ORDINANCE NO. 13-17

ORDINANCE GRANTING A SPECIAL USE PERMIT (SUP) TO ALLOW AN ADULT CONGREGATE LIVING FACILITY (ACLF) WITH A MAXIMUM BED CAPACITY OF 34 AND GRANTING A VARIANCE PERMIT TO ALLOW A LOT COVERAGE OF 36.7%, WHERE A MAXIMUM LOT COVERAGE OF 30% IS ALLOWED, TO ALLOW 5 PARKING SPACES, WHERE AT LEAST 11 PARKING SPACES ARE REQUIRED, TO ALLOW ALL PARKING SPACES TO BACK OUT ON TO THE STREET, WHERE BACKOUT PARKING IS ONLY ALLOWED IN LOW DENSITY RESIDENTIAL DISTRICTS, TO ALLOW A REAR SETBACK OF 15 FEET, WHERE 20 FEET ARE REQUIRED, AND TO ALLOW A SOUTH SIDE SETBACK OF 2.3 FEET, WHERE 10 FEET ARE REQUIRED, CONTRA TO HIALEAH CODE §§ 98-590, 98-591, 98-2056(b)(2), 98-2189(21) AND 98-2190. **PROPERTY LOCATED AT 1315 SOUTHEAST 9 AVENUE, 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 regular meeting of January 23, 2013 recommended approval of this ordinance; and

WHEREAS, the applicant proffered a Declaration of Restrictive Covenants limiting its services to provide standard care services exclusively to elderly residents aged sixty-two or more, limiting the hours of use of the outdoor areas, restricting the time for delivery of goods and services, and establishing hours of visitation by health professionals, to which the City accepts.

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

Section 1: The below-described property is hereby granted a special use permit (SUP) to allow an adult congregate living facility (ACLF), and the below-described property is

hereby granted a variance permit to allow a total lot coverage of 36.7%, where a maximum lot coverage of 30% is allowed, to allow 5 parking spaces, where at least 11 parking spaces are required, to allow all parking spaces to back out on to the street, where backout parking is allowed only in low density residential districts, to allow a rear setback of 15 feet, where 20 feet are required, to accommodate an aluminum-roofed open terrace built without the benefit of a building permit, and to allow a south side setback of 2.3 feet, where 10 feet are required, to accommodate a trellis built without the benefit of a building permit, contra to Hialeah Code §§98-590, 98-591, 98-2056(b)(2), 98-2186 and 2189(21), which provide in pertinent part: "In the R-3 multiple-family district, there shall be side yards, and the width of each shall not be less than ten feet.", "In the R-3 multiple-family district, there shall be a 20-foot rear yard setback.", "In addition, every residential development except R-1 and R-4, and R-3 when developed as R-4 shall comply with the following open space and lot coverage requirements: (2) A maximum of 30 percent of the net residential land area shall be covered with or occupied by the principal residential structure.", "*Residential care, treatment and convalescent home uses.* One parking space for every three patient beds." and "In all zoning districts, the parking area shall be so arranged that there is no backout in to an adjacent private or public street or right-of-way, except for those lots in low density residential districts or developments.", respectively. The property located at 1315 Southeast 9 Avenue, Hialeah, Florida, zoned R-3-2 (Multiple Family District) and legally described as follows:

> THE NORTH 1/3 OF LOT 11 AND ALL OF LOT 12, BLOCK 6 OF WEST BUENA VISTA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 7, AT PAGE 6, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 2: Repeal of Ordinances in Conflict.

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

Section 3: Penalties. Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by 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 4: Additional Penalties upon Violation of the Conditions of Use and/or 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, will cause a revocation of the Special Use Permit and of the city occupational license issued in connection herewith and the property shall revert to the zoning classification without the benefit of the special use and associated variances.

Section 5: 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 6: 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 12 day of March, 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 14 day of March, 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".