ORDINANCE NO. 2014-24

ORDINANCE REPEALING AND RESCINDING HIALEAH, FLA., ORDINANCE 2009-18 (MAY 15, 2009), GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A K-8 PRIVATE SCHOOL WITH A TOTAL STUDENT POPULATION OF 330, INCLUSIVE OF THE NUMBER OF CHILDREN ENROLLED IN THE DAYCARE FACILITY, PURSUANT TO HIALEAH CODE §98-181(2)i, AND GRANTING A VARIANCE PERMIT TO ALLOW 39 PARKING SPACES, WHERE AT LEAST 80 PARKING SPACES ARE REQUIRED, CONTRA TO HIALEAH CODE §98-2189(9), ON PROPERTY ZONED M-1 (INDUSTRIAL DISTRICT). **PROPERTY LOCATED AT 3580 WEST 84 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 February 25, 2014, recommended approval of this ordinance; and

WHEREAS, the petitioner proffered a declaration of restrictive covenants providing that the entrance to the school be exclusively from West 36 Avenue, only a right-turn be allowed by cars leaving the school on to West 84 Street, and that extra-duty police officers be hired to direct traffic during peak drop-off and pick-up times, to which the City accepts.

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Section 2: Hialeah, Fla., Ordinance 09-18 (May 15, 2009) is hereby repealed and rescinded.

Section 3: The below-described property is hereby granted a conditional use permit (CUP) to allow a K-8 private school with a total student population of 330 students, inclusive of the children enrolled in the daycare facility, pursuant to Hialeah Code §98-181(2)i., and a variance permit to allow 39 parking spaces, where at least 80 are required, contra to Hialeah

Code §98-2189(9), which provides in pertinent part: "Off-street parking shall be provided in accordance with the following minimum standards...(9) *Elementary, middle and high schools, post-secondary schools, colleges, vocational or trade schools.* One parking space for each 200 square feet of gross floor area of the floor with the greatest area and one parking space for each 400 square feet of all other floors.", on property zoned M-1 (Industrial District). The property is located at 3580 West 84 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

> TRACT A, OF BERNIE INDUSTRIAL, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 158, PAGE 2, 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 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 6: Additional Penalties upon Violation of Conditions of Use.

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

city occupational license if issued in connection herewith and the property shall revert to the zoning classification without the benefit of the conditional use and associated variances.

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 25 day of March, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 31 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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THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Ordinance was adopted by a 6-0-1 vote with Council Members, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Hernandez and Lozano voting "Yes"& Council Vice President Gonzalez absent.

CFN 2014R0299360
OR Bk 29125 Pgs 1604 - 1606; (3pgs)
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, Demetrio Perez, Jr., as sole managing member of and with full intent and authority to legally bind DP Real Estate Holdings, LLC, a Florida limited liability company, being the owner of the land described herein:

> Tract A, of Bernie Industrial, according to the Plat thereof, as recorded in Plat Book 158, at Page 2, of the Public Records of Miami-Dade County, Florida.

The property's street address is 3580 West 84 Street; Hialeah, Florida 33018
The folio number is 04-2028-093-0010

hereby 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 a private school with a maximum student population of 330 students. The private school shall only offer instruction for grades starting in kindergarten up to and including eighth grade. The maximum student population of 330 shall include all students or children enrolled in the daycare facility on the premises.

2. At the beginning of each school year in operation, the Chief of the Hialeah Police Department, with the assistance of the sector commander and shift officers under his/her command, shall determine, based on the impacts to vehicular traffic on the adjacent roadways observed that are directly related to the school's operation, whether the school operator shall hire Hialeah Police extra-duty police officers to direct and control traffic in to and out of the school as students are arriving to school and as students as being dismissed from school. The number of officers needed, the days and length of time shall be evaluated periodically throughout the school year and at any time at the request of the school operator by the Chief of Police.

3. The site shall be designed and improved such that the exclusive point of entry to the school for any purpose during its operation shall be from West 36 Avenue. All vehicles leaving the property shall do so by making a right-turn only on to West 84 Street.

4. Provided that all conditions reflected in this Declaration of Restrictive Covenants have been met, the City of Hialeah hereby agrees to issue an occupational license allowing for the operation of a private school on the premises. If a school is not operated at this site in accordance with the ordinance, including the site plan, covenants, other supporting statements, representations and documents made by the applicant the conditional use permit shall be rescinded and the covenants released.

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

6. 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.

7. 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 City of Hialeah, Florida, this 25 day of March 2014.
(location)

Signed sealed and delivered in the presence of:

Name of Corporation: DP Real Estate Holdings, LLC

By: [signature]
Managing Member

Demetrio Perez
Typed/Printed Name

Signed, sealed and delivered in the presence of:

[signature] Maricarmen Lopez
Witness
Typed/Printed Name

[signature] Jonathan Martinez
Witness
Typed/Printed Name

Corporate Seal

DECLARATION OF RESTRICTIVE COVENANTS

STATE OF Florida
COUNTY OF Miami-Dade
The foregoing instrument was acknowledged before me on this 25 day of March 2014 by

Demetrio Perez as Managing Member
(Name of Officer or Agent)
DP Real Estate Holdings, LLC, a Florida limited liability company.
(State or Place of Incorporation).

(S)/He is personally known to me or have produced the following _____ as identification and did (did not) take an oath and who attest to the truth and accuracy of the representations contained herein.

Signature of Notary Public

Notary Public State of Florida
Maricarmen Lopez
My Commission EE 210606
Expires 06/24/2015

Name of notary typed, printed, or stamped
Commission Number

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