

RESOLUTION NO. 2024-33401

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ON SECOND READING, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE, AT ITS JUNE 28, 2024 MEETING, AND WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT IN SECTION 82-39(A) OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH CONDITION, AND APPROVING AND AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AIR RIGHTS EASEMENT AGREEMENT PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE, IN THE FORM ATTACHED TO THIS RESOLUTION AS EXHIBIT "A", 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 SPACE BETWEEN THE ELEVATIONS, SUBJECT TO AND CONDITIONED UPON, GRANTEES: (1) SECURING ALL LAND USE DEVELOPMENT APPROVALS AND OTHER REQUIRED REGULATORY APPROVALS; AND (2) DELIVERING TO THE CITY A VOLUNTARY MONETARY PUBLIC BENEFIT IN THE AMOUNT OF \$803,250.00, OF WHICH \$300,000.00 IS TO BE ALLOCATED TOWARD THE BELLE ISLE DOG PARK PROJECT, AND THE REMAINDER OF THE FUNDS TO BE ALLOCATED AT THE CITY'S DISCRETION.

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 which may be granted by the City Manager 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, at the October 30, 2024 City Commission meeting, it was discussed that at a previous FERC meeting, Commissioner Laura Dominguez had made a request to FERC members to consider allocating \$300,000.00 from the proposed public benefit towards the Belle Isle dog park, which request was reiterated at the October 30, 2024 City Commission meeting by Commissioner Dominguez, which recommendation was accepted by the members of the City Commission; and

WHEREAS, at the October 30, 2024 City Commission meeting, the Mayor and City Commission, on first reading of the Resolution, voted to accept the recommendation of FERC at its June 28, 2024 meeting, and approve the Easement, subject to and conditioned upon Grantees: (1) securing all land use development approvals and other required regulatory approvals; and (2) delivering to the City a voluntary monetary public benefit in the amount of \$803,250.00, with all of the funds allocated to the general fund, of which \$300,000.00 was designated to be used toward the Belle Isle dog park project and the remainder of the funds to be used at the City's discretion; further, waiving, by 5/7th vote, the formal competitive bidding requirement in Section 82-39(a) of the City Code, finding that the public interest would be served by waiving such condition; and further, authorizing the City Manager to negotiate an Easement Agreement with Grantees, subject to approval by the City Commission at the second and final reading/public hearing of the Resolution; 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

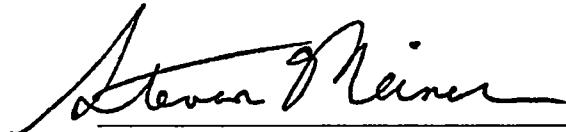
WHEREAS, the City Manager recommends accepting the recommendation of FERC at its June 28, 2024 meeting, and waiving, by 5/7th vote, the formal competitive bidding requirement in Section 82-39(a) of the City Code, finding that the public interest would be served by waiving such condition, and approving and authorizing the City Manager and City Clerk to execute an air rights Easement Agreement pursuant to section 82-37(a)(2) of the City Code, in the form attached to this Resolution as Exhibit "A", 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 a voluntary monetary public benefit in the amount of \$803,250.00, of which \$300,000.00 is to be allocated toward the Belle Isle dog park project and the remainder of the funds to be allocated at the City's discretion.

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, on second reading, hereby accept the recommendation of the Finance and Economic Resiliency Committee, at its June 28, 2024 meeting, and waive, by 5/7th vote, the formal competitive bidding requirement in Section 82-39(a) of the City Code, finding that the public interest would be served by waiving such condition, and approve and authorize the City Manager and City Clerk to execute an air rights Easement Agreement pursuant to Section 82-37(a)(2) of the City Code, in the form attached to this Resolution as Exhibit "A", 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 space between the elevations, subject to and conditioned upon, Grantees: (1) securing all land use development approvals and other required regulatory approvals; and (2) delivering to the City a voluntary monetary public benefit in the amount of \$803,250.00, of which \$300,000.00 is to be allocated toward the Belle Isle dog park project, and the remainder of the funds to be allocated at the City's discretion.

PASSED and ADOPTED this 20 day of November, 2024.

ATTEST:


NOV 22 2024
Rafael E. Granado, City Clerk


Steven Weiner, Mayor

Sponsored by Commissioner Joseph Magazine



**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney 11/18/2024
Date

EXHIBIT "A"

This instrument prepared by and
after recording return to:

Joseph I. Pardo, Esq.
Pardo Law PLLC
1205 Lincoln Road
Miami Beach, FL 33139

(For Recorder's Use Only)

GRANT OF EASEMENT FOR AIR RIGHTS

This Grant of Easement for Air Rights (the "Easement") is made and entered into as of this ___ day of ___, 2024, by the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation duly organized and existing under the laws of the State of Florida, having an address at 1700 Convention Center Drive, Miami Beach, Florida 33139 ("Grantor"), in favor of **MMS 7 FARREY LLC**, a Florida limited liability company as to 50% and **Farrey Ln DG Master Plan, LLC**, a Delaware limited liability company as to 50%, as Tenants in Common (jointly, "Grantee").

RECITALS

- A. MMS 7 FARREY LLC and FARREY LN DG MASTER PLAN LLC are each 50% Tenants in Common fee owners of real property located at 6 Farrey Lane and 7 Farrey Lane (collectively, the "Properties"), the legal description of which are attached hereto as **Exhibit "A"**.
- B. The Farrey Lane right-of-way is dedicated by plat to Grantor as a public right of way, and this dedication also includes the air rights over the Farrey Lane right-of-way (the "Farrey Lane Right of Way").
- C. Grantee desires to build a unified, multilevel single-family home on the Properties, in accordance with current land use regulations; said development requiring a skybridge connector over the portion of Farrey Lane right of way adjacent to the Properties in order to connect 6 Farrey Lane to 7 Farrey Lane and provide a skybridge of three levels of enclosed habitable space over the Farrey Lane Right-of-Way, having a total of approximately 1,841.57 square feet, which is anticipated to include a private balcony, decorative architectural features, a portion of a lap pool and roof terrace (the "Project").
- D. After referral by the City of Miami Beach Commissioner, the City's Finance and Economic Resiliency Committee (FERC) approved the granting of an easement in connection with Grantee's development of the Properties, which easement shall not impede vehicular access through the Farrey Lane Right of Way and shall not convey or affect any floor area ratio on the Properties.

- E. Grantor has agreed to grant an easement to Grantee, for the use of all of Grantor's air rights within that volume of space above the portion of the Farrey Lane Right of Way between the Properties, having a base elevation of 17.12 feet NGVD above the grade surface of Farrey Lane Right-of-Way to an upper limit elevation of 65.56 feet, having approximately 36,301 cubic feet of air space between the elevations, as legally described in **Exhibit "B"** attached hereto and made a part hereof ("Easement Area"), for the sole purpose of the construction, use, and occupancy of a skybridge within the Easement Area, containing habitable connecting floors, as part of the development of the Project ("Skybridge Improvements"), subject to the terms and conditions set forth herein. The improvements to the Properties and the Skybridge Improvements shall collectively be referred to herein as the "Project Improvements").
- F. At the October 30, 2024 City Commission meeting, the Mayor and City Commission, on first reading of the Resolution, voted to accept the recommendation of FERC at its June 28, 2024 meeting, and approve the Easement, subject to and conditioned upon Grantee: (1) securing all land use development approvals and other required regulatory approvals; and (2) 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 requirement in Section 82-39(a) of the City Code, finding that the public interest would be served by waiving such condition; and further, authorizing the City Manager to negotiate an Easement Agreement with Grantee, subject to approval by the City Commission at the second and final reading/public hearing of the Resolution.
- G. On November 20, 2024, the Mayor and City Commission adopted Resolution No. _____, approving, on second reading, pursuant to a public hearing, this Easement and further clarifying the allocation of the public benefit, with \$300,000.00 to be allocated toward the Belle Isle dog park project, and the remainder of the funds to be allocated at the City's discretion.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.
2. Easement. Subject to the terms and conditions of this Easement, Grantor hereby grants, bargains and conveys to Grantee, for the use and benefit of Grantee and, its successors and assigns and its agents, employees and invitees a perpetual, exclusive easement in, through, over and across the Easement Area, along with a non-exclusive right of ingress and egress over and across the portions of the Farrey Lane Right of Way necessary to access the Easement Area for the construction and maintenance of the Skybridge Improvements, as provided herein. Grantor also hereby authorizes Grantee to construct the Skybridge Improvements, provided that they are consistent with the Design Review Board approval of same. Grantee shall exercise its easement rights hereunder without obstructing or interfering with the continued use of the Farrey Lane Right of Way by Grantor and/or the public as a dedicated public

right of way for pedestrian and vehicular travel, and utility services, except as permitted pursuant to a temporary right-of-way closure permit for any construction, repair or maintenance activities that temporarily obstructs, or otherwise requires temporary closure of, any portion of Farrey Lane Right-of-Way.

3. Consideration. As consideration and inducement for Grantor's grant of this Easement, Grantee shall pay to Grantor the amount of \$803,250.00 ("Contribution") to be paid 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 Improvements or (ii) September 30, 2025; and (3) \$267,750.00 on or before December 31, 2025.

4. Construction and Maintenance of the Properties.

A. Grantor desires, and Grantee agrees that Grantee shall develop, design, permit, construct, use, maintain, repair and replace the Skybridge Improvements, or necessary portions thereof, so that same is at all times in good working order and condition and free of material defects, subject only to occasional interruption of service due to (i) ordinary wear and tear and use thereof; (ii) routine or extraordinary maintenance, repair or replacement; or (iii) events beyond the Grantee's reasonable control. Grantee shall have the right to select the contractor(s) of its choice in connection with all aspects of installation or construction, maintenance, repair and replacement of the Skybridge Improvements; provided, however, the contractor(s) shall be subject to prior approval of Grantor, which approval shall not be unreasonably withheld so long as the work is performed by contractor(s) with prior experience performing similar projects, with the requisite licenses to perform the work, and sufficient bonding capacity to obtain a performance and payment bond covering the value of such work. Grantee's contractor shall also furnish the City with evidence of the following construction insurance coverages:

1. **Worker's Compensation Insurance** for all employees of the contractor as required by Florida Statute 440. Employer's liability in an amount not less than \$1,000,000.
2. **Commercial General Liability** on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **City of Miami Beach must be shown as an additional insured with respect to this coverage.**
3. **Maintain in force until at least three (3) years after Final Completion of the Project coverage for Products and Completed Operations, including Broad Form Property Damage.**
4. **Excess/Umbrella Liability**, in amount not less than \$5,000,000 combined single limit, per occurrence for bodily injury and property damage. **This coverage requirement will be at the discretion of the City of Miami Beach.**

5. **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **City of Miami Beach must be shown as an additional insured with respect to this coverage**
6. **Professional (Design Errors & Omissions) Liability Insurance** in an amount not less than \$1,000,000 with the deductible per claim, if any, not to exceed 10% of the limit of liability. The policy must be endorsed to provide coverage for up to three (3) years after Project completion. The policy is to be on a primary basis if other professional liability is carried.

All deductibles for insurance required in the Agreement are the responsibility of the contractor. A waiver of subrogation is required for the policies listed above.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the contractor.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**CERTIFICATE HOLDER MUST READ:
CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
3rd FLOOR
MIAMI BEACH, FL 33139**

- B. Grantee shall cause for plans and specifications to be prepared for any construction work related to the Skybridge Improvements, and shall be solely responsible for obtaining any and all governmental permits and approvals required in connection with the Skybridge Improvements (collectively, the "Permits").
- C. After completion of any work by Grantee, Grantee shall, at its sole cost and expense, and with due diligence, restore the Farrey Lane Right of Way to the condition in which it existed immediately prior to the performance of such work.
- D. Grantee shall assume the responsibility, at its sole cost and expense, to maintain the Skybridge Improvements in a good and safe condition and to repair and replace same as necessary from time to time, all in accordance with the Permits and any and applicable regulations of the federal, state, County, City of Miami Beach Code of Ordinances, and any other regulation governing the Skybridge Improvements ("Applicable Laws").
- E. Grantee shall be solely responsible for, and shall bear any and all costs and expenses of, installation, maintenance, operation, utilities, taxes (including, without limitation, any ad valorem or other taxes or governmental charges that may be assessed in connection with this Easement and the Skybridge Improvements), insurance, repairs, and replacement or restoration work (including, without limitation, any replacement or restoration in the event of any casualty or as otherwise required in the normal and customary ownership and use of the Skybridge Improvements and this Easement) and any and all other costs and expenses, including any necessary relocation or undergrounding of existing utilities in conflict with the Skybridge Improvements, or any damage to the Farrey Lane Right of Way in connection in connection with the Grantee's installation and use of the Skybridge Improvements.
- F. Grantee assumes all risks in connection with the construction and use of the Skybridge Improvements at its sole cost and expense. The Grantor disclaims any and all implied warranties of merchantability and fitness, fitness for a particular purpose, intended use, workmanship or construction respecting the use of the Easement Area or the construction or use of the Skybridge Improvements. Grantor and its successors and assigns shall have no obligations with respect to the operation, use, maintenance, repair, replacement or restoration of the Skybridge Improvements, except to the limited extent provided in 5.A of this Easement and to the extent caused by the gross negligence or willful misconduct of Grantor and/or its representatives.
- G. Grantee shall, at all times, exercise diligent, good-faith efforts to: (a) avoid causing any damage to the Farrey Lane Right of Way; adversely affecting the safety or appearance of the Farrey Lane Right of Way; or causing any unreasonable interference with the use of the Farrey Lane Right of Way; and (b) minimize any disruption or inconvenience to Grantor and the public in the use and enjoyment of the Farrey Lane Right

of Way as a dedicated public right of way arising from, without limitation, lights, sounds, wireless frequencies, smoke, fumes, vapors, odors, droppings or any other objectionable discharges, or emissions, or nuisances of any kind therefrom.

- H. Grantee, at Grantee's sole cost and expense, agrees to clean up any litter from the Farrey Lane Right of Way resulting from Grantee's use of the Easement Area and restore any damage to the Farrey Lane Right of Way that is caused by or arises from the use and occupancy of the Easement Area.

5. Grantor's Continued Use and Maintenance of the Farrey Lane Right of Way. Except with respect to the Grantee's exclusive rights over the Easement Area, the Grantor reserves unto itself, and its successors, assigns, and its authorized invitees, agents, employees, contractors, and licensees, and without the need for any notice to Grantee, the perpetual right and privilege to (i) use the Farrey Lane Right of Way for the purposes of providing the general public with an unrestricted right of passage, ingress, egress, access to, and reasonable use of the Farrey Lane Right of Way; (ii) maintain, repair and replace, and/or install improvements within the Farrey Lane Right of Way, including surface or subsurface improvements, as Grantor may deem necessary from time to time, at its sole and absolute discretion; and (iii) grant third- parties providing utility services with the right to use and occupy the Farrey Lane Right of Way for the purpose of providing any such utilities, including, but not limited, to water, sewer, stormwater, electrical, gas, telecommunications, telephone and cable, at Grantor's sole and absolute discretion. Notwithstanding anything to the contrary herein, Grantor's issuance, in its regulatory capacity, of any right of way or other permit to a third-party (such as utility providers), shall not be construed as an assumption of any liability for the acts or omissions of that third-party, and Grantor shall not be responsible for the acts or omissions of third-parties not contracted by Grantor (such as utility providers).

- A. If the Skybridge Improvements are damaged during any maintenance, repair or other work performed by Grantor or its employees, agents or contractors within the Farrey Lane Right of Way, the Grantor shall work with the Grantee to make all necessary repairs to the Skybridge Improvements, at Grantor's sole cost and expenses. Notwithstanding anything to the contrary herein, Grantor's issuance, in its regulatory capacity of any right of way or other permit to a third-party (such as utility providers), shall not be construed as an assumption of any liability for the acts or omissions of that third-party, and Grantor shall not be responsible for the acts or omissions of third-parties not contracted by Grantor (such as utility providers).

- B. Notwithstanding anything herein contained to the contrary, this Section 5 shall not be construed or deemed to relieve Grantee of its obligations to maintain, repair, replace and/or restore the Skybridge Improvements.

6. Term. The term of this Easement shall not commence and shall be of no force or effect unless and until Grantee submits its application for a building permit for the construction of the Project Improvements, and once in effect, shall be perpetual unless terminated upon mutual agreement of the parties, in writing. This Easement shall not merge with any deed to the Properties or any part thereof, and shall survive for the term described herein. For the avoidance of doubt, the decision to proceed with the construction of the Skybridge Improvements is within the Grantee's sole discretion. In the event that Grantee: (1) elects not to proceed with the use of the Easement Area prior to securing the building permit for the construction of the Skybridge Improvements; or (2) Grantee does not secure DRB approval by November 25, 2025 and the building permit for the construction of the Skybridge Improvements by May 25, 2026, subject to possible written extensions which may be granted by the City Manager for good cause, at the discretion of the City Manager, the Easement shall be null and void, the Grantee shall be entitled to a refund of any portion of the Contribution received by the Grantor, and the parties agree to promptly execute a written release of the Easement and record said release in the Public Records of Miami-Dade County, Florida. The Compensation shall be deemed earned by Grantor and non-refundable upon Grantee securing the building permit for the construction of the Skybridge Improvements. In the event that Grantee fails to commence construction of the Skybridge Improvements within three (3) years from issuance of the building permit for the Skybridge Improvements or otherwise abandons construction of the Project, this Easement shall become null and void and the parties agree to promptly execute a written release of the Easement and record said release in the Public Records of Miami-Dade County, Florida.

Subsequent to the construction of the Project Improvements, Grantee shall have the right to demolish and remove the Skybridge Improvements, provided that all required Permits and approvals are obtained from the City. In the event that the Skybridge Improvements are demolished with the expectation of future development thereon, this Easement shall not automatically terminate and shall only be voidable in Grantee (or Grantee's successor's) reasonable discretion and in accordance with Applicable Laws. In the event that the Skybridge Improvements are demolished without the expectation of future development, this Easement shall terminate and the parties agree to promptly execute a written release of the Easement and record said release in the Public Records of Miami-Dade County, Florida. In the event that Grantee fails to commence construction of a future development within three (3) years, the Easement shall terminate and the parties agree to promptly execute a written release of the Easement and record said release in the Public Records of Miami-Dade County, Florida.

7. Successors and Assigns. This Easement shall bind, and the benefit thereof shall inure to the respective successors and assigns of the parties hereto. Any transferee of the Properties, or any portion thereof, shall automatically be deemed, by acceptance of the title thereto, to be subject to all of the terms of this Easement.

8. **Limitation.** It is the intention of the parties hereto that this Easement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons and Properties named herein. The roadway surface of the Farrey Lane Right of Way shall continue to be used for appropriate pedestrian and vehicular access and activity, except as necessary during times of installation, maintenance, repair or replacement of the Skybridge Improvements by Grantee, or maintenance, repair or replacement of the Farrey Lane Right of Way or utilities located therein.

9. **Indemnification.**

A. Grantee shall indemnify, defend and hold harmless Grantor, its officers and employees, from any costs, liabilities, claims, losses, and damages (including, without limitation, reasonable attorneys' fees and disbursements at the trial level and all levels of appeal), whether suit is instituted or not, relating to death of or injury to persons, or loss of or damage to property, arising out of, or incurred in connection with, this Easement, or with the use and/or operation of the Easement Area or Skybridge Improvements by Grantee, and/or its officials employees, contractors, and agents; and including, but not limited to, any violation by the Grantee, and/or its officials, employees, contractors, and agents, of any laws, rules, regulations or ordinances regarding hazardous materials, hazardous wastes, hazardous substances, solid waste, or pollution, whether now existing or hereafter enacted or promulgated, as they may be amended from time to time ("Environmental Laws"); any presence, release, or threat of release of hazardous materials, hazardous wastes, hazardous substances, solid waste or pollution at, upon, under, from or within the Easement Area by Grantee, and/or its officials, employees, contractors; and agents; the failure of Grantee, and/or its officials, employees, contractors, and agents, to duly perform any obligations or any clean-up required to be taken by Grantee under any Environmental Laws; liability for personal injury or property damage; and any fines, penalties, and punitive damages, or any fines or assessments incurred by or claimed against Grantor and arising out of the failure of Grantee, and/or its officials, employees, contractors, and agents, to comply with Environmental Laws in connection with the use of the Easement by Grantee, and/or its officers, employees, contractors, and agents. For the avoidance of doubt, the liability in this Section 9 as to Environmental Laws shall not apply to Grantee unless the liability is caused by the actions of Grantee and/or its officials, employees, contractors, and agents.

B. Grantee shall also, as part of the indemnification provided to Grantor pursuant to this Section 9, defend any and all claims asserted against Grantor resulting from, arising out of, or incurred in connection with the existence and/or use of the Easement and the Easement Area or Skybridge Improvements by Grantee, and/or its officials, employees, contractors, and agents. Grantee shall be entitled to select counsel of Grantee's choice to defend claim; provided however, that such counsel shall first be approved by Grantor's City Attorney, which approval shall

not be unreasonably conditioned, withheld, or delayed; and, provided further, that the Grantor shall be permitted, at its cost and expense, to retain independent counsel to monitor the claim proceeding. The duty to defend set forth in this subsection shall be severable and independent from the indemnity obligations otherwise set forth in this Section 9, to the extent that if any other provisions and/or subsections of this Section 9 are deemed to be invalid and/or unreasonable, this duty to defend provision shall remain in full force and effect.

- C. Notwithstanding anything contained in Section 9 to the contrary, Grantee shall not be obligated or liable to Grantor, or any third parties, for any costs, liabilities, expenses, losses, claims or damages, with respect to claims resulting from the gross negligence, recklessness or willful misconduct of Grantor or its officials, employees, contractors, and agents.
- D. The indemnity and defense obligations set forth in this Section 9 including, without limitation, the provisions of its subsections, shall survive the expiration of the Term or any termination of this Easement regarding any and all costs, liabilities, claims, losses, and damages (including, without limitation, reasonable attorneys' fees and disbursements at the trial level and all levels of appeal), whether suit is instituted or not, relating to death of or injury to persons, or loss of or damage to property, resulting from, arising out of, or incurred in connection with the existence and use of the Easement and the Easement Area by Grantee and/or its officials, employees, contractors, and/or agents during the Term of the Easement. For purposes of example only and without limiting the generality of the foregoing, costs, liabilities, claims, losses and/or damages which are unknown or unaccrued as of the date of the expiration of the Term or other termination of the Easement could include, without limitation, latent construction defects and/or environmental remediation claims.

10. **Insurance.** Grantee shall maintain insurance sufficient to cover Grantee's liability exposure with respect to its construction, use or operation of the Skybridge Improvements, which insurance shall include Commercial General Liability Insurance, including Products-Completed Operations and Contractual Liability, in an amount not less than \$1,000,000 combined single limit per occurrence, and \$2,000,000 in the aggregate, for bodily injury and property damage, and Workmen's Compensation as required by Applicable Law. Grantee shall name the Grantor as an additional named insured on the Certificates of Insurance for Commercial General Liability Insurance, and upon request of the Grantor, shall provide the City with a certificate of insurance evidencing the foregoing coverages.

11. **Default.**

- A. **Default By Grantee.** In the event of a default by Grantee under the terms of this Easement, Grantor shall give written notice to Grantee, specifying the nature of such default. Grantee shall have a period of thirty (30 days following receipt of said notice in which to remedy the default (or such longer time as may be necessary and reasonable, provided Grantee shall have commenced a cure within said 30-day period and is diligently and continuously prosecuting same); failing which Grantor shall have the right to enter upon the Easement Area, for the limited purpose of

effecting the required repair or maintenance of the Pedestrian Bridge Improvements. Notwithstanding the foregoing, if the default is of such a nature that an emergency situation arises, constituting an unsafe or unsanitary condition, the period of cure of such default shall be accelerated to a period of time which is reasonable in light of the nature of the emergency. All costs incident to curing a default by the Grantee under this subsection shall be the sole responsibility and obligation of, and accordingly, shall be borne by, the Grantee.

- B. **Default by Grantor.** In the event of a default by Grantor, Grantee shall give written notice to Grantor, specifying the nature of such default. Grantor shall have a period of thirty (30) days following receipt of said notice in which to remedy the default (or such longer time as may be necessary and reasonable, provided Grantor shall have commenced a cure within said 30-day period and is diligently prosecuting same). Notwithstanding the foregoing, if the default is of such a nature that an emergency situation arises constituting an unsafe or unsanitary condition, the period for cure of such default shall be accelerated to be a period of time which is reasonable in light of the nature of the emergency. All costs incident to curing a default by Grantor relating to an emergency situation shall be borne by the Grantor.
 - C. Any sums due and owing under this Easement by Grantor or Grantee shall be due and owing within thirty (30) days from receipt of the invoice. Any unpaid sums shall accrue interest at the interest rate of eighteen percent (18%) per annum or the highest interest rate authorized by Applicable Law, whichever is less.
12. **No Liens.** Grantee shall not cause liens of any kind to be placed against the Easement Area or any portion thereof. The right, title and interest of the Grantor in the Easement Area shall not be subject to liens or claims of liens for improvements made by Grantee. Nothing contained in this Easement shall be deemed or construed to constitute the consent or request of the Grantor, express or by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of the Easement Area, or any part thereof, nor as giving Grantee, any mortgagee or lessee of the Grantee or Properties any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Grantor's interest in the Easement Area, or any part thereof, or against assets of the Grantor. In the event Grantee fails to remove any lien or desires to contest any lien placed against the Easement Area or any portion thereof, Grantee shall indemnify, defend and hold harmless the Grantor against all loss, expense or damages in connection therewith, in accordance with Section 9 of this Easement. Notwithstanding the foregoing, Grantee's rights under this Easement may be part of the collateral for any mortgage encumbering the Properties.
13. **Inspection.** It is hereby agreed that any City official has the right to enter and investigate the Easement Area at any time to verify compliance with the conditions of this Easement and any Applicable Laws.

14. Enforcement. An action to enforce the terms and conditions of this Easement may be brought at law or in equity against any party or person violating or attempting to violate any provision of this Easement or provisions of any Permits or Applicable Laws, either to restrain violations or to recover damages. In the event it becomes necessary for any party to defend or institute legal proceedings to enforce the terms, covenants and conditions of this Easement, the prevailing party in such litigation shall recover from the other party all costs and expenses incurred or expended in connection therewith, including, without limitation, reasonable attorney's fees and costs, at all levels.
15. Venue and Jurisdiction; WAIVER OF JURY TRIAL. This Easement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms and conditions herein, exclusive venue for the enforcement of same shall be Miami-Dade County, Florida. This Easement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. BY ENTERING INTO THIS EASEMENT, GRANTOR AND GRANTEE EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS EASEMENT.
16. No Joint Venture. Nothing in this Easement shall be construed to create a joint venture, partnership, tenancy in common, or joint tenancy relationship between the Grantor and the Grantee, nor shall this Easement render either party liable for the debts or obligations of the other party.
17. Interpretation. No provision of this Easement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.
18. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.
19. Notices. Any notices required or permitted to be given under this Easement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to Grantee at:

MMS 7 Farrey LLC
1521 ALTON ROAD, No. 894
MIAMI BEACH, FL 33139

With a copy to:

Joseph I. Pardo, Esq.
Pardo Law PLLC
1205 Lincoln Road, Suite 211
Miami Beach, Florida 33139

If to Grantor:

City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Manager

With a copy to:

City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Attorney

Notices personally delivered or sent by overnight courier, or mailed in accordance with the foregoing shall be deemed given upon receipt. The terms of this Section shall survive any termination of this Easement.

20. Severability. If any clause or provision of this Easement is deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the validity of the remainder of this Easement shall not be affected thereby and shall be legal, valid and enforceable.
21. Entire Agreement; Recordation. This Easement constitutes the entire agreement between the parties hereto relating in any manner to the subject matter of this Easement, and shall be recorded by Grantee in the Public Records of Miami-Dade County, Florida, at its sole cost and expense. No prior agreement or understanding pertaining to same shall be valid or of any force or effect. This Easement may not be amended, modified or terminated except by a written instrument executed by the Grantor (through its City Manager) and Grantee, and which is recorded in the Public Records of Miami-Dade County, Florida. All provisions of this Easement, including the benefits and burdens of the same, are covenants that run with the land, are not intended to be executory in nature, and shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, legal representatives, successors and assigns.

SIGNATURE PAGES TO FOLLOW

WITNESSES:

GRANTEE

MMS 7 FARREY LLC, a Florida
limited liability company

Name: _____
Title: _____

Sign

Print Name

Address: _____

Sign

Print Name

Address: _____

STATE OF _____

COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me this ___ day
of _____, 2024, by _____ as _____ of
MMS 7 Farrey LLC, a Florida limited liability company. He is personally known to me
or produced valid _____ driver's licenses as identification.

Notary Public, _____
My commission expires:

WITNESSES:

GRANTEE

FARREY LN DG MASTER PLAN,
LLC, a Delaware limited liability
company

Name: _____
Title: _____

Sign

Print Name

Address: _____

Sign

Print Name

Address: _____

STATE OF _____

_____) ss:
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day
of _____, 2024, by _____ as _____ of
Farrey Ln DG Master Plan, LLC, a Delaware limited liability company. He is
personally known to me or produced valid _____ driver's licenses as
identification.

Notary Public, _____
My commission expires:

EXHIBIT "A"

[legal description of 6 Farrey Lane and 7 Farrey Lane]

Lot 6, SECOND SECTION BELLE ISLE VILLAS, according to the Plat thereof, recorded in Plat Book 42, at Page 100, of the Public Records of Miami-Dade County, Florida

Folio No. 02-3233-003-0060

Address: 6 Farrey Lane, Miami Beach, Florida 33139

Lot 7, SECOND SECTION BELLE ISLE VILLAS, according to the Plat thereof, recorded in Plat Book 42, at Page 100, of the Public Records of Miami-Dade County, Florida

Folio No. 02-3233-003-0070

Address: 7 Farrey Lane, Miami Beach, Florida 33139

EXHIBIT "B"

[legal description of Easement Area]

**Mortgagee Joinder and Consent
to
Grant of Easement for Air Rights**

City National Bank of Florida ("Mortgagee"), as owner and holder of that certain Mortgage, Assignment of Rents and Security Agreement by and between Farrey LN DG Master Plan, LLC, a Delaware limited liability company ("Mortgagor") and Mortgagee, recorded on November 3, 2021, in Official Records Book 32828, at Page 3065, of the Public Records of Miami-Dade County, Florida (the "Mortgage"), as modified by that certain 06/24 Mortgage Modification and Future Advance Agreement, recorded in Official Records Book 34295, at Page 352 and further secured by that certain UCC-1, recorded in Official Records Book 34295, at Page 359, all of the Public Records of Miami-Dade Records, hereby joins in and consents to the granting of this Grant of Easement for Air Rights (the "Easement") in favor of the Mortgagor under the Easement, all in accordance with the terms and conditions set forth in the Easement. Mortgagee agrees that in the event Mortgagee or any other party shall obtain title to any of the Mortgagor's Properties (as defined in the Easement) through foreclosure or deed-in-lieu of foreclosure, the Easement shall be superior in interest to the Mortgage and be binding upon the entity obtaining title as the then owner of Mortgagor's Properties.

City National Bank of Florida

By: _____

Print Name: _____

Address: _____

Print Name: _____

Title: _____

Address: _____

By: _____

Print Name: _____

Address: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization on this _____ day of _____, 20__ by _____ as _____ on behalf of City National Bank of Florida, on behalf of said company. He or she is () personally known to me or, () produced a _____ driver's license as identification.

Notary Public – State of _____

Print Name: _____

My Commission Expires: _____

**Mortgagee Joinder and Consent
to
Grant of Easement for Air Rights**

City National Bank of Florida ("Mortgagee"), as owner and holder of that certain Mortgage, Assignment of Rents and Security Agreement, dated October 25, 2021, by and between Farrey LN DG Master Plan, LLC, a Delaware limited liability company ("Mortgagor") and Mortgagee, recorded on November 3, 2021, in Official Records Book 32828, at Page 3065, of the Public Records of Miami-Dade County, Florida, in the original principal amount of \$720,000.00, as modified by that certain 06/24 Mortgage Modification and Future Advance Agreement, recorded in Official Records Book 34295, at Page 352, increasing the principal amount of the loan to \$723,016.27 (collectively, the "Mortgage") and further secured by that certain UCC-1 Financing Statement, recorded in Official Records Book 34295, at Page 359, of the Public Records of Miami-Dade County Florida, hereby joins in and consents to the granting of this Grant of Easement for Air Rights (the "Easement") in favor of the Mortgagor under the Easement, all in accordance with the terms and conditions set forth in the Easement. Mortgagee agrees that in the event Mortgagee or any other party shall obtain title to any of the Mortgagor's Properties (as defined in the Easement) through foreclosure or deed-in-lieu of foreclosure, the Easement shall be superior in interest to the Mortgage and be binding upon the entity obtaining title as the then owner of Mortgagor's Properties.

City National Bank of Florida

By: _____
 Print Name: _____
 Address: _____

 Print Name: _____
 Title: _____
 Address: _____

By: _____
 Print Name: _____
 Address: _____

State of _____
 County of _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization on this _____ day of _____, 20__ by _____ as _____ on behalf of City National Bank of Florida, on behalf of said company. He or she is () personally known to me or, () produced a _____ driver's license as identification.

 Notary Public – State of _____

 Print Name: _____
 My Commission Expires: _____

**Mortgagee Joinder and Consent
to
Grant of Easement for Air Rights**

City National Bank of Florida ("Mortgagee"), as owner and holder of that certain Mortgage, Assignment of Rents and Security Agreement, dated December 2, 2021, by and between MMS 7 Farrey LLC, a Florida limited liability company ("Mortgagor") and Mortgagee, recorded on December 13, 2021, in Official Records Book 32899, at Page 3537, of the Public Records of Miami-Dade County, Florida, in the original principal amount of \$2,650,000.00 (the "Mortgage"), hereby joins in and consents to the granting of this Grant of Easement for Air Rights (the "Easement") in favor of the Mortgagor under the Easement, all in accordance with the terms and conditions set forth in the Easement. Mortgagee agrees that in the event Mortgagee or any other party shall obtain title to any of the Mortgagor's Properties (as defined in the Easement) through foreclosure or deed-in-lieu of foreclosure, the Easement shall be superior in interest to the Mortgage and be binding upon the entity obtaining title as the then owner of Mortgagor's Properties.

City National Bank of Florida

By: _____
Print Name: _____

Address: _____

Print Name: _____
Title: _____
Address: _____

By: _____
Print Name: _____

Address: _____

State of _____
County of _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization on this _____ day of _____, 20__ by _____ as _____ on behalf of City National Bank of Florida, on behalf of said company. He or she is () personally known to me or, () produced a _____ driver's license as identification.

Notary Public – State of _____

Print Name; _____
My Commission Expires: _____

**Mortgagee Joinder and Consent
to
Grant of Easement for Air Rights**

Fryd Mortgage, LLC, a Florida limited liability company ("Mortgagee"), as owner and holder of that certain Mortgage and Security Agreement, dated August 23, 2022, by and between MMS 7 Farrey LLC, a Florida limited liability company ("Mortgagor") and Mortgagee, recorded on August 24, 2022, in Official Records Book 33351, at Page 371, of the Public Records of Miami-Dade County, Florida (the "Mortgage") and further secured by that certain Assignment of Leases and Rents, dated August 23, 2022, and recorded on August 24, 2022, in Official Records Book 33351, at Page 391, of the Public Records of Miami-Dade County, Florida, and further secured by that certain UCC-1 Financing Statement, recorded on August 24, 2022, in Official Records Book 33351, at Page 399, hereby joins in and consents to the granting of this Grant of Easement for Air Rights (the "Easement") in favor of the Mortgagor, all in accordance with the terms and conditions set forth in the Easement. Mortgagee agrees that in the event Mortgagee or any other party shall obtain title to any of Mortgagor's Properties (as defined in the Easement) through foreclosure or deed-in-lieu of foreclosure, the Easement shall be superior in interest to the Mortgage and be binding upon the entity obtaining title as the then owner of Mortgagor's Properties.

Fryd Mortgage, LLC

By: _____

Print Name: _____

Address: _____

Print Name: _____

Title: _____

Address: _____

By: _____

Print Name: _____

Address: _____

State of _____

County of _____

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization on this _____ day of _____, 20__ by _____ as _____ on behalf of *****, on behalf of said company. He or she is () personally known to me or, () produced a _____ driver's license as identification.

Notary Public – State of _____

Print Name; _____

My Commission Expires: _____