

# PARDO LAW PLLC

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September 23, 2024

Mayor and Commissioners of the City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE: PROPOSED CONVEYANCE OF AIR RIGHTS EASEMENT TO MMS 7  
FARREY LLC AND FARREY LN DG MASTER PLAN LLC, TENANTS  
IN COMMON**

Dear Mayor and Commissioners:

I represent MMS 7 Farrey LLC and Farrey Ln DG Master Plan LLC, Tenants in Common (“Owner”) which together own 6 and 7 Farrey Lane, Miami Beach, Florida (separately, the Properties and, collectively, the “Property”). The Properties are divided by the City right-of-way (Farrey Lane) which ends at a dead end on the western side of the street. Owner is applying to purchase an air rights easement from the City so that Owner can construct a unified, single-family home on the Property (the “Easement”). This application is similar to and follows the same procedure that led to the City’s past conveyances of air rights easements (e.g., easements granted over Ocean Court for the Betsy and Tides hotels; and an air rights easement granted to The Jesta Group to construct a pedestrian bridge to connect Essex House with the Clevelander).

## **History and Description of the Project**

Owner purchased the Properties in late 2021 with plans to build a unified site plan with a single-family home in accordance within current land use regulations. The development plan contemplates an air bridge over the City’s right-of-way, for which Owner requires the City’s conveyance of the Easement giving rise to this application. A Concept Design for the project is enclosed herewith. The City’s conveyance of an Easement to Owner would not convey or affect any floor area ratio on the Properties.

## **Public Purpose**

The City’s grant of the Easement to Owner will benefit the entire Belle Isle community, including all of the condominiums on Belle Isle and the rest of the owners on Farrey Lane. The City’s past procedure regarding easements such as this has required the applicant to pay the appraised value of the air rights it proposes to acquire from the City. Here, Owner has proposed paying **above fair market value** in order to ensure a significant public benefit to the neighbors, and has reached agreement with both (i) a vast majority of owners on Farrey Lane and (ii) Belle Isle Residents Association (“BIRA”).

At its March 13, 2024 meeting, the City Commission approved a referral to the Finance and Economic Resiliency Committee (“FERC”) to discuss this Easement conveyance. On March 19, 2024, ahead of the FERC meeting, the City’s Public Works Department ordered (and Owner paid for) an *Appraisal Report* to determine the fair market value of the air rights at issue. A copy of the Appraisal Report is enclosed herewith. The Appraisal Report concluded that market value of the air rights was Five Hundred Ninety-Five Thousand (\$595,000.00) Dollars. The Appraisal Report additionally noted that the Properties are “a strategic candidate for acquisition and assemblage . . . and a premium in the range of 20% to 50% above market value could be warranted[.]”. Based on the Appraisal Report, Owner had several discussions with the City’s Public Works Department and ultimately arrived at a **35% premium above market value**, for a potential air rights purchase price of **Eight Hundred Three Thousand Two-Hundred Fifty (\$803,250.00) Dollars**.

On June 28, 2024, Owner presented to FERC Owner’s proposal to purchase the Easement. In support of the item, Owner provided FERC with letters of support from 65% of all of Farrey Lane, including the owner of both of the applicant’s direct next-door neighbors at 5 and 8 Farrey Lane, respectively. **FERC unanimously recommended the item to the full City Commission.**

Ahead of and since the June 28, 2024 FERC meeting, and at the urging of Commissioners Magazine and Dominguez, Owner has conferred with BIRA Vice President, Jack Robbins. The BIRA Board met, and on July 29, 2024, **Owner and BIRA reached a friendly agreement with respect to this application:**

- First, BIRA acknowledges Owner’s right to develop the Property per current zoning rules and to seek to purchase the air rights Easement requested herein.
- Second, BIRA agrees with Owner that the public benefit resulting from Owner’s Easement purchase should benefit the entire Belle Isle community; and
- Third, and finally, BIRA and Owner are in alignment on a proposed division of the expected public benefit as follows:
  - **69% in favor of Belle Isle;** and
  - **31% in favor of Farrey Lane**

Consistent with above, BIRA is not taking any formal action against Owner’s proposed Easement Purchase.

### **Bid Waiver**

Section 82-39 of the City Code requires public bids in connection with transfers of City real estate, unless bids are waived by the City Commission by a 5/7 vote. Here, a bid waiver is appropriate because the only parties that could make use of the subject Easement are the owners of the Properties making this application. Therefore, it would be a waste of City resources to go through a bid process when no one other than Owner could make realistic use of these air rights.

### **Planning Analysis**

The proposed Easement is consistent with the criteria in Section 82-38 of the City Code, as outlined below:

- (1) *Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city's comprehensive plan*

The use of the Easement to serve the Properties is consistent with the future land use category description available to the Properties contained in the City's Comprehensive Plan. Owner will not build more than is allowable by right and in accordance with applicable land use regulations.

- (2) *The impact on adjacent properties (if any), including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level, enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is need, the purchaser/lessee shall be responsible for obtaining and paying for a traffic impact analysis from a reputable traffic engineer.*

Owner and its affiliate own the Properties located on either side of the proposed Easement, and such Properties will benefit from the Easement for the reasons outlined herein. There will be no negative impacts, including no impact on City utilities. Finally, access to the alley will not be impeded due to the clearance height of the anticipated development. Therefore, traffic will not be impacted.

- (3) *A determination as to whether or not the proposed use involves a public purpose, or is in keeping with the community's needs, such as expanding the city's revenue base, reducing city costs, creating jobs, creating a significant revenue stream, and/or improving the community's overall quality of life.*

The Public Benefit proposed by Owner in this Application is at a premium above the fair market value of the air rights sought. This will be a significant revenue to the City. In addition, and because of the friendly agreement with BIRA, Owner anticipates that the improvements made because of the public benefit will specifically serve the Belle Isle community's overall quality of life.

(4) *A determination as to whether or not the proposed use is in keeping with the surrounding neighborhood, will block views or create other environmental intrusions, and evaluation of the design and aesthetic considerations of the proposed development or project.*

The proposed development will be done in accordance with applicable land use regulations and will not result in an increase in the allowable floor area ratio for the Properties. As evidenced by the City's prior approval of bridge connectors for the Betsy and Tides hotels, and other projects on Ocean Court, this Easement is not out of the ordinary. The intended use of the Property (single family home) is consistent with the current allowable use; and, because the proposed development unifies the Properties, it actually avoids one blocked view by 6 Farrey Lane.

(5) *The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.*

There will be no adverse impacts to adjacent properties.

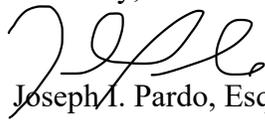
(6) *Such other issues as the city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.*

Consistent with the City's prior approval process for easements and air rights, Owner will be paying (above) fair market value for the Easement as determined by the Appraisal Report obtained by the City. Consistent with prior applications, Owner would request that the public benefit be paid in at least three (3) installments, conditioned on (i) Owner applying for and receiving a building permit (for which the City would co-sign), (ii) Design Review Board (DRB) approval, and (iii) Owner's issuance of a Certificate of Occupancy for the Property.

[End of Letter of Intent]

**Conclusion**

For all the above reasons, we respectfully request that the City Commission grant an air rights easement in favor of Owner as indicated herein. Thank you for your consideration and attention to this matter.

Sincerely,  
  
Joseph A. Pardo, Esq.

**Enclosures:**

Concept Design

March 19, 2024 Appraisal Report

Sketch and Legal Description Prepared by Survey Pros, Inc.

Opinion of Title