Miami-Dade County, Florida; thence North 02°39'34" West along said East Right-of-Way line of West 6th Avenue for 1,085.94 feet to the Point of Beginning of the hereinafter described parcel of land; thence North 89°36'02" East along a line being South of and parallel with the North line of the South half of said TRACT 50 for 90.07 feet; thence South 02°39'34" East on a line being 90.00 feet East of and parallel with said East Right-of-Way line of West 6th Avenue for 947.71 feet; thence North 89°34'37" East along a line being 138.09 feet North of and parallel with said South line of TRACT 53 for 504.30 feet; thence North 02°40'59" West along a line being 702.55 feet West of and parallel with the East line of the Southeast 1/4 of said Section 25 for 304.07 feet; thence North 89°35'11" East along a line being 112.50 feet North of and parallel with the North line of said TRACT 53 for 653.07 feet to a point on the West line of the 50 foot wide Canal Right of Way as recorded in Official Records Book 3604 at Page 258, of said Public Records of Miami-Dade County, Florida, also being a line 50.00 feet West of and parallel with said East line of the Southeast 1/4 of Section 25; thence South 02°40'59" East along said West line of the 50 foot wide Canal Right of Way and parallel line for 112.59 feet to a point on said North line of TRACT 53; thence South 89°35'11" West along said North line of TRACT 53 for 100.00 feet; thence North 02°40'59" West along a line parallel with said West line of the 50 foot wide Canal Right of Way and East line of the Southeast 1/4 for 25.02 feet; thence South 89°35'11" West along a line 25.00 feet North of and parallel with said North line of TRACT 53 for 467.67 feet; thence South 02°40'59" East along a line being 702.55 feet West of and parallel with said East line of the Southeast 1/4 of Section 25 for 276.55 feet to a point of curvature; thence Southwesterly along a 25.00 foot radius curve, leading to the right, through a central angle of 92°15'37" for an arc distance of 40.26 feet to a point of tangency; thence South 89°34'37" West along a line being 52.09 feet North of and parallel with said South line of TRACT 53 for 629.76 feet to a point of curvature; thence Northwesterly along a 25.00 foot radius curve, leading to the right, through a central angle of 87°45'49" for an arc distance of 38.29 feet to a point of tangency, said point being on said East right-of-Way line of West 6th Avenue; thence North 02°39'34" West along said East Right-of-Way line for 1,009.77 feet to the Point of Beginning.

## Medium Covenant

This instrument was prepared by:

Melissa Tapanes Llahues, Esq.  
Bercow Radell Fernandez Larkin & Tapanes, PLLC  
200 S. Biscayne Boulevard, Suite 850  
Miami, Florida 33131

(Space reserved for Clerk)

### Declaration of Restrictions

WHEREAS, the undersigned Owner, FLORIDA KENNELS, INC., a Florida limited liability company ("Owner"), holds fee simple title to the following parcel of land located at 7218 West 4 Avenue (Folio No. 04-2025-001-0510) in the City of Hialeah, Florida ("City"), which is legally described in **Exhibit A** and hereinafter referred to as the "Property;" and

WHEREAS, the Owner seeks to redevelop the Property into a modern, family-friendly residential community including a linear park and townhome liner; and

WHEREAS, in order to redevelop the Property the existing "Kennels" future land use designation must be amended; and

WHEREAS, an application to amend the future land use map designation for the Property was heard by the City Council on July 13<sup>th</sup>, 2020 for a "Transmittal Hearing" in accordance with Florida Statute Chapter 163; and

WHEREAS, the Owner proposes to change the existing "Kennels" designation to "Medium Density;"

WHEREAS, the Property will be subdivided and platted into Parcel I and Parcel II; and

WHEREAS, Parcel I will be developed with multi-family apartment buildings and Parcel II will be developed with townhomes; and

WHEREAS, Both Parcel I and Parcel II will be designated Medium Density Residential; and

WHEREAS, the final density calculations for the development will be based on the Property's current size of 28.314 acres, regardless of any reductions that might result from land dedications for infrastructure purposes which may be required at the time of subdivision.

WHEREAS, in the future the Owner will submit a Rezoning application to the corresponding zoning district for each parcel; and

WHEREAS, the Owner wishes to assure the City Council of its commitment and establish certain safeguards for the protection of the neighborhood and development of the Property; and

NOW, THEREFORE, IN ORDER TO ASSURE the City that the representations made during the consideration of the Application will be abided by the Owner freely, voluntarily and without duress, the Owner makes the following declaration of restrictions (the "Declaration") covering and running with the Property:

1. Recitals. The above recitals are true and correct and are hereby incorporated.
2. Density. Regardless of the City's Comprehensive Plan Future Land Use Plan Map designations for the property, the total density for the Property shall not exceed a maximum total density of 642 dwelling units. The final density calculations for the development will be based on the Property's current size of 28.314 acres, regardless of any reductions that might result from land dedications for infrastructure purposes which may be required at the time of subdivision.
3. Townhome Liner. The development of the Property shall include a townhome liner along the south and west Property Boundary consistent with the conceptual site plan submitted with the Land Use Plan Amendment application.

#### General Provisions

Covenant running with the land. This Declaration is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the Property, and shall constitute a covenant running with the land. This Declaration is to run with the land and shall be binding 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 until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter. The City is the only beneficiary of this Declaration and no other third party, including adjoining property owners, have any right to enforce the terms of this Declaration. This Declaration shall be modified if the City approves any new development plan for all or any part of the Property that is inconsistent with the restrictions set forth herein.

Remedies. In the event of a violation of this Declaration, in addition to any other remedies available, the City of Hialeah is authorized to withhold any future permits, refuse to make any inspections or grant any approval, until such time as there is compliance with this Declaration. 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.

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 and/or any appropriate City Board or Department of City who retain its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance.

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.

City Inspection. As further part of this Declaration, it is hereby understood and agreed that any official inspector of City of Hialeah, 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 the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

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. The remaining portions and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular party, term, or provision held to be invalid or unenforceable.

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 City retains its full power and authority to, with respect to the Property and Building, deny each such application in whole or in part and to decline to accept any conveyance.

Reversion of Use. It is understood that if the application is approved, the undersigned must comply with all applicable Federal, State, County, City laws, rules, and regulations.

Authority. The persons signing below on behalf of Owner, respectively, represent and warrant that they each have full right and authority to execute this Agreement, that they are authorized to do so and that no consents of any person(s) are required other than those which have already been obtained.

Notices. Unless otherwise provided herein, all notices, demands, and other communications hereunder shall be in writing (which shall include telegraphic and facsimile communications) and shall be effective either when actually received by the party to whom they are directed, or, if sent by the United States Mail, prepaid, registered or certified, return receipt requested, shall be deemed to have been given or made three (3) days after deposit in the United States Mail, if addressed as follows:

IF TO OWNER:           Melissa Tapanes Llahues, Esq.  
Bercow Radell Fernandez Larkin & Tapanes, PLLC  
200 S. Biscayne Boulevard, Suite 850  
Miami, Florida 33131

IF TO CITY:             City Attorney  
City of Hialeah, Florida  
501 Palm Avenue, 4th Floor  
Hialeah, FL 33010

Integration. With the exception of representations made during the consideration of the Application at public meetings, this instrument together with all other exhibits hereto embodies the whole Declaration of the parties with respect to the subject matter hereof, and there are no promises, terms, conditions, or obligations other than those herein contained. This Declaration shall supersede all previous letters of intent, communications, discussions, representations, or agreements, either verbal or written, between the parties hereto (and their officers, directors, employees, agents, and beneficiaries) and not herein contained. All exhibits to this Declaration are incorporated herein by reference.

Construction. Owner acknowledges participating equally in the drafting of this Declaration and that, accordingly, no court construing this Declaration shall construe it more stringently against anyone party.

Counterparts. This Declaration may be executed in two or more counterparts, each of which shall be deemed an original, but, all of which together shall constitute one and the same instrument.

Amendment. This Declaration shall not be amended or modified in any manner, except, in writing executed by the Owner or their respective successors and/or assigns; provided that the same is also approved by the City Council and the Mayor of the City of Hialeah, Florida, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in the City of Hialeah Charter.

Choice of Law. This Declaration and all questions of interpretation, construction, and enforcement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of law principles. Any legal action brought in connection with this Declaration shall be filed exclusively in Miami-Dade County, Florida.

Enforcement and Remedies. If Owner fails to perform or breaches any obligation, requirement, duty or covenant contained herein, then the City shall have the right, at its option, in addition to any of its other rights, privileges or remedies otherwise stated elsewhere herein to bring an action for specific performance in a court of competent jurisdiction. The failure to enforce any of the terms or provisions of this Declaration, however long continued, shall in no event be deemed a waiver of the right to enforce the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

***IN WITNESS WHEREOF**, the Owner caused these presents to be signed in their name by their proper officials.*

**[Signature Pages to Follow]**

## EXHIBIT "A"

### LEGAL DESCRIPTION: PARCEL I

A portion of TRACTS 50, 51, 52 and 53, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, of Section 25, Township 52 South, Range 40 East, according to the plat thereof, as recorded in Plat Book 2 at Page 17, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

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### LEGAL DESCRIPTION: PARCEL II

A portion of TRACTS 50, 51, 52 and 53, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, of Section 25, Township 52 South, Range 40 East, according to the plat thereof, as recorded in Plat Book 2 at Page 17, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said TRACT 53; thence North 89°34'37" East along the South line of said TRACT 53 for 25.02 feet to a point on the East Right-of-Way line of West 6th Avenue, as recorded in Official Records Book 7293 at Page 481, of said Public Records of Miami-Dade County, Florida; thence North 02°39'34" West along said East Right-of-Way line of West 6th Avenue for 1,085.94 feet to the Point of Beginning of the hereinafter described parcel of land; thence North 89°36'02" East along a line being South of and parallel with the North line of the South half of said TRACT 50 for 90.07 feet; thence South 02°39'34" East on a line being 90.00 feet East of and parallel with said East Right-of-Way line of West 6th Avenue for 947.71 feet; thence North 89°34'37" East along a line being 138.09 feet North of and parallel with said South line of TRACT 53 for 504.30 feet; thence North 02°40'59" West along a line being 702.55 feet West of and parallel with the East line of the Southeast 1/4 of said Section 25 for 304.07 feet; thence North 89°35'11" East along a line being 112.50 feet North of and parallel with the North line of said TRACT 53 for 653.07 feet to a point on the West line of the 50 foot wide Canal Right of Way as recorded in Official Records Book 3604 at Page 258, of said Public Records of Miami-Dade County, Florida, also being a line 50.00 feet West of and parallel with said East line of the Southeast 1/4 of Section 25; thence South 02°40'59" East along said West line of the 50 foot wide Canal Right of Way and parallel line for 112.59 feet to a point on said North line of TRACT 53; thence South 89°35'11" West along said North line of TRACT 53 for 100.00 feet; thence North 02°40'59" West along a line parallel with said West line of the 50 foot wide Canal Right of Way and East line of the Southeast 1/4 for 25.02 feet; thence South 89°35'11" West along a line 25.00 feet North of and parallel with said North line of TRACT 53 for 467.67 feet; thence South 02°40'59" East along a line being 702.55 feet West of and parallel with said East line of the Southeast 1/4 of Section 25 for 276.55 feet to a point of curvature; thence Southwesterly along a 25.00 foot radius curve, leading to the right, through a central angle of 92°15'37" for an arc distance of 40.26 feet to a point of tangency; thence South 89°34'37" West along a line being 52.09 feet North of and parallel with said South line of TRACT 53 for 629.76 feet to a point of curvature; thence Northwesterly along a 25.00 foot radius curve, leading to the right, through a central angle of 87°45'49" for an arc distance of 38.29 feet to a point of tangency, said point being on said East right-of-Way line of West 6th Avenue; thence North 02°39'34" West along said East Right-of-Way line for 1,009.77 feet to the Point of Beginning.

Folio No.: 04-2025-001-0510