ORDINANCE NO. 2015-47

ORDINANCE GRANTING A SPECIAL USE PERMIT (SUP) TO EXTEND THE NEIGHBORHOOD BUSINESS DISTRICT (NBD) OVERLAY ON PROPERTY LOCATED AT AN ACTIVITY NODE AREA, FOR A PROPOSED MIXED-USE DEVELOPMENT INCLUDING 50,912 SQUARE FEET OF COMMERCIAL SPACE AND 304 RESIDENTIAL UNITS, PURSUANT TO HIALEAH CODE §98-1630.8; AND GRANTING A VARIANCE PERMIT TO ALLOW 739 PARKING SPACES, WHERE 863 ARE REQUIRED; TO ALLOW A VALET PARKING SERVICES FOR GUESTS PURSUANT TO HIALEAH CODE §98-2189(16)A; TO ALLOW 186 UNITS WITH LESS THAN 850 SQUARE FEET OF WHICH 12 UNITS HAVE 580 SQUARE FEET, WHERE UP TO TEN PERCENT OF RESIDENTIAL UNITS MAY HAVE A MINIMUM OF 600 FEET; TO ALLOW A FRONT AND SIDE SETBACK OF 20 FEET FOR THE TOWER OR MIDDLE OF THE BUILDING, WHERE A MINIMUM OF 22 FEET ARE REQUIRED; TO ALLOW A SETBACK OF 20 FEET FOR THE CAP OR PENTHOUSE OF THE BUILDING, WHERE A MINIMUM OF 34 FEET ARE REQUIRED; AND TO ALLOW AN INTERIOR SIDE SETBACK OF 20 FEET AND 15 FEET FOR THE CAP OR PENTHOUSE, WHERE A MINIMUM OF 28 FEET ARE REQUIRED; CONTRA TO HIALEAH CODE §§ 98-2189(16)A, 98-1630.2, 98-1630.3(E)1, AND 98-1630.3(E)2. **PROPERTY LOCATED AT 401 AND 435 HIALEAH DRIVE, 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 June 10, 2015 recommended approval of this ordinance; and

WHEREAS, the petitioner proffered a declaration of restrictive covenants whereby it agrees to implement and maintain at all times, a parking management plan ("Parking Management Plan") which shall include valet parking, tandem parking, assigned spaces, shared parking agreements and car sharing programs and incentives as needed, so that the demand in parking does not exceed the current available spaces, or

creates and adverse impact on traffic flow or circulation in and off-site, which shall be attached and incorporated to the declaration of restrictive covenants, to which the City accepts; and

WHEREAS, the initial Parking Management Plan is subject to the approval of the Planning and Zoning Official. Any subsequent amendments to the initial Parking Management Plan are subject to the approval of City Council upon the recommendation of the Planning and Zoning Official. The Parking Management Plan and corresponding amendments shall be kept on file with the Planning and Zoning Official at all times; and

WHEREAS, no certificate of occupancy will be issued for the property until petitioner properly executes and records the declaration of restrictive covenants, which shall incorporate the Parking Management Plan.

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 Special Use Permit (SUP) to extend the Neighborhood Business District (NBD) overlay on property located at an activity node area, for a proposed mixed-use development including 50,912 square feet of commercial space and 304 residential units, pursuant to Hialeah Code §98-1630.8; and granted a variance permit to allow 739 parking spaces, where 863 are required; to allow a valet parking service for guests pursuant to Hialeah Code §98-2189(16)a; to allow 186 units with less than 850 square feet of which 12 units have 580 square feet, where up to ten percent of residential units may have a minimum of 600 feet; to allow a front and side setback of 20 feet for the tower or middle of the building, where a minimum of 22 feet are required; to allow a setback of 20 feet for the cap or penthouse of the building, where a minimum of 34 feet are required; and to allow an interior side setback of 20 feet and 15 feet for the cap or penthouse, where a minimum of 28 feet are

required, contra to Hialeah Code §§ 98-2189(16)a, 98-1630.2, 98-1630.3(e)1, and 98-1630.3(e)2, which provide in pertinent part: " *Minimum required off-street parking spaces...(16) NBD neighborhood business district. (a) Residential uses.* Parking for residential uses shall be two parking spaces for one or two bedrooms and one-half parking spaces for each additional bedroom. An additional one-quarter parking space for each dwelling unit shall be provided for guest parking. The guest parking requirement may be satisfied, in whole or in part, by the operation of valet parking services for residential guests, approved by the city.", "Retail uses shall be allowed only on the ground level of any building in mixed-use buildings. Office uses shall be allowed on all levels. Residential uses shall be allowed above the ground level only. Each residential unit shall have minimum of 850 square feet, except that ten percent of residential units may have a minimum of 600 feet for studios or one bedroom units.", and "*Development Standards...(e) Setback requirements. The minimum setbacks shall be as follows:* (1) Front setback and street side setback. For the pedestal or base of a building, a minimum setback of ten feet, built-to-line, or as provided in the urban design plan. The pedestal setback area at street level shall not be landscaped or fenced but will be treated in harmony with the sidewalk. For the tower or middle of a building, a minimum setback of 22 feet. For the cap or penthouse of a building, a minimum setback of 34 feet. (2) Interior side setback and interior rear setback. For the pedestal or base of a building, there is no minimum setback requirement, except that all property lines abutting low density and medium density residential districts shall provide a minimum setback of 15 feet. For the tower or middle of a building, a minimum setback of 22 feet. For the cap or penthouse of a building, a minimum setback of 28 feet." The property is located at 401 and 435

Hialeah Drive, Hialeah, Florida, Miami-Dade County, Florida and legally described as follows:

> TRACT B, IN BLOCK 34 OF FOURTH ADDITION TO ESSEX VILLAGE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 46, AT PAGE 63 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND ALL OF DACO TRACT, A RE-SUBDIVISION OF A PORTION OF TRACT "B", FOURTH ADDITION TO ESSEX VILLAGE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 91, AT PAGE 93 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 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 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 8th day of September, 2015.

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

Isis Garcia-Martinez
Council President

Attest:

Approved on this 18 day of September, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form:

DDP

Lorena E. Bravo, City Attorney

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