ORDINANCE NO. 2014-22

ORDINANCE REPEALING AND RESCINDING HIALEAH, FLA., ORDINANCE 2013-17 (MARCH 12, 2013), GRANTING A SPECIAL USE PERMIT (SUP) TO ALLOW AN ASSISTED LIVING FACILITY WITH A MAXIMUM BED CAPACITY OF 38, PURSUANT TO HIALEAH CODE §98-1956, AND GRANTING A VARIANCE PERMIT TO ALLOW A LOT COVERAGE OF 41%, WHERE A MAXIMUM OF 30% IS ALLOWED, TO ALLOW 5 PARKING SPACES (WHERE A MINIMUM OF 13 SPACES ARE REQUIRED), TO ALLOW ALL PARKING SPACES TO BACK-OUT ON TO THE STREET (WHERE BACK-OUT SPACES ARE ALLOWED ONLY 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 7 FEET (WHERE 10 FEET ARE REQUIRED), CONTRA TO HIALEAH CODE §§98-2056(b)(2), 98-2189(21), 98-2190, 98-591, 98-590. **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 February 12, 2014, 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 older, 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 the operation of an assisted living facility with a maximum bed capacity of 38, pursuant to Hialeah Code §98-1956.

Section 2: The below-described property is hereby granted a variance permit to allow a total lot coverage of 41%, where a maximum of 30% is allowed, to allow 5 parking spaces, where 13 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 district, to allow a rear setback of 15 feet, where 20 feet are required, and to allow a south side setback of 7 feet, where 10 feet are required, contra to Hialeah Code §§ 98-2056(b)(2), 98-2189(21), 98-2190, 98-590, and 98-591, which provide in pertinent part: "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.", "Off-street parking shall be provided in accordance with the following minimum standards..."(21) *Residential care, treatment and convalescent home uses.* One parking space for every three patient beds.", "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.", "In the R-3 multiple-family district, there shall be side yards, and the width of each shall not be less than ten feet.", and "In the R-3 multiple-family district, there shall be a 20-foot rear yard setback.", respectively. The property located at 1315 Southeast 9 Avenue, Hialeah, Florida, zoned R-3-2 (Multiple Family District) with a land use classification of Medium Density Residential, 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 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: 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 5: 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 6: 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 7: 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 25 day of March, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 25 day of March, 2014.

Marbelys 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 5-1-1 vote with Council Members, Caragol, Cue-Fuente, Garcia-Martinez, Hernandez and Lozano voting "Yes", Council Member Casáls-Muñoz voting "no", and Council Vice President Gonzalez absent.

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

CFN 2014R0299359
OR Bk 29125 Pgs 1602 - 1603; (2pgs)
RECORDED 04/25/2014 11:54:50
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and return to:
City of Hialeah
Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

DECLARATION OF RESTRICTIVE COVENANTS

I, YADELKIS CRUZ, as managing member and with full authority to legally bind1315 INVESTMENT GROUP, LLC, a Florida limited liability corporation, being the owner of the land described herein:

> The North 1/3 of Lot 11 and all of Lot 12, in Block 6, of West Buena Vista, according to the Plat thereof, as recorded in Plat Book 7, Page 6, of the Public Records of Miami-Dade County, Florida.

The property's street address is 1315 Southeast 9 Avenue; Hialeah, Florida 33010
The folio numbersare 04-3120-010-0550

make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. The premises, being legally described above, shall be used and licensed to operate an assisted living facility (ALF) exclusively for elderly patients aged sixty-two or older,with the capacity to provide standard care services and limited nursing and mental health servicesonly, pursuant to F.S. Ch 429 as amended, with a total licensed bed capacity not exceeding thirty-eight (38). The undersigned covenants not to obtain a license to provide extended congregate care services or admit residents or patients who require consistent monitoring, supervision and/or twenty-four hour nursing supervision or assistance with personal services or supportive services in a manner that would disqualify them from residency at the premises according to the admissions criteria established for facilities providing standard care. Based on the nature of the services for the elderly, the property owner or business operator will not accept court referrals.

2. All State licenses for the operation of an assisted living facility pursuant to F.S. Ch 429, as amended, must be submitted annually for review by the City of Hialeah Zoning Division.

3. As a means of enforcement for any violations of these restrictions, the undersigned consents to the revocation of the business tax receipt and special use permit. Thereafter, the premises shall only be developed pursuant to the applicable regulations of the underlying zoning classification, without the benefit of the special use permit and associated variances.

4. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns 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.

5. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

IN WITNESS WHEREOF, We have hereunto set out hands and seals at , Florida, _____ this 24 day of _____ 2014.
(location)

Signed sealed and delivered in the presence of:

Name of Corporation: 1315 Investment Group, LLC, a Florida limited liability company

By: _____
Yadelkis Cruz, Member-Manager

Signed, sealed and delivered in the presence of:

Witness
Typed/Printed Name

Witness
Typed/Printed Name

Corporate Seal

STATE OF Florida
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me on this 24 day of March 2014 by Yadelkis Cruz as Member Manager,
(Name of Officer or Agent)
1315 Investment Group, LLC, a Florida limited liability corporation.
(Name of Corporation) (State or Place of Incorporation)

~~He is personally known to me~~ or has produced the following F.L. D.L. as identification and did (did not) take an oath and who attest to the truth and accuracy of the representations contained herein.

This document was prepared by:

Name

Street

City State Zip Code

Signature of Notary Public

CESAR MESTRE, JR.
MY COMMISSION # EE 137436
EXPIRES: November 9, 2015
Bonded Thru Budget Notary Services

Name of notary typed, printed, or stamped
Commission Number

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