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CITY OF COSTA MESA

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**CITY OF COSTA MESA
ATTENTION: CITY CLERK
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**AFFORDABLE HOUSING AGREEMENT
2277 HARBOR BOULEVARD, COSTA MESA, CA 92626**

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)**

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Costa Mesa)
Economic & Development Services Director)
77 Fair Drive)
Costa Mesa, CA 92626)
Attn: Jennifer Le)
)

APN: 422-163-31

This document is exempt from the payment of a recording fee pursuant to Government Code Sections 27383 and 6103

AFFORDABLE HOUSING AGREEMENT

2277 HARBOR BOULEVARD, COSTA MESA, CA 92626

This Affordable Housing Agreement (the “Agreement”) is entered into as of this 15th day of September 2020, by and between the CITY OF COSTA MESA, a California municipal corporation (“City”), and MIRACLE MILE PROPERTIES, LP, a Delaware limited partnership (“Owner”), as follows:

RECITALS

A. Owner is the owner of certain real property located in the City of Costa Mesa, County of Orange, State of California, commonly known as 2277 Harbor Boulevard (the “Project Property”) and legally described in Exhibit “A” attached hereto and incorporated herein by this reference; and

B. Owner proposes to construct a 200-unit multifamily development (the “Project”) on the Project Property in connection with the following discretionary approvals granted by the City (the “Discretionary Approvals”):

- General Plan Amendment (GP-14-04), City of Costa Mesa City Council Resolution No. 15-60, adopted on November 3, 2015;
- Master Plan Application (PA-14-27), City of Costa Mesa City Council Resolution No. 15-61, adopted on November 3, 2015;
- Rezone (R-14-04), City of Costa Mesa Ordinance 15-14 adopted on November 17, 2015; and
- Zoning Code Amendment (CO-14-02); City of Costa Mesa Ordinance No. 15-15 adopted on November 17, 2015; and

C. Pursuant to the Stipulated Judgment dated July 12, 2018 in the matter of *Kennedy Commission, et al. v. City of Costa Mesa* (Los Angeles County Superior Court Case No. 30-2016-00832585-CU-WM-CJC), Owner shall comply with the State Density Bonus Law (California Government Code Section 65915, et seq., “DBL”) as it existed as of March 7, 2014 to include nine (9) units restricted for lease to Very-Low Income Households (“Affordable Units”), as defined in Section 50105 of the Health and Safety Code, which equates to five percent (5%) of the total units of the Project approved by the Discretionary Approvals; and

D. The nine (9) Very Low-Income units shall be subject to a recorded affordability restriction of 55 years pursuant to the DBL as it existed as of March 7, 2014; and

E. The inclusion of such nine (9) Very Low-Income units shall entitle Owner to a twenty percent (20%) density bonus increase, which bonus is equal to an additional 34 units above the Property’s base density of 40 dwelling units per acre, which entitles Owner to build a housing project that consists of 200 residential units or less; and

F. Pursuant to the July 12, 2018 Stipulated Judgement, Owner and City enter into an agreement regarding the construction, operation, and lease of a total of nine (9) housing units available to Very Low-Income Households at an Affordable Housing Cost.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

AGREEMENT

1. **Recitals.** The Recitals set forth above are true and accurate, and incorporated herein.

2. **Definitions.** All defined terms, as indicated by initial capitalization, shall have the meanings set forth in the Costa Mesa Municipal Code, or the State Density Bonus Law Regulations, except as expressly indicated otherwise. For purposes of this Agreement, the terms listed below shall have the meanings thereafter specified:

(a) “Affordable Housing Cost” as set forth in Section 50052.5 of the California Health and Safety Code, means the Total Housing Costs paid by an Eligible Household, which does not exceed a specified fraction of the gross monthly income, adjusted for Household Size Appropriate for the Unit, as follows:

- For Very Low Income Households: thirty percent (30%) of fifty percent (50%) of the Orange County median income.

(b) “Affordable Unit” means a dwelling unit that will be offered for lease exclusively to an Eligible Household at an Affordable Housing Cost pursuant to this Agreement.

(c) “Director” means the City’s Economic & Development Services Director or his or her designee.

(d) “Eligible Household” shall mean a Very Low-Income Household, as applicable in accordance with Section 4 of this Agreement, which is eligible to lease a particular Affordable Unit.

(e) “Minimum Household Size Appropriate for the Unit” means for a household of one person in the case of a one-bedroom unit, and two persons in the case of a two-bedroom unit.

(f) “Market-rate Unit” means a dwelling unit that will be offered for lease at rates set exclusively by the Owner, and shall not include any Affordable Units.

(g) “Owner” means the person or entity defined as such in the introductory paragraph of this Agreement, and includes all successors and assigns of that person or entity.

(h) “Project” means the 200-unit multifamily residential development approved by the City as described in Recital “B”.

(i) “Project Property” shall have the meaning described in Recital “A”.

(j) “Total Housing Costs” means the total monthly or annual recurring expenses required of a household to obtain shelter, and includes, as applicable, the rental payment or mortgage payment (principal and interest, based on a thirty year term with a five percent (5%) down payment), utilities, homeowner’s association dues, homeowner or renter’s insurance, taxes, mortgage insurance and any other related assessments.

(k) “Very Low Income Households” means households whose gross income does not exceed fifty (50%) percent of the median income for Orange County as determined annually by the U.S. Department of Housing and Urban Development.

3. **Notices.** All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt, as follows:

To Owner: Miracle Mile Properties, LP
4221 Wilshire Blvd., Suite 408
Los Angeles, CA 90010
Attn: Mr. Frank Menlo

To City: Economic & Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Copy to: Kimberly Hall Barlow, City Attorney
Jones & Mayer
3777 N Harbor Blvd.
Fullerton, CA 92835

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 3.

4. Affordable Units

(a) Number of Affordable Units. Owner agrees to restrict rents of nine (9) Affordable Units.

(b) Duration of Affordability Requirements. The Affordable Units shall be subject to the requirements of this Agreement for a period of fifty-five (55) years, beginning on the date of the issuance of a Certificate of Occupancy for the Project (“Commencement Date”). The duration of this Agreement shall be known as the “Affordability Period.” Owner or its successor shall give notice to all tenants residing in the Affordable Units during the last two (2) years of the Affordability Period of the expiration date of this Agreement. Such notice shall be made at least once every six (6) months during the two years prior to the expiration date, and shall also include notification that the rent payable on the Affordable Units may be raised to a market rate at the end of the Affordability Period.

(c) Minimum Household Size. The minimum household size of an Affordable Unit shall not be below following limits based on unit size:

Unit Size	Minimum Household Size
1 bedroom	1 person
2 bedroom	2 persons

(d) Utilization of Affordable Units. All Affordable Units required by this Agreement shall be leased and fully utilized in accordance with this Agreement; no Affordable Unit shall be withdrawn from the market or otherwise held vacant for an unreasonable period of time. The City shall not grant permission to lease, rent, or sublet the Affordable Unit if it finds that the prospective tenant or occupant is not an Eligible Household.

(f) Location, Size, Quality, and Maintenance of Units. All Affordable Units shall be evenly distributed throughout the Project Property, and shall be of comparable size and finish quality as Market-rate Units. The number of one and two bedroom Affordable Units shall be proportional to the number of one and two bedroom Market-rate Units located on the Project Property. Owner shall provide the Affordable Units with the same levels of services and maintenance as is provided to all other dwelling units on the Project Property.

5. Federal and State Laws. Notwithstanding the above provisions, nothing contained herein shall require Owner or City to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable

to the construction and management for the lease of Very-Low Income housing units in the City of Costa Mesa.

6. **Prohibition Against Discrimination.** Owner shall not discriminate against any potential Income Eligible occupants on the basis of any protected category pursuant to the Fair Employment and Housing Act and/or as set forth herein, including but not limited to sex, color, race, religion, ancestry, national origin, age, pregnancy, marital status, family composition, sexual orientation, source of income, gender identity, veterans status or the potential or actual occupancy of minor children. Owner further agrees to take affirmative action to ensure that no such person is discriminated against for any of the above mentioned reasons.

7. **Indemnification.** Owner shall defend, with attorneys of City's choosing, indemnify and hold harmless the City of Costa Mesa and its officers, agents, employees, representatives, and volunteers (collectively, "Indemnitees") from and against any loss, liability, claim or judgment relating in any manner to this Agreement. Owner shall not be required to indemnify and hold harmless Indemnitees for liability attributable to the active negligence or willful misconduct of Indemnitees, provided such active negligence is determined by agreement between the Parties or by the findings of a court of competent jurisdiction. In instances where an Indemnitee is shown to have been actively negligent and where Indemnitees' active negligence accounts for only a percentage of the liability involved, the obligation of Owner to indemnify and hold harmless will be for that entire portion or percentage of liability not attributable to the active negligence of Indemnitees. Nothing contained herein shall limit Owner's obligations to defend, indemnify and hold Indemnitees harmless pursuant to the Development Approvals.

8. **City's Right to Inspect Units and Documents.** The City may inspect the Affordable Units and any documents or records relating thereto, at any reasonable time to determine Owner's compliance with this Agreement.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of City and Owner, and their respective successors, owners and assigns. City reserves the right to designate another public agency to perform City obligations or to exercise City rights and options under this Agreement.

10. **Agreement Appurtenant to Property.** This Agreement is appurtenant to and shall run with the Property, and be binding upon the heirs, administrators, executors, successors, assigns, and transferees of the parties hereto. Owner shall expressly make the conditions and covenants in this Agreement a part of any deed or other instrument conveying an interest in the Property.

11. **Term.** This Agreement shall become effective upon its execution and delivery. Except as otherwise provided in this Agreement, this Agreement shall remain in full force and effect for the duration of the Affordability Period.

12. **Default.** Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure,

correction or remedy with due diligence. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

13. Remedies

(a) Any individual who leases (including subleasing) an Affordable Unit in violation of the provisions of this Agreement shall be subject to termination of the lease agreement.

(b) City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to:

(i) actions to revoke, deny or suspend the Discretionary Approvals and/or Certificate of Occupancy; and

(ii) actions for injunctive relief or damages, or both.

14. Governing Law. The laws of the State of California shall govern this Agreement. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Orange, State of California, or in Federal District Court in the Central District of California.

15. Attorney's Fees. In any action brought to declare the rights granted herein or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney(s) fees in an amount determined by the court.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties regarding all or any part of the subject matter thereof. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statement or promise not contained in this Agreement shall not be valid or binding. This Agreement may be amended only by written instrument signed by both City and Owner.

This Agreement consists of eight (8) pages of text and one (1) Exhibit, which is incorporated herein by reference as follows:

Exhibit "A" Legal Description of Project Property

17. Non-Waiver. Failure to exercise any right City may have or be entitled to, in the event of default hereunder shall not constitute a waiver of such right or any other right in the event of a subsequent default.

18. Further Assurances and Recordation. Owner shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form and do such further acts as may be necessary, desirable or proper as City shall from time to time find necessary or appropriate to effectuate its purpose in entering this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on or as of the date first written above.

“CITY”

City of Costa Mesa, a California municipal corporation

By: Lori Ann Farrell Harrison
Lori Ann Farrell Harrison, City Manager

Dated: 11/10, 2020

APPROVED AS TO FORM: ATTEST:

Kimberly Hall Barlow
Kimberly Hall Barlow
City Attorney

Brenda Green 11/12/2020
Brenda Green
City Clerk



“OWNER”

Miracle Mile Properties, LP, a Delaware limited partnership

By: _____

Its: Frank Menlo

Dated: 10/20, 2020

By: _____

Its: _____

Dated: _____, 2020

EXHIBIT "A"

LEGAL DESCRIPTION OF PROJECT PROPERTY

Parcel 1, in the City of Costa Mesa, County of Orange, State of California, as shown on a map filed in Book 59, Page 1 of Parcel Maps, in the office of the County Recorder of said County.

Together with all right, title and interest of Grantor in and to all buildings and improvements now located or hereafter constructed on the Land.

Commonly known as: 2277 Harbor Boulevard, Costa Mesa, California.