

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE, AT ITS JUNE 28, 2024 MEETING, AND APPROVING, ON FIRST READING, AN AIR RIGHTS EASEMENT PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE TO MMS 7 FARREY, LLC (AS TO 50%) AND FARREY LN DG MASTER PLAN, LLC (50%), AS TENANTS IN COMMON (GRANTEES), FOR USE OF A 20 FOOT AERIAL EASEMENT OVER A PORTION OF THE FARREY LANE RIGHT-OF-WAY (EASEMENT AREA) ADJACENT TO THE PROPERTIES OWNED BY GRANTEES, LOCATED AT 6 FARREY LANE AND 7 FARREY LANE (GRANTEES' PARCELS), SO THAT GRANTEES MAY CONSTRUCT A UNIFIED, MULTILEVEL SINGLE-FAMILY HOME, UTILIZING THE EASEMENT AREA AS A SKYBRIDGE BETWEEN GRANTEES' PARCELS FOR THE CONSTRUCTION OF THREE HABITABLE CONNECTING FLOORS; SAID EASEMENT AREA CONSISTING OF A BASE ELEVATION OF 17.12 FEET ABOVE THE GRADE SURFACE OF FARREY LANE TO AN UPPER LIMIT ELEVATION OF 65.56 FEET, HAVING APPROXIMATELY 36,301 CUBIC FEET OF AIR RIGHTS BETWEEN THE ELEVATIONS, AS MORE PARTICULARLY DESCRIBED IN THE SKETCH AND LEGAL DESCRIPTION ATTACHED TO THIS RESOLUTION AS EXHIBIT "A", SUBJECT TO AND CONDITIONED UPON, (1) GRANTEES SECURING ALL LAND USE DEVELOPMENT APPROVALS AND OTHER REQUIRED REGULATORY APPROVALS; AND (2) GRANTEES' DELIVERING TO THE CITY A VOLUNTARY MONETARY PUBLIC BENEFIT IN THE AMOUNT OF \$803,250.00; FURTHER, WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENTS OF SECTION 82-39(A) OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH CONDITION; FURTHER, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN EASEMENT AGREEMENT WITH GRANTEES, SUBJECT TO APPROVAL BY THE CITY COMMISSION; AND FURTHER, SETTING THE PUBLIC HEARING FOR THE SECOND AND FINAL READING OF THE RESOLUTION, ON NOVEMBER 20, 2024.

WHEREAS, at its March 13, 2024 meeting, the City Commission, at the request of Commissioner Joseph Magazine, approved referral item C4J to the Finance and Economic Resiliency Committee (FERC) to discuss the possible conveyance of an air rights easement to MMS 7 Farrey, LLC (as to 50%) and Farrey Ln Dg Master Plan, LLC (50%) (collectively, "Grantees"), as owners of the properties located at 6 Farrey Lane and 7 Farrey Lane ("Grantees' Parcels"), to allow for the connection, with habitable space, of Grantees' Parcels; and

WHEREAS, the air rights will allow for unified construction on Grantees' Parcels, which are separated by the public Farrey Lane right-of-way, without the conveyance of any floor area to either of the Grantees' Parcels; and

WHEREAS, at the May 24, 2024 FERC meeting, the Public Works Department favorably recommended approving the air rights easement, provided Grantees contributed to the City the proposed public benefit in the total monetary amount of \$803,250.00, based upon an appraisal secured by the City Administration; and

WHEREAS, FERC members recommended engaging the neighborhood to determine if there is opposition to the proposed air rights easement, as it was commented that last year the Belle Isle Residents Association, Inc. ("BIRA") was not in favor of this initiative when presented with a similar

discussion at Committee), and FERC members requested that staff gather feedback from the neighboring property owners and report back to FERC the following month; and

WHEREAS, at the June 28, 2024 FERC meeting, as part of the FERC Memorandum, the Administration included letters of support from the neighboring Farrey Lane property owners provided by Grantees, and FERC members recommended in favor of approving the air rights easement, provided that the Grantees engaged BIRA with respect to the approval of the proposed easement; and

WHEREAS, pursuant to Section 82-37(a)(2) of the City Code, Grantees are seeking an aerial easement ("Easement"), with an easement area consisting of a base elevation of 17.12 feet above the grade surface of Farrey Lane to an upper limit elevation of 65.56 feet, having approximately 36,301 cubic feet of air rights between the elevations ("Easement Area"), as more particularly described in the sketch and legal description attached to this Resolution as Exhibit "A", to allow for the construction of a skybridge, connecting Grantees' Parcels with habitable space, at Grantees' sole cost and expense, including any ad valorem real estate taxes assessed against said Easement Area; and

WHEREAS, the City has previously approved pedestrian bridge connector projects, such as the connectors for the Tides and the Betsy Hotel; however, in this case, the Grantees will be developing three levels of habitable improvements within the skybridge connector, having a total of approximately 1,841.57 square feet, which will include a private balcony, decorative architectural features, a portion of a lap pool and roof terrace; and

WHEREAS, pursuant to Section 82-38 of the City Code, any proposed sale or lease of City-owned land is required to be analyzed from a Planning perspective, based upon the criteria set forth in Section 82-38, so that the City Commission and the public are fully apprised of all conditions related to the proposed sale or lease; and

WHEREAS, on October 2, 2024, the City's Planning Department prepared a Planning analysis, a copy of which is attached to the City Commission Memorandum accompanying this Resolution as Exhibit "B", finding that the proposed Easement is consistent with the criteria in Section 82-38 of the City Code; and

WHEREAS, pursuant to Section 82-39(b) of the City Code, an appraisal was conducted and received on March 19, 2024, a copy of which is attached to the City Commission Memorandum accompanying this Resolution as Exhibit "C", in order to form an opinion of the market value of the proposed Easement, which calculated the fee simple market value of the subject air rights and land value; and

WHEREAS, Grantees and the City Administration have reached agreement as to the monetary value of the Easement in the form of a public benefit, as follows: \$595,000.00 appraised market value of the Easement + 35% (median range of 20-50%) range above market value as suggested on the appraisal report, for a total monetary contribution of \$803,250.00; and

WHEREAS, Grantees will pay the City the public benefit in installments, as follows: (1) \$267,750.00 upon the earlier of: (i) issuance of Design Review Board (DRB) approval or (ii) June 30, 2025; (2) \$267,750.00 upon the earlier of (i) receipt a building permit to construct the project on Grantees' Parcels or (ii) September 30, 2025; and (3) \$267,750.00 on or before December 31, 2025; and

WHEREAS, in the event Grantees do not secure DRB approval by November 25, 2025 and the building permit for the construction of the project by May 25, 2026, subject to possible extensions for good cause, at the discretion of the City Manager, the Easement shall be null and void; and

WHEREAS, Grantees engaged BIRA and Grantees in their Letter of Intent, a copy of which is attached to the City Commission Memorandum as Exhibit "D", represent BIRA and Grantees' position, as follows:

- BIRA acknowledges Grantees' right to develop the Property per current zoning rules and to seek to purchase the proposed Easement;
- BIRA and Grantees are requesting that the public benefit associated with the purchase of the Easement benefit the entire Belle Isle community; and
- BIRA and Grantees are requesting that the public benefit to be allocated as follows, subject to approval by the City Commission:
 - 69% in favor of Belle Isle; and
 - 31% in favor of Farrey Lane

WHEREAS, although FERC, at its June 28, 2024 meeting, requested that BIRA be notified of the possible approval of the Easement, in that, BIRA is concerned with matters which could impact its neighborhood, BIRA is a voluntary neighborhood association and Grantees' Parcels are not governed by any homeowners' association covenants; as such, BIRA's consent to the proposed Easement is not legally required and allocation of the public benefits proffered by Grantees remains at the discretion of the City Commission; and

WHEREAS, the City Administration recommends that the public benefit be utilized at the discretion of the City Manager in connection with Public Works projects or as may otherwise be determined by the City Commission; and

WHEREAS, based upon the foregoing, and the fact that only the Grantees could benefit from the use of the proposed Easement Area, the City Manager recommends that the Mayor and City Commission waive, by a 5/7th vote, the formal competitive bidding requirement, as permitted under Section 82-39(a) of the City Code, as being in the best interest of the City; and

WHEREAS, pursuant to Section 82-40 of the City Code, Grantees are responsible for all costs associated with the purchase of the Easement including, without limitation, the appraisal; and

WHEREAS, following approval of the requested Easement on first reading, the City Administration will negotiate the Easement Agreement with Grantees, which will be presented for approval to the City Commission on November 20, 2024, during the second reading, public hearing for approval of this Easement, which Easement Agreement, among other essential terms, will contain a prohibition against short term rentals; and

WHEREAS, the Administration is supportive of the granting of the proposed Easement, subject to and conditioned upon Grantees (1) securing all land use development approvals and all other required regulatory approvals; and (2) delivering to the City of a voluntary monetary public benefit in the amount of \$803,250.00.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission accept the recommendation of the Finance and Economic Resiliency Committee, at its June 28, 2024 meeting, and approve, on First Reading, an air rights easement pursuant to Section 82-37(a)(2) of the City Code, among the City (Grantor) and MMS 7 Farrey, LLC (as to 50%) and Farrey Ln DG Master Plan, LLC (50%), as tenants in common (Grantees), for use of a 20 foot aerial easement over a portion of the Farrey Lane right-of-way (Easement Area) adjacent to the properties owned by Grantees, located at 6 Farrey Lane and 7 Farrey Lane (Grantees' Parcels), so that Grantees may construct a unified, multilevel single-family home, utilizing the Easement Area as a skybridge between Grantees' Parcels for the construction of three habitable connecting floors; said Easement Area consisting of a base elevation of 17.12 feet above the grade surface of Farrey Lane to an upper limit elevation of 65.56 feet, having approximately 36,301 cubic feet of air rights between the elevations, as more particularly described in the sketch and legal description attached to this Resolution as Exhibit "A", subject to and conditioned upon, (1) Grantees securing all land use development approvals and other required regulatory approvals; and (2) Grantees' delivering to the City a voluntary monetary public benefit in the amount of \$803,250.00; further, waive, by 5/7th vote, the formal competitive bidding requirements of Section 82-39(a) of the City Code, finding that the public interest would be served by waiving such condition; further, authorize the City Manager to negotiate an Easement Agreement with Grantees, subject to approval by the City Commission; and further, set the public hearing for the second and final reading of the Resolution, on November 20, 2024.

PASSED and ADOPTED this _____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *[Signature]*

10/18/2024
Date