



To: Warren Adams, Historic Preservation Officer

From: Gustavo J. Ceballos, Assistant City Attorney

Approved By: Miriam Soler Ramos, City Attorney *MSR*

CC: Kara Kautz, Assistant Historic Preservation Officer

RE: Legal Opinion Regarding Transfer/sending of TDRs and issuance of a Certificate of TDRs from 235 Majorca Avenue

Date: October 5, 2022

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Section 14-204.4 of the City of Coral Gables Zoning Code provides for the process and procedures for transferring and sending of Transfer of Development Rights (“TDRs”). The transferring/sending of the TDRs is completed via the issuance of a Certificate of TDRs by the Historic Preservation Officer (“HPO”). In order for the HPO to issue the Certificate of TDRs the criteria listed under 14-204.4(B) of the Zoning Code must be complied with. This includes that the sending site be a local historic landmark, it be zoned Commercial, MF2, or MF3, it be located within the permitted boundaries, and that the Historic Preservation Board approve a maintenance/preservation plan. In addition to those requirements a property must not be subject to Code Enforcement violations.

The Zoning Code allows for the waiver of this Code Enforcement requirement by the City Attorney in consultation with City staff. In this instance, no expressed waiver was granted by the City Attorney pursuant to a stipulation or mitigation agreement. On March 4, 2020, the Historic Preservation Board approved the issuance of the Certificate of TDRs from 235 Majorca without any Code Enforcement violations conditions and the Historic Preservation Department staff subsequently complied with the Board’s approval through the issuance of an approval letter (Certificate of Transfer) on March 5, 2020<sup>1</sup>. Subsequently, the property owner

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<sup>1</sup> Although the City’s Zoning Code states that the HPO issues the Certificate of TDRs, it has been past practice for the Historic Department to take all request for transfer of TDRs to the Historic Preservation Board for approval.

reasonably relied upon such approval and initiated the sale of said TDRs. Accordingly, since the issuance of the Certificate of TDRs was approved and issued by the Historic Preservation Board and the Historic Preservation Department with no additional Code Enforcement conditions, then this requirement was therefore in effect waived.<sup>2</sup>

This opinion is based on the specific facts of this matter and pursuant to Section 2-252(e)(1) and (8) of the City Code and Section 14-107.2 of the City's Zoning Code, authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

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<sup>2</sup> It is important to note that a lien has been recorded against the property and the City is working to ensure compliance of all pending Code Enforcement violations.