ORDINANCE NO. 2015-44

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW 13 PARKING SPACES, WHERE 18 PARKING SPACES ARE REQUIRED, OF WHICH 3 PARKING SPACES WILL BE ON STREET PARKING, TO ALLOW 10 PARKING SPACES TO BACK-OUT INTO THE STREET, WHERE BACK-OUT INTO THE STREET PARKING IS ONLY ALLOWED IN LOW DENSITY RESIDENTIAL DISTRICTS, AND TO WAIVE ALL OF THE CITY OF HIALEAH LANDSCAPE MANUAL REQUIREMENTS, CONTRA TO HIALEAH CODE §§ 98-2189(5), 98-2192 (A), 98-2190 AND 98-2233 ON PROPERTY ZONED M-1 (INDUSTRIAL DISTRICT). **PROPERTY LOCATED AT 791 WEST 25 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 May 27, 2015 recommended approval of this ordinance; and

WHEREAS, the Petitioner proffers to a Declaration of Restrictive Covenants, 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: The below-described property is hereby granted a variance permit to allow 13 parking spaces, where 18 parking spaces are required, of which 3 parking

spaces will be on street parking, and to allow 10 parking spaces to back-out into the street, where back-out into the street parking is only allowed in low density residential districts, and to waive all of the City of Hialeah Landscape Manual requirements, contra to Hialeah Code §§ 98-2189(5), 98-2192 (a), and 98-2190, which provide in pertinent part: "Off-street parking shall be provided in accordance with the following minimum standards...*(5) Combined industrial and office uses contained in buildings with storefront facades and overhead doors.* One parking space for each 200 square feet of gross floor area counted for 50 percent of the building. One parking space for each 500 square feet of gross floor area counted for the remaining 50 percent of the building. For second floor office space: One parking space for each 250 square feet of gross floor area. For second floor storage space with finished ceilings less than seven feet six inches in height or no less than six feet eight inches in height, if there is any projection from the ceiling: One parking space for each 2,000 square feet of gross floor area. If office space is less than ten percent of the total square footage of the building, then minimum parking spaces will be calculated as a manufacturing and industrial use.", "*Location and percentage of on-street parking that would satisfy required parking. (a) Property zoned industrial.* Up to 20 percent of required parking may be satisfied by utilizing on-street parking within 600 feet of the main entrance of the use served, except for streets or rights-of-way where on-street parking is not permitted. On-street parking must be paved, marked and approved by the streets department. Any on-street parking space that is used to calculate required parking shall not be reserved for the exclusive use of the property owner, but shall be used for the general public.", and "In all zoning districts, the parking area shall be so arranged that there is no backout into an adjacent private or public street or right-of-way, except for

those lots in low density residential districts or developments. All parking spaces shall be reached or entered by traveling along assigned accessways without interfering with landscaped areas, structures, or other parking spaces. Every parking space shall be reached or entered by a continuous forward movement, without reversing direction, except for parallel parking, and shall be vacated by returning to the right-of-way with not more than one reversal of direction.", and " The city council, by ordinance, may waive the minimum landscaping requirements of the Miami-Dade County Landscape Manual. Such a waiver must be predicated on physical limitations and restrictions on the property. In order to protect and maintain the tree canopy and landscape cover of the city, the grantee of a waiver of minimum landscaping requirements shall mitigate the loss of tree canopy and landscape cover on the affected property by providing new, viable trees and landscaping acceptable to the city as represented by the difference between the required number of trees and landscaping (shrubbery and ground cover) and the actual number of trees and landscaping allowed by waiver granted by the city. The trees and landscaping shall be delivered to the city for planting in areas within the city, such as parks, recreation and open spaces and street medians, as designated by the city.", respectively. Property located at 791 West 25 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

> SOUTH 135 FEET OF TRACT A LESS EAST 1130 FEET OF HIALEAH INDUSTRIAL DISTRICT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 62, PAGE(S) 75, 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 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 parking variance and Petitioner shall become subject to the parking regulations then in effect in the City of Hialeah and the City is authorized to withhold any further permits, refuse to make any inspections or grant any approval, until such time as there is compliance with this Ordinance and the Declaration of Restrictive Covenants.

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 August, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 28 day of August, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Cásals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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

S:\DDP\LEGISLATURE\ORDINANCES 2015\130W20StreetRezoning backoutparking.lotcoverage.perviousarea.sfb.ssb.csb.rsb.PZMay27.doc

AFTER RECORDING TO BE RETURNED TO:
Diana Herrera
Embrace Balance, LLC
791 West 25 Street
Hialeah, FL 33010

{Space above this line for recording data}

DECLARATION OF RESTRICTIVE COVENANTS

I, Diana Herrera, individually and as a duly authorized officer on behalf of Embrace Balance LLC, a Florida limited liability company ("Embrace"), being the owner of the land described herein:

> SOUTH 135 FEET OF TRACT A LESS EAST 1130 FEET OF HIALEAH INDUSTRIAL DISTRICT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 62, PAGE(S) 75, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

The property's street address is 791 West 25 Street, Hialeah, Florida 33010

The folio number is 04-3012-024-0073

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

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

1.) This Declaration of Restrictions is made in connection with the application for a variance permit approved by City of Hialeah, Fla. Ordinance 2015- (August , 2015) to allow 13 parking spaces, where 18 parking spaces are required, of which 3 parking spaces will be on-street parking, to allow off-street 10 parking spaces to back-out into the street, where back-out into the street parking is only allowed in low density residential districts, and to waive all of the City of Hialeah Landscape Manual requirements. The Ordinance and all site plans, drawings, maps, surveys, applications and representations made at all public meetings, whether written or oral, made in support of the application for the variance permit are incorporated herein by reference as if fully set forth herein.

2.) Embrace agrees to limit the total number of employees reporting to work to a maximum of ten (10) at any given time on any given day, such that the number of employees does not exceed the number of available off-street parking spaces; UNLESS, Embrace establishes, adopts and enforces an incentive program for employees to (1) use alternative means of transportation such as public transportation or carpool, or (2) park at nearby transit stations or public parking lots. The total maximum number of employees limit shall be in effect at any time the business is in operation. The total maximum number of employees shall include, but is not limited to, directors, supervisors, agents, staff, vendors and independent contractors.

3.) No change will be made to the use of the Property such that the (1) demand for parking exceeds the current available spaces or (2) the change in use does not comply with parking regulations in effect at the time of the change or (3) the change in use creates an adverse impact on traffic on and off site as a result of the diminished number of spaces.

4.) Embrace agrees that if a condition included above ever changes (i.e. (a) that are more ten 10 employees and Embrace has not established, adopted or enforced written policy to incentivize employees to use alternative means of transportation or (b) the use of the Property changes), it shall become subject to the parking regulations then in effect in the City of Hialeah.

5.) This Declaration 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. 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.

6.) This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida at Embrace's expense. Embrace shall promptly submit to the Planning and Zoning Official a certified copy of the recorded Declaration.

7.) In the event of a violation of this Declaration, in addition to any other remedies available, the City of Hialeah is authorized to withhold any future permits, refuse to make any inspections or grant any approval, until such time as there is compliance with this Restrictive Covenant.

8.) 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 shall not be construed as clouding title of any of said property on which such development has occurred.

9.) All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

10.) Acceptance of this Declaration does not obligate the City in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the City Council and/or any appropriate City Board or Department of City who retain its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance.

IN WITNESS WHEREOF, the Owner caused these presents to be signed in their name by their proper officials.

Signed, Sealed and delivered in the presence of:

Witness

Jessica D. Herrera
Printed Name

Witness

Ariagna Gonzalez
Print Name

EMBRACE BALANCE, LLC

By: _____
Diana Herrera President

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on this 24 day of August, 2015 by Diana Herrera, as President of Embrace Balance, LLC, LLC, a Florida limited liability company, on behalf of the company.

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

S.C.

Signature of Notary

Sixto Cura
Printed Name of Notary
Commission No. FF 240888

SIXTO CURA
MY COMMISSION # FF 240888
EXPIRES: June 16, 2019
Bonded Thru Notary Public Underwriters

S:\DDP\DEPARTMENTS\ZONING\791 W 25 Street DECLARATION OF RESTRICTIONS clean-version.docx

August 11, 2015

Waiver of Minimum Landscape Requirements
Waiver Mitigation- Ordinance N° 02-51

RE: Embrace Balance LLC, 791 West 25 Street, Hialeah

Mitigation amount estimate

Landscape requirements: 6 trees and 60 shrubs

Average price of trees= $ 350.00
Average price of shrubs= $8.00

Mitigation amount $ 2,580

Embrace balance
President.

CFN: 20150564585 BOOK 29760 PAGE 1796
DATE:09/01/2015 12:39:49 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

AFTER RECORDING TO BE RETURNED TO:
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Signed, Sealed and delivered in the presence of:

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Jessica D. Herrera
Printed Name

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Oriagna Gonzalez
Print Name

EMBRACE BALANCE, LLC

By: _____
Diana Herrera President

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

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

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PASSED and ADOPTED this 25 day of August, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 28 day of August, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Cásals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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

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