ORDINANCE NO. 13-04

ORDINANCE GRANTING A SPECIAL USE PERMIT (SUP) TO EXTEND THE NEIGHBORHOOD BUSINESS OVERLAY DISTRICT REGULATIONS ON PROPERTY LOCATED AT AN ACTIVITY NODE AREA HAVING A LAND USE CLASSIFICATION OF COMMERCIAL PURSUANT TO HIALEAH CODE § 98-1630.8, AND GRANTING A VARIANCE PERMIT TO ALLOW A STREET FRONTAGE OF 179.83 FEET, WHERE A MINIMUM OF 200 FEET IS REQUIRED, TO ALLOW 24 PARKING SPACES, WHERE 79 PARKING SPACES ARE REQUIRED, TO ALLOW DENSITY OF 65 UNITS PER NET ACRE WITH 2.37 INCENTIVE POINTS, WHERE 10 INCENTIVE POINTS ARE REQUIRED; TO ALLOW A SIDE SETBACK OF 7 FEET, WHERE 22 FEET ARE REQUIRED, AND TO WAIVE THE BUILDING MASS REQUIREMENT, WHERE A BASEMENT, MIDDLE AND TOP ARTICULATION IS REQUIRED, CONTRA TO HIALEAH CODE §§ 98-1630.3(a), (c), (e), 98-1630.5(b) AND 98-2189(16). **PROPERTY LOCATED AT 355 EAST 32 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of December 12, 2012 recommended approval of this ordinance; and

WHEREAS, the property is located at an activity node area as defined by Hialeah Code §98-1628 and, except for the minimum street frontage, meets all the characteristics of sites eligible for a limited expansion of the Neighborhood Business Overlay District regulations pursuant to Hialeah Code §98-1630.8.

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

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

Section 2: The below-described property is hereby granted a special use permit (SUP) to extend the Neighborhood Business Overlay District regulations.

Section 3: The below-described property is hereby granted a variance permit to allow a street frontage of 179.83 feet, where a minimum of 200 feet is required, to allow 24 parking spaces, where 79 parking spaces are required, to allow density of 65 units per net acre with 2.37 incentive points, where 10 incentive points are required, to allow a side setback of 7 feet, where a minimum of 22 feet are required, and to waive the building mass requirement, where a basement, middle and top articulation is required, contra to Hialeah Code §§ 98-1630.3(a), (c), (e), 98-1630.5(b) and 98-2189(19), which provide in pertinent part: "(a) *Residential density.* Maximum density without incentives is 32 units per net acre. Increased residential density in mixed use developments up to a maximum of 70 units per net acre shall be based on density incentives as provided herein.", "(c) *Building mass.* A building shall be defined a delineated base or pedestal, middle or tower and cap or penthouse. The building mass shall provide a segmented, reduced mass as the building reaches its full height, from a greater mass at the base to a lesser mass in the

middle to smaller mass at the cap or penthouse.", (e) *Setback requirements.* The minimum setbacks shall be as follows: (1) Front setback and street side setback. For the pedestal or base of a building, a minimum setback of ten feet, built-to-line, or as provided in the urban design plan...For the tower or middle of a building a minimum setback of 22 feet.", "(b) *Calculation of total elements or points that correspond to allowable increase in residential density.* The total number of assigned points of the density incentives, as identified and shown in the site plan, when added together, shall correspond to the allowable number of higher residential density, up to 70 residential units per net acre, that exceed that maximum of 32 residential units permitted without density incentives and subject to site plan review of the physical site and its relation to the surrounding properties...*Total points*: 10 points...*Number of residential units per net acre:* 56 to 66 units per net acre." and "(16) *NBD neighborhood business district.* a. *Residential uses.* Parking for residential uses shall be two parking spaces for one or two bedrooms, and one-half parking space for each additional bedroom. An additional one-quarter parking space for each dwelling unit shall be provided for guest parking.", respectively. The property is located at 157 West 5 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

> LOT 25, 26, 27, 28 AND THE EAST 20 FEET OF LOT 29, IN BLOCK 1-A, OF AMENDED PLAT OF FIFTEENTH ADDITION TO HIALEAH SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 12, PAGE 76, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 4: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 6: Additional Penalties upon Violation of the Declaration of Restrictive Covenants.

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, if submitted, will cause a revocation of the Special Use Permit issued in connection herewith and the property shall revert to the zoning classification without the benefit of the Neighborhood Business Overlay District regulations.

Section 7: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 8: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 22 day of January, 2013.

Isis Garcia-Martinez
Council President

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Attest:

Approved on this 24 day of Jan, 2013.

Marbelys L. Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".