

ORDINANCE NO. 2018-114

ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING A PARTIAL RELEASE AND MODIFICATION, IN THE FORM ATTACHED AS EXHIBIT "1", FROM THE DECLARATION OF USE AND COVENANT-IN-LIEU OF UNITY OF TITLE RECORDED ON NOVEMBER 16, 2017, IN OFFICIAL RECORDS BOOK 30758, AT PAGE 3898, BINDING UPON THE PROPERTY LOCATED AT 445 E 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, on December 7, 2017, pursuant to Ordinance No. 2017-87, the City Council and the Mayor of the City of Hialeah approved the rezoning from R-1 (One Family District) and R-2 (One and Two Family District) to P (Parking District) for the parcels located at 502, 512, 522, 532, 540, and 552 East 26 Street; and

WHEREAS, as part of this approval, LFH 445, LLC, a Florida limited liability company, and 555 E 25 Street, LLC, a Florida limited liability company (the "Owners"), proffered and executed a Declaration of Use and Covenant-in-Lieu of Unity of Title for the parcels located at 502, 512, 522, 532, 540, and 552 East 26 Street, owned by 555 E 25 Street, LLC, and 445 East 25 Street, owned by LFH 445, LLC (the "Declaration"); and

WHEREAS, the Declaration was recorded in Official Records Book 30758, Page 3898 of the Public Records of Miami-Dade County, Florida; and

WHEREAS, the Declaration holds the parcels as one tract and single building site, and places specific restrictions against the conveyance, mortgaging, or leasing of the parcels apart from each other; and

WHEREAS, it was intended for the 502, 512, 522, 532, 540, and 552 East 26 Street parcels rezoned to P (Parking District) to be transitional in nature, until such time as the rezoned assemblage of parcels could be rezoned to C-1 (Restricted Retail Commercial District); and

WHEREAS, the parcels rezoned to P (Parking District) were intended to provide overflow parking for the uses located at the 445 East 25 Street parcel, where the existing Leon Medical Centers ("LMC") East Hialeah facility is located; and

WHEREAS, the 445 East 25 Street parcel does not have a parking deficiency, pursuant to the City's off-street parking requirements; and

WHEREAS, the Declaration, and its stringent restrictions, have caused unanticipated adverse effects to certain uses and operations on the 445 East 25 Street parcel, including the collateralization and mortgaging of this parcel.

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: Due to the transitional nature of the parcels rezoned to P (Parking District), the sufficiency of off-street parking on the 445 E 25 Street parcel, and the unanticipated adverse effects to operations on the 445 E 25 Street parcel, LFH 445, LLC, and its parcel located at 445 E 25 Street, are hereby released from the Declaration; and the Declaration is further modified to require that the parcels located at 502, 512, 522, 532, 540, and 552 East 26 Street, utilized for parking purposes, be limited and restricted to employees and staff of the LMC East Hialeah facility, pursuant to the form attached as Exhibit "1" to this Ordinance.

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: 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 23 day of October, 2018.

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


Vivian Casals-Munoz
Council President

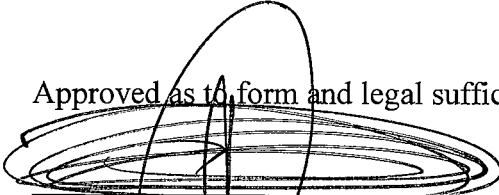
Attest:

Approved on this 24 day of October, 2018.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena Bravo, City Attorney

Ordinance was adopted by a 5-0-2 vote with Councilmembers, Zogby, Lozano, Casals-Munoz, Garcia-Martinez, Hernandez, voting "Yes" and with Councilmembers Caragol and Cue-Fuente absent.

EXHIBIT "1"

Partial Release of Declaration of Use and Covenant-in-Lieu of Unity of Title

This instrument was prepared by:

Name: Alejandro J. Arias, Esq.
Address: Holland & Knight, LLP
701 Brickell Avenue
Suite 3300
Miami, Florida 33131

(Space reserved for Clerk of Court)

Partial Release and Modification of Declaration of Use and Covenant-in-Lieu of Unity of Title

WHEREAS, the undersigned Owners, LFH 445, LLC, a Florida limited liability company, and 555 E 25 Street, LLC, a Florida limited liability company (collectively, the “**Owners**”), hold fee simple title to the following seven (7) parcels of land located in the City of Hialeah, Florida (“**City**”): 445 East 25 Street (Folio No. 04-3108-001-2160)(hereinafter “**Parcel A**”) and 502 East 26 Street, 512 East 26 Street, 522 East 26 Street, 532 East 26 Street, 540 East 26 Street, and 552 East 26 Street (Folio Nos. 04-3108-001-1800, -1810, -1820, -1830, -1840, and -1860), (hereinafter collectively, “**Parcel B**”) which are legally described as follows:

Parcel A:

Lots 1 through 18, Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida.

Lots 19 through 26, and Lots 28, 29, and 30, less the South 15 feet thereof, and Lot 27, less the South 10 feet thereof, all in Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida.

All of Lots 31, 32, 33, 34, and 35, and Lot 36, less the South 10 feet thereof, Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida.

Less that portion of Lots 35 and 36, Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida, which lies within the external area formed by a 25.00 foot radius arc concave to the Northeast tangent to the North line of the South 10.00 feet of said Lot 36, and tangent to the West line of said Lot 35.

Parcel B:

Lot 1, and the West 20 feet of Lot 2, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

Section-Township-Range: 08-53-41

Folio Nos.: 04-3108-001-2160, 04-3108-001-1800, 04-3108-001-1810, 04-3108-001-1820, 04-3108-001-1830, 04-3108-001-1840, 04-3108-001-1860

Lot 3, and the East 20 feet of Lot 2, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

Lot 4, and the West 20 feet of Lot 5, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

All of Lot 5, less the West 20 feet thereof and all of Lot 6, in Block 35-B, AMENDED PLAT OF THE AMENDED THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

Lot 7, and the West 20 feet of Lot 8, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

Lot 9, and the East 20 feet of Lot 8, in Block 35-B, AMENDED PLAT OF THE AMENDED THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

And hereinafter referred to collectively as the “**Property**”; and

WHEREAS, pursuant to Ordinance No. 2017-87, as part of the rezoning of Parcel B to the “P (Parking District)” zoning district, the Owners had heretofore proffered and executed a Declaration of Use and Covenant-in-Lieu of Unity of Title (the “**Declaration**”); and

WHEREAS, said Declaration has been recorded in Official Records Book 30758, Page 3898 of the Public Records of Miami-Dade County, Florida, attached hereto and made a part hereof as Exhibit “A”; and

WHEREAS, the Owners intend for the “P (Parking District)” zoning district on Parcel B to be transitional in nature, until such time as the Property assemblage may be rezoned to the “C-1 (Restricted Retail Commercial District)”; and

WHEREAS, the “P (Parking District)” zoning district on Parcel B is intended to provide overflow parking for the uses located on Parcel A, which is the location of the Leon Medical Centers East Hialeah Center; and

WHEREAS, Parcel A does not have a parking deficiency, pursuant to the City’s off-street parking requirements; and

WHEREAS, the utilization of the Property as one tract and single building site, and the specific restrictions against the conveyance, mortgaging, or leasing of Parcel A and Parcel B apart

from each other, has caused unforeseen impacts and hindrances to certain uses and operations on Parcel A; and

WHEREAS, due to the transitional nature of the overflow parking uses on Parcel B, the sufficiency of off-street parking on Parcel A, and the unanticipated adverse effects to operations on Parcel A, the Owners and the City Council and Mayor desire to release LFH 445, LLC and Parcel A from the Declaration, and to modify Provision No. 3 of the Declaration; and

WHEREAS, the City Council and the Mayor are authorized to execute this partial release and modification of the Declaration on behalf of the City, pursuant to Provision No. 5 of the Declaration.

NOW THEREFORE, in consideration of the foregoing along with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners and the City of Hialeah agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated herein by reference.
2. **Release.** Parcel A of the Property is hereby released from the Declaration, and declared of no further legal effect, null and void, and terminated as it applies to the Property. The Clerk of the Circuit Court of Miami-Dade County, Florida is hereby directed to note the same upon the records. Notwithstanding the release of Parcel A of the Property from the Declaration, the use of Parcel B of the Property for parking purposes shall be limited and restricted to employees and staff of the Leon Medical Centers East Hialeah Center, located on Parcel A.
3. **Modification.** Provision No. 3 of the Declaration shall be hereby modified to read as follows:

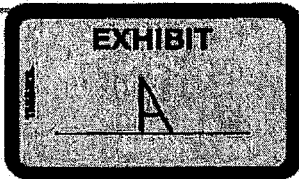
FROM:

3. **Declaration of Use.** Parcel B shall only be used for parking purposes.

TO:

3. **Declaration of Use.** ~~Parcel B shall only be used for parking purposes.~~
As it pertains to Parcel B, and for the extent and duration of its use for parking purposes, parking shall be limited and restricted to employees and staff of the Leon Medical Centers East Hialeah Center, located on Parcel A.

[SIGNATURE PAGES FOLLOW]



CFN: 20170646657 BOOK 30758 PAGE 3898
DATE: 11/16/2017 02:17:02 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

This instrument was prepared by:

Name: Alejandro J. Arias, Esq.
Address: Holland & Knight, LLP
701 Brickell Avenue
Suite 3300
Miami, Florida 33131

(Space reserved for Clerk of Court)

Declaration of Use and Covenant-in-Lieu of Unity of Title

WHEREAS, the undersigned Owners, LFH 445, LLC, a Florida limited liability company, and 555 E 25 Street, LLC, a Florida limited liability company (collectively, the "Owners"), hold fee simple title to the following seven (7) parcels of land located in the City of Hialeah, Florida ("City"): 445 East 25 Street (Folio No. 04-3108-001-2160)(hereinafter "Parcel A") and 502 East 26 Street, 512 East 26 Street, 522 East 26 Street, 532 East 26 Street, 540 East 26 Street, and 552 East 26 Street (Folio Nos. 04-3108-001-1800, -1810, -1820, -1830, -1840, and -1860), (hereinafter collectively, "Parcel B") which are legally described as follows:

Parcel A:

Lots 1 through 18, Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida.

Lots 19 through 26, and Lots 28, 29, and 30, less the South 15 feet thereof, and Lot 27, less the South 10 feet thereof, all in Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida.

All of Lots 31, 32, 33, 34, and 35, and Lot 36, less the South 10 feet thereof, Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida.

Less that portion of Lots 35 and 36, Block 36-B, AMENDED PLAT OF THE AMENDED PLAT OF THE THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, Page 26, of the Public Records of Miami-Dade County, Florida, which lies within the external area formed by a 25.00 foot radius arc concave to the Northeast tangent to the North line of the South 10.00 feet of said Lot 36, and tangent to the West line of said Lot 35.

Parcel B:

Lot 1, and the West 20 feet of Lot 2, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

Section-Township-Range: 08-53-41
Folio Nos.: 04-3108-001-2160, 04-3108-001-1800, 04-3108-001-1810, 04-3108-001-1820,
04-3108-001-1830, 04-3108-001-1840, 04-3108-001-1860

Declaration of Use and Covenant-in-Lieu of Unity of Title
Page 2

Lot 3, and the East 20 feet of Lot 2, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

Lot 4, and the West 20 feet of Lot 5, in Block 35-B, AMENDED PLAT OF THE AMENDED PLAT OF THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

All of Lot 5, less the West 20 feet thereof and all of Lot 6, in Block 35-B, AMENDED PLAT OF THE AMENDED THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

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Lot 9, and the East 20 feet of Lot 8, in Block 35-B, AMENDED PLAT OF THE AMENDED THIRTEENTH ADDITION TO HIALEAH, according to the Plat thereof, as recorded in Plat Book 34, at Page 26, of the Public Records of Miami-Dade County, Florida along with the North ½ of Alleyway lying south and adjacent.

And hereinafter referred to collectively as the "Property"; and

WHEREAS, through a rezoning application, the Owner seeks to rezone Parcel B from "R-1 (One Family District)" and "R-2 (One and Two-Family Residential)" to "P (Parking District)", in order to provide overflow parking for the uses located on Parcel A; and

WHEREAS, the Owner intends for the "P (Parking District)" zoning district to be transitional in nature, until such time as the Property assemblage may be rezoned to the "C-1 (Restricted Retail Commercial District)"; and

WHEREAS, the undersigned Owners desire to utilize the Property as a single building site, and the undersigned Owner does hereby declare and agree that the Property shall not be conveyed, mortgaged, or leased separate or apart from each other and that they will be held together as one tract; and

WHEREAS, the undersigned Owners and the City desire that the restrictive covenants hereinafter control the development and operation of the Property.

NOW THEREFORE, for good and valuable consideration, the undersigned Owners do hereby declare and covenant as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated.

Section-Township-Range: 08-53-41

Folio Nos.: 04-3108-001-2160, 04-3108-001-1800, 04-3108-001-1810, 04-3108-001-1820,
04-3108-001-1830, 04-3108-001-1840, 04-3108-001-1860

Declaration of Use and Covenant-in-Lieu of Unity of Title
Page 3

2. **Covenant-in-Lieu of Unity of Title.** The Property shall be hereafter considered as one (1) plot and parcel of land, and no portion of said plot and parcel of land shall be sold, transferred, devised or assigned separately, except in its entirety as one (1) plot and parcel of land.
3. **Declaration of Use.** Parcel B shall only be used for parking purposes.
4. **Conveyance.** Owners shall not convey or cause to be conveyed the title to the Property without requiring the successor in title to abide by all terms and conditions set forth herein.
5. **Covenant Running with the Land and Modification, Amendment, Release.** This Declaration is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the 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 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 the Hialeah Charter.
6. **Remedies.** 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 Declaration. 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 part exercising the same from exercising such other additional rights, remedies or privileges.
7. **Acceptance of Unity of Title.** Acceptance of this Declaration does not obligate the City in any manner, nor does it entitle the Owners 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.
8. **Severability.** Invalidation of any one of these covenants by judgment of Court shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the City shall be entitled to revoke any approval predicated upon the invalidated portion.

[SIGNATURE PAGES FOLLOW]

