

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (“Agreement”) is made and entered into as of ~~April~~ ^{MAY} 17, 2016 (“Effective Date”), by and between **PHILLIP A. LUCHESI** and **KAREN S. LUCHESI**, husband and wife (collectively referred to as the “Luchesis”), **CITY OF COSTA MESA**, a California municipal corporation (the “City” or “Costa Mesa”), **CITY COUNCIL OF THE CITY OF COSTA MESA** (the “City Council”), and **MIRACLE MILE PROPERTIES, LP**, a Delaware limited partnership (“MM”). The Luchesis, Costa Mesa, the City Council, and MM are collectively referred to hereinafter as the “Parties.”

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings, and intentions of the Parties:

A. MM is seeking to develop the real property located at 2277 Harbor Boulevard in Costa Mesa, California (the “Project Site”), with a multi-story residential apartment complex (the “Project”). The Project Site is currently developed with a 236-room motel known as the Costa Mesa Motor Inn. MM represents and warrants that it currently owns the Project Site.

B. On November 3, 2015, and November 17, 2015, the City Council voted to approve the following entitlements requested by MM relating to its proposed development of the Project Site: (i) Resolution No. 15-60, adopting a mitigated negative declaration (“MND”) for the Project and approving a General Plan amendment for the Project Site; (ii) Ordinance No. 15-14, approving a rezoning of the Project Site from C1 (Local Business District) to PDR-HD (Planned Development Residential-High Density); (iii) Ordinance No. 15-15, purporting to adopt a Zoning Code amendment for (according to the ordinance) a “site-specific density of 54 dwelling units per acre and site-specific building height” on the Project Site; and (iv) Resolution No. 15-61, approving a Master Plan for the Project. Together, these items ((i), (ii), (iii), and (iv), above) are referred to herein as the “Entitlements.”

C. The Luchesis are the owners of the real property located immediately adjacent to the Project Site at 2299 Harbor Boulevard (the “Luchesi Property”), which is improved with, *inter alia*, a single building that currently houses the Pals Vacuum Sewing Center. In addition, the Luchesi Property also contains three mono-pole cell-phone towers (the “Cell-Phone Towers”) that contain the cell-transmission equipment for five different cell-phone companies (the “Cell-Phone Companies”), each of which currently holds a valid lease with the Luchesis to place and operate their cell-tower equipment on the Luchesi Property. As used hereinafter, the term “Cell-Phone Towers” refers to the three mono-pole towers, as well as the cell-transmission equipment thereon owned by the five Cell-Phone Companies.

D. On December 8, 2015, the Luchesis filed Orange County Superior Court Case No. 3D-2015-00824266-CU-WM-CXC (the “Action”), which seeks, *inter alia*, a writ of mandate to set aside the City Council’s approval of the Entitlements, and alleging other causes of action and remedies relating thereto.

E. On January 14, 2016, the Parties met pursuant to Public Resources Code section 21167.8 to discuss the terms of a potential settlement of the Action. The settlement discussions held at that meeting, and any and all additional settlement discussions (including but not limited to the

discussions and negotiations leading to this Agreement) are subject to the protections of Evidence Code section 1152. At the meeting, the parties discussed, and conditionally agreed upon, a general framework for resolving this matter, subject to the preparation of one or more written agreements accurately reflecting that framework.

F. To that end, and subject to the limitations, conditions, and covenants set forth in this Agreement, the Parties intend for this Agreement to constitute a full compromise, settlement, and release of all disputes and claims relating to the Project, the Entitlements, and the Action, as well as all claims raised in the Action. The Parties hereto consider this Agreement to be a compromise of disputed claims, and to not entail any admission of wrongdoing or fault by any party.

NOW, THEREFORE, for full and valuable consideration, the adequacy of which is hereby acknowledged, and based upon the foregoing Recitals, and the terms, conditions, covenants, and agreements contained herein, the Parties hereto agree as follows:

1. Settlement Payment. Within seven (7) calendar days after the full execution of this Agreement by the Parties, MM shall pay to the Luchesis the total sum of \$67,000 (the "Settlement Payment") to cover all attorneys' fees and costs incurred by the Luchesis, to date, in relation to (i) their challenge to the Project at the administrative level, (ii) the prosecution of the Action, and (iii) the negotiation and implementation of this Agreement to date. The Settlement Payment shall be paid via check made out to the "Rutan & Tucker Attorney-Client Trust Account," which check shall be delivered to the Luchesis' counsel of record, Mark J. Austin, of Rutan & Tucker, LLP.

2. Framework to Address Impacts of Project on the Cell-Phone Towers. It is possible that the Project, during or after construction, may have an actual or alleged adverse impact on the operation, performance, signal reach, or signal strength of the Cell-Phone Towers, or any of them, or any component(s) thereof, such that one or more of the Cell-Phone Companies may seek to terminate their leases on the Luchesi Property, renegotiate those leases for better terms than the existing agreements, or otherwise alter the existing arrangement under the existing leases. To address this possibility, the Parties agree to the following framework (as set forth in the following subparagraphs of this Paragraph 2) to remedy the potential damages to the Luchesis from such termination(s) and/or renegotiation(s).

a. If any one or more of the Cell-Phone Companies provide the Luchesis with notice of an intent to terminate their respective leases, or to renegotiate those leases, or to otherwise alter the existing arrangement under their existing leases, the Luchesis shall promptly notify MM and the City of such circumstance, in writing.

b. If any one or more of the Cell-Phone Companies provide the Luchesis with notice of an intent to terminate their respective leases, or to renegotiate those leases, or to otherwise alter the existing arrangement under their existing leases (the "Adverse Action"), the Luchesis shall inquire with the relevant Cell-Phone Company(ies) regarding the specific reasons for the Adverse Action, in an attempt to determine if such Adverse Action arises solely from or in connection with an adverse impact on the operation, performance, signal reach, or signal strength of the Cell-Phone Towers, or any of them, or any component(s) thereof, caused by the Project.

c. In the event the impacted Cell-Phone Company(ies) confirm, in writing, that the Adverse Action is the sole result of an adverse impact caused, in the belief of the Cell-Phone Company(ies), by the Project, the Luchesis shall have the right to pursue a remedial design solution

("Design Solution") with the impacted Cell-Phone Company(ies) and MM, under the terms set forth herein. Prior to the selection of a Design Solution for a particular Cell-Phone Company, that Cell-Phone Company shall explain, in writing, the basis for its belief that the Adverse Action is solely the result of the Project.

d. Design Solution(s) may include, without limitation, modifying or relocating the existing Cell-Phone Towers (including any components thereof) on the Luchesi Property. Alternatively, if the Luchesi Property cannot, for any reason (including a failure to obtain any legally required approvals or permits from the City), sufficiently host the modified or relocated Cell-Phone Towers (or any components thereof) as part of a Design Solution, in that circumstance (and only in that circumstance), the Cell-Phone Towers (including any new or replacement components or technologies) may be relocated onto the Project Site, in the reasonable discretion of the Luchesis, the Cell-Phone Companies, and MM. Any Design Solution(s) shall be negotiated and selected by mutual good-faith agreement of the Luchesis, the impacted Cell-Phone Company(ies), and MM, and the implementation and construction of such Design Solutions shall be at the sole cost and expense of MM, including costs incurred by the Luchesis and/or the Cell-Phone Companies for permits, applications, installation, relocation, changes to utilities services, and construction.

e. Notwithstanding the foregoing, in exercising their discretion to select any Design Solution, the Luchesis, the Cell-Phone Company(ies), and MM must choose a Design Solution that involves leaving the Cell-Phone Towers on the Luchesi Property (as opposed to relocating them to the Project Site) if (1) such a solution allows the Cell-Phone Company(ies) to provide a level of service that is equal to or greater than the level of service it would be able to provide from equipment located on the Project Site, and (2) the City has approved the Design Solution to the extent such approval is required under applicable law. Only if one or both of these requirements is not met will the Luchesis, the Cell-Phone Company(ies), and MM explore an option that involves relocating the Cell-Phone Towers (or some new or replacement components thereof) to the Project Site. In addition, subject to the requirement in this sub-paragraph (e) that the parties will forego relocation to the Project Site if the above two requirements are met, MM shall be without discretion to refuse to agree to a reasonable Design Solution, so long as the costs of implementing and constructing that solution (as set forth in sub-paragraph (d)) are within a commercially reasonable range.

f. Once a Design Solution has been selected for a particular Cell-Phone Tower and/or Cell-Phone Company, the Parties shall take all necessary and reasonable steps to implement that Design Solution, including but not limited to entering into and recording any necessary license and/or easement agreements to allow for the relocation of the Cell-Phone Towers to the Project Site.

g. To the extent any Design Solution requires approval of a building permit, conditional use permit, or other approval pursuant to the City of Costa Mesa Municipal Code (the "Code") or other applicable law, the City shall process the requests or applications for such permits in good faith, and in accordance with the Costa Mesa General Plan (the "General Plan"), the Code, and any other applicable laws, as they exist, and to the extent they apply, at the time the permit or permits are sought.

h. The period in which the Luchesis may pursue a remedial Design Solution for any Adverse Action is limited to three (3) years following the completion of the Project's construction, measured from the date of issuance of the final Certificate of Occupancy by the City of Costa Mesa. For purposes of satisfying this three-year requirement, the Luchesis may continue to pursue a remedial Design Solution with respect to a particular Cell-Phone Tower and/or Cell-Phone Company, even after

the three-year period has passed, so long as (a) within the three-year period, the Luchesis have received oral or written notice of an intended Adverse Action from the relevant Cell-Phone Company(ies), and (b) to the extent that notice was in writing, the Luchesis have provided written notice to MM concerning the intended Adverse Action within fifteen (15) days after the Luchesis' receipt of that written notice. So long as these requirements are met, the three-year period will not bar the selection and implementation of a Design Solution as contemplated herein.

3. Dismissal of the Action. Within three (3) business days after the check providing the Settlement Payment has cleared (meaning the full \$67,000 in funds have been deposited in the Rutan & Tucker Attorney-Client Trust Account), the Luchesis shall cause the Action to be dismissed, with prejudice.

4. Non-Compete. MM, for itself and its successors and assigns in and to the Project Site, hereby covenants, agrees, and warrants that it will not compete with the Luchesis with respect to, or in any way endeavor to obtain, any contract with any cell-phone company or carrier (including but not limited to the Cell-Phone Companies, or any of them), for the benefit of MM or its affiliates, or any subsequent owner or occupant of the Project Site, to place or maintain any type of cell-phone transmission system on the Project Site, or to receive any revenue from any such system on the Project Site, so long as the Luchesis, or any of their successors or assigns (including, without limitation, one or more of the Cell-Phone Companies or other lessees or sublicensees), maintain the Cell-Phone Towers, or any of them, or, any components thereof, on the Luchesi Property. MM, for itself and its successors and assigns in and to the Project Site, hereby further covenants, agrees, and warrants that, if a Design Solution involves relocating a Cell-Phone Tower or any component(s) thereof to the Project Site, then MM (and its successors and assigns in and to the Project Site) will not compete with the Luchesis with respect to, or in any way endeavor to obtain, any contract with any cell-phone company or carrier (including but not limited to the Cell-Phone Companies, or any of them), for the benefit of MM or its affiliates, or any subsequent owner or occupant of the Project Site, to place or maintain any type of cell-phone transmission system on the Project Site, or to receive any revenue from any such system on the Project Site, (1) so long as any member of the Luchesi family, or any descendent or issue thereof, or any entity owned or controlled by any such person, owns the Luchesi Property, in whole or in part, or (2) for a period of 30 years from the date of this Agreement, whichever period is longer. The foregoing covenant, agreement, and warranty shall be recorded as an encumbrance against the Project Site pursuant to that certain recordable "Memorandum of Agreement for Non-Competition" attached hereto as Exhibit A and incorporated herein by this reference (the "Memorandum"), which MM shall execute, acknowledge, and deliver to the Luchesis concurrent with the execution of this Agreement.

5. Waiver and Release of Attorneys' Fees and Costs. It is understood and agreed that the Settlement Payment provided for herein shall constitute the full and complete compensation of the Luchesis for all attorneys' fees and/or court costs, of whatever kind or basis, relating to the Action, whether already incurred or incurred hereafter, including fees sought under either Code of Civil Procedure section 1021.5 or Code of Civil Procedure section 1036, and that the Luchesis shall not seek (and hereby waive and release any claim for) any such fees and/or costs from any other Party hereto after receipt of the Settlement Payment. The City, the City Council, and MM also hereby waive and release any claim for attorneys' fees, court costs, or other relief that they may have against the Luchesis relating to the Action or the Project. Nothing in this Paragraph 5 shall waive or release any of the Parties' rights under this Agreement.

6. **Civil Code Section 1542 Waiver.** It is understood and agreed by all Parties that the facts with respect to which the release set forth in the foregoing Paragraph 5 is given may hereafter turn out to be other than, or different from, the facts now known to be or believed to be true, and that the Parties therefore each hereby expressly waive any and all rights it has or may have under California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party hereto expressly warrants and guarantees that it has full and complete authority to release all such claims on behalf of itself, its assigns, and its successors-in-interest.

7. **Confidentiality of this Agreement.** The Parties expressly agree that they will not affirmatively publicize the terms of this Agreement by issuing a press advisory or press release to third parties. The terms of the Agreement shall not be disclosed publicly except (a) as may be reasonably required to comply with federal, state, or local law or regulation, or a court order, (b) when provided to a Party's employees, attorneys, accountants, consultants, or governmental agencies or members for purposes other than to publicize the terms of the Agreement, (c) as may be necessary in any proceedings to enforce the terms of this Agreement, and/or (d) to employees and/or agents of the Cell-Phone Companies for the purpose of implementing the terms of this Agreement, including selecting and/or implementing the Design Solution(s) described in Paragraph 2 above. Notwithstanding the above, the Parties may disclose to any persons or entities that this matter has been resolved, without any disclosure, dissemination, or publication of the amount of money paid to resolve this matter. The confidentiality provisions of this Agreement shall survive the termination of this Agreement, whether the Agreement is terminated by breach or mutual consent.

8. **Entire Agreement.** This Agreement constitutes the full and entire agreement between and among the Parties hereto, and the Parties acknowledge that there is no other contract, oral or written, between or among the Parties hereto, relating to the subject matter of this Agreement. MM, the City, the City Council, and the Luchesis represent that they have been represented by legal counsel during the course of the negotiations leading to the signing of this Agreement, and have been advised by legal counsel with respect to the meaning of this Agreement and its legal effect now and in the future.

9. **Binding Agreement.** This Agreement is and shall be binding upon, and shall inure to the benefit of, the predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees, associates, legal representatives, heirs, executors, constituent partners or members, and/or administrators, of each of the Parties hereto.

10. **Interpretation of Agreement.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California. Any statute or rule of construction that provides that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Agreement, and is hereby waived. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

11. Nullification. If MM, or its successors and assigns, elects not to execute the Entitlements granted by the City of Costa Mesa as defined above, elects not to construct the Project or any similar project pursuant to those Entitlements or any related entitlements, and elects to completely abandon all of the Entitlements and any other Project-related entitlements in their entirety, then Paragraph 2 of this Agreement (including all of its subparagraphs) relating to the pursuit of a Design Solution, Paragraph 4 of this Agreement relating to the non-competition by MM, and the Memorandum of Agreement, as recorded, shall be deemed null and void, and of no further force and effect. Should MM, or its successors or assigns, elect to not develop the Project, or any similar project, pursuant to the Entitlements, it shall provide the Luchesis and the City with written notice of its intent to abandon the Entitlements, and any other Project-related entitlements, within thirty (30) days of making such decision. This Paragraph shall have no impact whatsoever on the requirement of MM to make the Settlement Payment as described in Paragraph 1, or the requirement of the Luchesis to dismiss the Action as described in Paragraph 3, or any other requirement or provision of this Agreement.

12. Notices. Any notice provided to any Party pursuant to this Agreement shall be in writing and delivered or sent to the addresses below via: (a) personal delivery; (b) certified mail, postage prepaid, return receipt requested; or (c) overnight courier. Any notice that is hand-delivered shall be deemed received on the date of personal delivery; any notice that is sent by certified mail shall be deemed received three (3) business days after deposit in the U.S. Mail; and any notice that is sent by overnight courier shall be deemed received one (1) calendar day after deposit with an overnight delivery service. A Party may provide written notice of a change of address in the same manner specified herein for providing notices.

Luchesis Address for Notice:

Phil & Karen Luchesi
2299 Harbor Blvd.
Costa Mesa, CA 92626

with a copy to:

Mark J. Austin
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

MM's Address for Notice:

Miracle Mile Properties, LP
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422

with a copy to:

Elizabeth Thompson
Sklar Kirsh, LLP
1880 Century Park East, Suite 300
Los Angeles, CA 90067

City's Address for Notice:

77 Fair Drive
Costa Mesa, CA 92626

Attention: City Manager

with copies to:
Thomas P. Duarte
Jones & Mayer
3777 North Harbor Blvd.
Fullerton, CA 92835

and

Celeste Stahl Brady
Straddling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422

13. No Admission of Liability. Each of the Parties acknowledges that this Agreement relates to the settlement of disputed claims. The Parties therefore agree that this Agreement is not to be construed as an admission of liability by any of the Parties to this Agreement, either directly or indirectly, on the part of themselves, their employees, or their agents. The Parties each hereby acknowledge that they are entering into this Agreement based upon their intelligent and knowing evaluation of the alternatives of allowing their disputes to be resolved through litigation. They each acknowledge that they are entering into this Agreement freely, and without any duress or coercion whatsoever, and that they are doing so because they have each concluded that it is in their individual interests to do so.

14. Counterparts. This Agreement may be executed in counterparts, with the same effect as if all original signatures were placed on one document, and all of which together shall be one and the same Agreement. Signatures may be provided as original signatures, or as facsimile or emailed PDF copies. A photocopy of this Agreement may be used as the original.

15. Authority to Execute Agreement. Each of the individuals signing this Agreement on behalf of a Party represents and warrants that it has the full authority to execute this Agreement on behalf of that Party and to bind that Party to the terms hereof.

16. Severability. In the event that any provision of this Agreement should be held to be void, voidable, or unenforceable, that provision shall be severable to the extent it does not vitiate the core intent of the Parties under this Agreement, and the remaining portions hereof shall remain in full force and effect.

17. Waiver, Modification, and Amendment. No breach of this Agreement or of any provision hereof can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by each of the Parties hereto or their authorized representatives.

18. Further Assurances. The Parties shall promptly execute and deliver any document that may be necessary to carry out and effectuate the provisions of this Agreement and/or to modify any prior document in conflict herewith.

19. **Successors and Assigns.** This Agreement shall accrue in favor of, and be binding upon, each Party's respective successors and assigns.

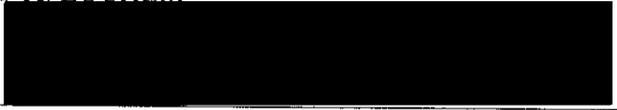
20. **Miscellaneous.** The Parties agree to do such further acts and things, and to execute and deliver such additional agreements and instruments, as the other(s) may reasonably require to consummate, evidence, or confirm the Agreements contained herein in the manner contemplated hereby.

21. **Enforcement Costs.** If a lawsuit or other proceeding is initiated for the purpose of enforcing or interpreting the terms of this Agreement, including but not limited to the obligation of MM to reasonably agree upon a proposed Design Solution, the prevailing Party in any such lawsuit or proceeding shall be entitled to recover his, her, or its attorneys' fees and other litigation-related costs, including in any appeal or enforcement matter in connection therewith.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

Dated: April 21, 2016

PHILLIP A. LUCHESI

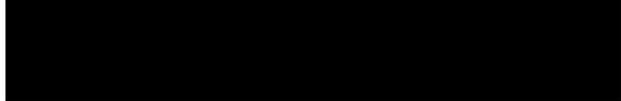

Phillip A. Luchesi

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Dated: April 21, 2016

KAREN S. LUCHESI

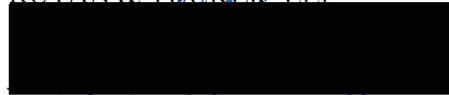


Karen S. Luchesi

Dated: April 21, 2016

APPROVED AS TO FORM BY:

RUTAN & TUCKER LLP



Mark Austin
Attorneys for Luchesi

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Dated: ^{MAY} April 17, 2016

“CITY”

CITY OF COSTA MESA, a California municipal corporation

By: _____
Its: _____

Dated: ^{May 6} April 6, 2016

“CITY COUNCIL”/CITY COUNCIL OF THE CITY OF COSTA MESA

By: _____
Mayor

ATTEST:

Brenda Green, City Clerk

APPROVED AS TO FORM BY:

IONES & MAYER

Thomas P. Duarte, City Attorney

STRADLING YOCCA CARLSON & RAUTH

Celeste Stahl Brady, Special Counsel to City

[signatures continue on next page]

[signatures continued from previous page]

Dated: May __; 2016

MIRACLE MILE PROPERTIES, LP

By: _____

Its: _____

Dated: May __, 2016

APPROVED AS TO FORM:

SKLAR KIRSH, LLP

Elizabeth ("Ellia") Thompson
Attorneys for Miracle Mile Properties, LP

EXHIBIT A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Phillip A. Luchesi
c/o Rutan & Tucker LLP
611 Anton Blvd, Suite 1400
Costa Mesa, CA 92626
Attn: Mark Austin

(Space above this line for Recorder's use)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Memorandum") is executed this ____ day of April, 2016, by and between MIRACLE MILE PROPERTIES, LP, a Delaware limited partnership ("MM"), and PHILLIP A. LUCHESI and KAREN S. LUCHESI (collectively, the "Luchesis"), with reference to the following facts:

RECITALS

A. MM is the owner of certain real property and improvements thereon located at 2277 Harbor Boulevard, Costa Mesa, California, described in *Exhibit A* attached hereto (the "MM Property").

B. The Luchesis are the owner of certain real property and improvements thereon located at 2299 Harbor Boulevard, Costa Mesa, California, described in *Exhibit B* attached hereto (the "Luchesi Property").

C. MM is undertaking a work of improvement on the MM Property (the "Project"), which may interfere with certain existing telecommunications facilities currently installed and operated on the Luchesi Property (the "Cell-Phone Towers").

D. To resolve certain disputes between the Luchesis and MM with regard to the Project, MM has agreed that, *inter alia*, no telecommunications facilities shall be installed, constructed, operated, or maintained on the MM Property except by or on behalf of the Luchesis and/or their successors and assigns, under the terms set forth in that certain Settlement Agreement by and among the Luchesis, MM, the City of Costa Mesa, and the City Council of the City of Costa Mesa (the "Settlement Agreement"), which Settlement Agreement is attached hereto as *Exhibit C* and incorporated herein by this reference.

NOW, THEREFORE, for full and valuable consideration, the adequacy of which

is hereby acknowledged, and based upon the foregoing Recitals, and the terms, conditions, covenants, and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

1. All capitalized terms in this Memorandum that are not otherwise defined herein have the meaning given to them in the attached Settlement Agreement.

2. MM hereby declares, covenants, and agrees that the MM Property is subject to the provisions of this Memorandum and the Settlement Agreement. The MM Property shall be held, mortgaged, rented, encumbered, used, sold, conveyed, leased, improved, and occupied subject to the restriction and licenses set forth in this Memorandum and the Settlement Agreement.

3. MM, for itself and its successors and assigns in and to the MM Property, hereby declares, covenants, and agrees, for the benefit of the Luchesis and their successors and assigns, that no telecommunications facilities, or any components thereof, shall be installed, constructed, operated, or maintained on the MM Property except by or on behalf of the Luchesis and/or their successors and assigns, under the terms set forth in the Settlement Agreement, so long as the Luchesis, or any of the Luchesis' successors or assigns (including, without limitation, one or more telecommunications companies or other lessees or sublicensees), locates, maintains, owns, or operates any telecommunications facilities, or any components thereof, on the Luchesi Property. MM, for itself and its successors and assigns in and to the MM Property, hereby further declares, covenants, and agrees, for the benefit of the Luchesis and their successors and assigns, that, if a Design Solution involves relocating a Cell-Phone Tower or any component(s) thereof to the MM Property, then MM (and its successors and assigns in and to the MM Property) will not compete with the Luchesis with respect to, or in any way endeavor to obtain, any contract with any cell-phone company or carrier (including but not limited to the Cell-Phone Companies, or any of them), for the benefit of MM or its affiliates, or any subsequent owner or occupant of the MM Property, to place or maintain any type of cell-phone transmission system on the MM Property, or to receive any revenue from any such system on the MM Property, (1) so long as any member of the Luchesi family, or any descendent or issue thereof, or any entity owned or controlled by any such person, owns the Luchesi Property, in whole or in part, or (2) for a period of 30 years from the date of this Agreement, whichever period is longer.

4. Except as expressly provided above, the covenants, rights, licenses, agreements, and restrictions set forth herein shall be unconditional and irrevocable, shall run with the land, and shall be binding on MM and any successor owner of the MM Property, and their successors and assigns, and on all parties having or acquiring any right, title, or interest in or to any part of the MM Property, and their heirs, successors, and assigns (collectively, "**Owner**"). This Memorandum may not be modified, amended, or terminated without the express written agreement of MM and the Luchesis. Reference to this Memorandum and the covenants, rights, licenses, agreements, and/or restrictions

set forth herein shall be incorporated by reference in any deed or instrument transferring, conveying, or encumbering any part of the MM Property, and, even if not incorporated expressly, shall be deemed incorporated in any such deed or instrument transferring, conveying, or encumbering all or any part of the MM Property by virtue of the recordation of this Memorandum in the Official Records of the County of Orange.

5. The Luchesis and their successors and assigns shall also have all rights at law or in equity to enforce this Memorandum and each and every covenant, right, license, agreement, and/or restriction set forth herein, all of which shall run with the land and inure to the benefit of the subsequent owners of the Luchesi Property (to the extent limited by Paragraph 3 hereof).

6. Time is expressly made of the essence in the performance of this Memorandum and any and all of the covenants, rights, licenses, agreements, and/or restrictions set forth herein. In the event of any action or proceeding to enforce or interpret any provisions of this Memorandum, or to protect or establish any right or remedy of any party(ies) hereunder, the prevailing party in any such action or proceeding shall be entitled to recover all of his, her, or its attorneys' fees and other litigation-related costs, including in any appeal or enforcement matter in connection therewith.

IN WITNESS WHEREOF, the Luchesis and MM have caused this Memorandum to be executed as of the date first above written.

LUCHESE:

PHILLIP A. LUCHESE

KAREN S. LUCHESE

MMP:

MIRACLE MILE PROPERTIES, LP,
a Delaware limited partnership

By: _____

Name: _____

Its: _____

EXHIBIT A
MM PROPERTY

EXHIBIT B
LUCESI PROPERTY

EXHIBIT C
SETTLEMENT AGREEMENT

Amendment to Confidential Joint Defense and Indemnity Agreement

*(Luchesi, et al. v. City of Costa mesa, et al. and
The Kennedy Commission, et al., v. City of Costa Mesa, et al.)*

Per the Confidential Joint Defense and Indemnity Agreement between **MIRACLE MILE PROPERTIES, LP**, a Delaware limited partnership ("MMP"), **DIAMOND STAR ASSOCIATES, INC.**, a California corporation ("DSA"), and the City of Costa Mesa, a California municipal corporation ("City"), executed March 23, 2016, both MMP and DSA are represented by Ellia Thompson and Jeffrey Harlan of Sklar Kirsh, LP ("Sklar") in the above referenced matters. Ms. Thompson and Mr. Harlan have resigned from Sklar and are now counsel at Ervin, Cohen & Jessup, LLP ("ECJ"). MMP and DSA have engaged ECJ to serve as legal counsel for the above referenced matters.

This Amendment recognizes that ECJ will be substituted as counsel for MMP and DSA, and all references in the document to Sklar shall be replaced by ECJ.

"MMP"

MIRACLE MILE PROPERTIES, LP,
a Delaware limited partnership

By: _____
General Partner

Date: _____

"DSA"

DIAMOND STAR ASSOCIATES, INC.,
a California corporation

B [REDACTED]
Donald Lamm, President

Date: 5-10-16

Ervin, Cohen & Jessup, LLP

[REDACTED]
Counsel to MMP and DSA

Date: 5.10.16

Amendment to Confidential Joint Defense and Indemnity Agreement
(Luchesi, et al. v. City of Costa mesa, et al. and
The Kennedy Commission, et al., v. City of Costa Mesa, et al.)

Per the Confidential Joint Defense and Indemnity Agreement between **MIRACLE MILE PROPERTIES, LP**, a Delaware limited partnership ("MMP"), **DIAMOND STAR ASSOCIATES, INC.**, a California corporation ("DSA"), and the City of Costa Mesa, a California municipal corporation ("City"), executed March 23, 2016, both MMP and DSA are represented by Ellia Thompson and Jeffrey Harlan of Sklar Kirsh, LP ("Sklar") in the above referenced matters. Ms. Thompson and Mr. Harlan have resigned from Sklar and are now counsel at Ervin, Cohen & Jessup, LLP ("ECJ"). MMP and DSA have engaged ECJ to serve as legal counsel for the above referenced matters.

This Amendment recognizes that ECJ will be substituted as counsel for MMP and DSA, and all references in the document to Sklar shall be replaced by ECJ.

"MMP"

MIRACLE MILE PROPERTIES, LP,
a Delaware limited partnership

By: _____
General Partner

Date: _____

"DSA"

DIAMOND STAR ASSOCIATES, INC.,
a California corporation

By: _____
Donald Lamm, President

Date: _____

Ervin, Cohen & Jessup, LLP

Counsel to MMP and DSA

Date: 5.10.14