ORDINANCE NO. 12-08

ORDINANCE GRANTING A SPECIAL USE PERMIT (SUP) INCREASING THE MAXIMUM RESIDENT CAPACITY, ESTABLISHED BY ORDINANCE 97-53 (August 26, 1997), OF AN EXISTING ADULT CONGREGATE LIVING FACILITY (ACLF) FROM 27 TO 50 RESIDENTS, ALL OTHER SETBACKS PURSUANT TO ORDINANCE 97-53 REMAINING THE SAME AND GRANTING A VARIANCE PERMIT TO ALLOW 13 PARKING SPACES, WHERE 17 PARKING SPACES ARE REQUIRED, TO ALLOW A TOTAL LOT COVERAGE OF 34.7%, WHERE A MAXIMUM OF 30% IS ALLOWED, AND TO ALLOW PERVIOUS AREA OF 18%, WHERE A MINIMUM OF 30% IS REQUIRED, CONTRA TO HIALEAH CODE §§ 98-2189(21), 98-2056(b)(2) AND 98-2233. **PROPERTY LOCATED AT 3601 WEST 11 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 November 9, 2011 recommended denial of this ordinance;

WHEREAS, on January 10, 2012, the Hialeah City Council overrode the Planning and Zoning Board's recommendation of denial; and

WHEREAS, the applicant proffers a Declaration of Restrictive Covenants limiting its services to provide standard care services exclusively to elderly residents aged sixty-two or more, 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 Mayor and the City Council of the City of Hialeah, Florida hereby override the Planning and Zoning Board's recommendation of denial of this ordinance. The

below-described property is hereby granted a special use permit (SUP) increasing the maximum resident capacity established by Ordinance 97-53 (August 26, 1997) of an existing adult congregate living facility (ACLF) from 27 to 50 residents, all other setbacks pursuant to Ordinance 97-53 remaining the same, and granting a variance permit to allow 13 parking spaces, where 17 parking spaces are required, to allow a total lot coverage of 34.7%, where a maximum of 30% is allowed, and to allow pervious area of 18%, where a minimum of 30% is required, contra to Hialeah Code §98-2189(21), §98-2056(b)(2) and §98-2233, which provide in pertinent part: "One parking space for every three patient beds", "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.", and "The City Council, by ordinance, may waive the minimum landscaping requirements of the Miami-Dade County Landscape Manual" as modified and supplemented by the city landscape manual which requires a minimum lawn areas (pervious) of 30% percent of the net lot area in Table A at (E) "Tree and lawn requirements by zoning classification", respectively. The property located at 3601 West 11 Street, Hialeah, Florida, zoned R-3-2 (Multiple Family District) and legally described as follows:

> THE SOUTH 100 FEET OF THE NORTH 400 FEET OF THE WEST 240 FEET, LESS THE WEST 30 FEET; OF THE NORTHEAST ¼ OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 12, TOWNSHIP 53 SOUTH, RANGE 40 EAST, LYING AND BEING IN THE CITY OF HIALEAH, 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 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 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 14th day of February, 2012.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 15 day of February, 2012.

David Concepcion, 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 5-2 vote, with Councilmembers Caragol, Cue-Fuente, Garcia-Martinez, Hernandez, Lozano voting "Yes", Councilmembers Casals-Muñoz and Gonzalez voting "No".