

## CITY OF CORAL GABLES, FLORIDA

### RESOLUTION NO. 2007-37

A RESOLUTION OF THE CITY COMMISSION APPROVING ENCROACHMENTS ON THE RIGHT-OF-WAY, LOCATED AT 375 MIRACLE MILE, SUBJECT TO THE REQUIREMENTS OF THE PUBLIC WORKS DEPARTMENT.

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

**SECTION 1.** That a request for encroachments into the right-of-way consisting of a roof overhang projecting up to 2'-0" at elevations of approximately 22'-0" above the sidewalk, a 4'-0" wide concrete balcony and aluminum railings encroaching 1'-10" at an elevation of 10'-0" above the sidewalk, four (4) wall sconce lights encroaching approximately 1'-8" at approximately 10'-0" above the sidewalk, landscaping, landscape lighting, trees, irrigation system, two (2) benches, two (2) bicycle racks on brick pavers, one (1) information Kiosk, two (2) abstract sculptures, one (1) refuse container and three (3) lighting poles adjacent to 375 Miracle Mile, Coral Gables, Florida., on property legally described as Lots 44 and 45, Block 36, of Coral Gables Section "K", according to the plat thereof, as recorded in Plat Book 8 at Page 33 of the Public Records of Miami-Dade County, Florida, shall be and they are hereby approved subject to the following requirements of the Public Works Department:

- a) The City of Coral Gables reserves the right to remove, add, maintain, or have the Owner remove any of the improvements within the right-of-way, and at Owner's expense.
- b) That the Owner maintains the proposed encroachments in good condition at all times, and at Owner's expense.
- c) That the Owner meets with the City Attorney's office for the purpose of providing all the information necessary for the office to prepare a Restrictive Covenant to be executed by the Owner which runs with the title of the property, and which states in addition to the above mentioned, that the Owner of the property will provide Public Liability Insurance coverage for the encroachment in the minimum limits required by the City, and naming the City as an additional insured under the policy.
- d) That copies of the Restrictive Covenant, when fully executed and filed, together with certification of required insurance, shall be presented to the Building Department and to the Public Works Department and permits thereafter be obtained for the work from both of these Departments.

- e) That the Owner shall replace, at the Owner's expense, any portion of the encroachment affected, in the event the Public Works Department must issue a permit for a utility cut in the proposed area.
- f). That the proposed encroachments be constructed in accordance with the Florida Building Code and all other pertinent Codes, including the provision of means to retain the storm water within private property.

**SECTION 2.** That this Resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS TWENTY-SEVENTH DAY OF FEBRUARY A. D., 2007.

(Moved: Withers / Seconded: Kerdyk)

(Yeas: Kerdyk, Withers, Anderson, Slesnick)

(Absent: Cabrera)

(Majority (4-0) Vote)

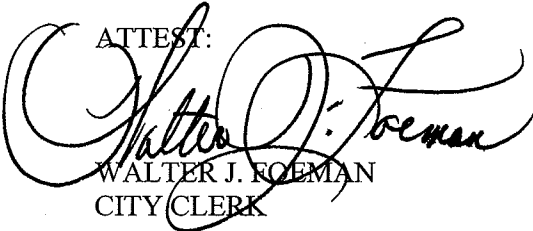
(Agenda Item D-2)

APPROVED:



DONALD D. SLESNICK II  
MAYOR

ATTEST:



WALTER J. ROEMAN  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ  
CITY ATTORNEY



CFN 2007R0543843  
OR Bk 25659 Pgs 1805 - 1808; (4pgs)  
RECORDED 05/31/2007 08:41:01  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

**DECLARATION OF RESTRICTIVE COVENANTS**

*KNOWN ALL BY THESE PRESENTS*, that Miracle Mile Plaza, Inc. hereinafter referred to as "Owner", hereby make, declare, and impose on the land herein described, the covenants running with the title to the land, which shall be binding on the Owner, their heirs, successors, and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by through or under them;

*WHEREAS*, Owner holds the fee simple title to the land in the City of Coral Gables, Florida, as follows, (hereinafter called the "Property"):

**Lot(s) 44 and 45 , Block 36, of Coral Gables Section "K" Subdivision,  
according to the plat thereof, as recorded in Plat Book 8 at Page 33 of the  
Public Records of Miami-Dade County, Florida, and**

*WHEREAS*, the City Commission of the City of Coral Gables on the 27<sup>th</sup> day of February, 2007, passed and adopted Resolution No. R-2007-37 which authorized the Owner to encroach over the public right-of-way at 375 Miracle Mile with encroachments consisting of a roof overhang projecting up to 2'-0" at elevations of approximately 22'-0" above the sidewalk, a 4'-0" wide concrete balcony and aluminum railings encroaching 1'-10" at an elevation of 10'-0" above the sidewalk, four (4) wall sconce lights encroaching approximately 1'-8" at approximately 10'-0" above the sidewalk, landscaping, landscape lighting, trees, irrigation system, two (2) benches, two (2) bicycle racks on brick pavers, one (1) information Kiosk, two (2) abstract sculptures, one (1) refuse container and three (3) lighting poles adjacent to 375 Miracle Mile, Coral Gables, Florida, and in order to induce the City of Coral Gables to issue a permit for said encroachment, the undersigned agrees to: (1) maintain the encroachment in good repair at all times at owner's expense; (2) reserve unto the City the right to remove, add, maintain, or have the Owner remove the improvements at owner's expense; (3) save the City harmless and; (4) that the proposed encroachments shall be constructed in accordance with the South Florida Building Code, and all pertinent Codes; (5) that the owner shall replace any portion of the encroachment affected, in the event the Public Works Department must issue a

4

permit for a utility cut in the proposed area, at Owner's expense; (6) furnish the City with a policy or certificate of insurance coverage in the minimum limits of \$300,000 each person and \$300,000 each occurrence for bodily injury and \$250,000 each occurrence on property damage or \$300,000 single limit coverage and naming the City as co-insured under such policy.

*NOW THEREFORE, IN ORDER TO ASSURE the City of Coral Gables that the representations made by the Owner in connection with the approvals by the City and issuance of a certificate of use and occupancy will be abided by, the Owner freely, voluntarily, and without duress, makes the following Declaration of Restrictions covering and running with the Property:*

1. The above recitations are true and correct and are incorporated herein in their entirety
2. As further part of this Declaration, it is hereby understood and agreed that any official inspector of the City of Coral Gables, or its agents duly authorized, may have the privilege (upon reasonable notice and in the presence of the Owner, unless such presence is waived) at any time during normal working hours of entering and inspecting the premises to determine whether or not the requirements of the Public Works Department regulations and the conditions herein agreed to are being complied with.
3. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at the Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the public welfare.
4. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, providing that the Declaration has first been modified or released by the City of Coral Gables.
5. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then owner(s) of all the Property, including joinders of all mortgagees, if any, provided that the same is also approved by the City of Coral Gables. Should this Declaration of Restrictions be so modified, amended or released, the City Shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.
6. That the City reserves the right to remove, add, maintain or have the Owner remove any of the improvements within the right-of-way at the Owner's expense, for cause, following a public hearing.
7. That the Owner shall maintain the proposed encroachment in good condition at all times, at Owner's expense;

8. The owner shall replace, at Owner's expense, any portion of the encroachment affected, in the event the Public Works Department must issue a permit for a utility cut in the proposed areas;

9. That the Owner furnish the City with a policy or certificate of insurance coverage in the minimum limits of \$300,000 each person and \$300,000 each occurrence for bodily injury and \$250,000 each occurrence on property damage, or \$300,000 single limit coverage and naming the City as additional insured under such policy;

10. That Enforcement shall be by action at law or in equity against any parties or person violating, or attempting to violate, any covenants, either to restrain violations or to recover damages. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of their attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both.

11. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the City is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as there is compliance with this declaration;

12. 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;

13. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the City, and inspections made an approval of occupancy given by the City, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration;

14. Invalidation of any of these covenants by judgment or Court shall not affect any of the other provisions, which shall remain in full force and effect.

15. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida, at the cost to the Owner.

NOW, THEREFORE, for good and valuable consideration, the undersigned does hereby declare that it will not convey or cause to be conveyed the title to the above-referenced Property without requiring the successor in title to abide by all the terms and conditions set forth herein.

FURTHER, the undersigned declares that this covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to Property and shall be binding upon the undersigned, its successors and assigns.

ACKNOWLEDGEMENT

Signed, sealed, executed, and acknowledged on this 23 of April, 2007.

WITNESSES:

[Signature]  
Print Name: IRISO CRUZ  
[Signature]  
Print Name: ODALYS CHAVIANO

OWNER(S) MIRACLE MILE PLAZA, INC

[Signature]  
Print Name: Patricia Delinois  
[Signature]  
Print Name: James Ferraro  
V.P.  
President  
Miracle  
Mile  
Plaza  
Inc.

STATE OF FLORIDA     )  
                                  )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of April, 2007  
by James Ferraro and Patricia Delinois, who is(are) personally  
known to me or who produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public State of Florida  
Print Name: Lisa Percival  
Commission No.: DD 329481

Approved as to Form and Legal Sufficiency

By: [Signature]  
Elizabeth M. Hernandez, Esq.  
City Attorney



ENCROACHMENT COVENANT