To: Mayor, Commissioners, and Mr. Manager

From: Miriam Soler Ramos, City Attorney for the City of Coral Gables MSR

RE: Legal Opinion Regarding Ownership Required for Planned Area Developments and Mixed-Use Projects

Date: March 8, 2019

The City is currently engaged in negotiations with a private developer for the possible redevelopment, as part of a public-private partnership, of the lots located at 245 and 345 Andalusia Avenue, which are owned by the City and where City Parking Garages 1 and 4 currently exist. In one of the proposals submitted by the private developer, the City maintains fee simple ownership of the land and building (to be constructed) where Parking Garage 1 is located and the developer acquires fee simple ownership of the land and building (to be constructed) where Parking Garage 4 is located. As a result of this proposal, the question whether all lots in a Planned Area Development (PAD) or mixed-use project must have the same owner has arisen.[1]

With regard to PADs, Sec. 3-502(B)(19) of the Zoning Code explicitly states as follows:

> "Ownership of PAD. All land included within a PAD shall be owned by the applicant requesting approval of such development, whether the applicant be an individual, partnership or corporation, or **groups of individuals, partnerships or corporations**...[Emphasis added]"

The project under consideration is a public-private partnership and as such, having one City-owned lot and the other lot owned by the private developer is permissible under the Zoning Code section included above.

With regard to mixed-use projects, the Zoning Code is silent as to ownership requirements. In the area of zoning, there exists a body of case law that sets forth the doctrine that, "since zoning regulations are in derogation of private rights to ownership, words used in zoning ordinances should be given their broadest meaning when there is no definition or clear intent to the contrary and that these ordinance should be interpreted in favor of the property

[1] CAO 2018-032 concluded that FAR may be transferred throughout a "contiguous unified parcel" when the site is developed as either PAD or a mixed-use project and that, in fact, this site is a "contiguous unified parcel" since the parcels are only separated by a street and the Miracle Theater, which is considered public land.

owner." *Stroemel v. Columbia County*, 930 So. 2d 742, at 745 (Fla. 1st DCA 2006); Accord *Mandelsta v. City Commission of the City of South Miami*, 539 So. 2d 1139 (Fla. 3d DCA 1988); *Thomas v. City of Crescent City*, 503 So. 2d 1299 (Fla. 5th DCA 1987); *City of Hallandale v. Prospect Hal College, Inc.*, 414 So. 2d 239 (Fla. 4th DCA 1982); and *City of Miami Beach v. 100 Lincoln Road, Inc.*, 214 So. 2d 39 (Fla. 3d DCA 1968).

Accordingly, ownership by different individuals or entities should not prevent a mixed-use project. However, either a Unity of Title or a Declaration of restrictive covenant in lieu of Unity of Title, in compliance with the Zoning Code, should be executed and recorded to ensure that the lots are tied together. This is also consistent with Sec. 4-201(A)(4) of the Zoning Code which states that one of the purposes of the Mixed Use District is to, "[r]equire that property within the District will be developed through a unified design providing continuity among the various elements causing a better environment."

In consultation with special counsel, this opinion is issued pursuant to Sections 2-252(e)(1) and (8) of the City Code and Section 2-702 of the City's Zoning Code authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City. Further the Planning and Zoning Director is in agreement with this opinion.

March 2019

**CITY OF CORAL GABLES**
CITY ATTORNEY'S OFFICE

OPINION REGARDING OWNERSHIP REQUIRED FOR
PLANNED AREA DEVELOPMENTS AND MIXED-USE PROJECTS

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|---|---|
| **From:** | Ramos, Miriam |
| **To:** | Paulk, Enga |
| **Cc:** | Suarez, Cristina |
| **Subject:** | FW: Opinion regarding ownership of Garage 1 and 4 |
| **Date:** | Friday, March 08, 2019 3:11:18 PM |
| **Attachments:** | opinion - ownership - G 1 - 4.docx.pdf<br>image003.png<br>image004.png |

Enga, please publish.

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**From:** Ramos, Miriam
**Sent:** Friday, March 8, 2019 3:11 PM
**To:** Valdes-Fauli, Raul <rvaldes-fauli@coralgables.com>; Lago, Vincente <vlago@coralgables.com>; Keon, Patricia <pkeon@coralgables.com>; Quesada, Frank <frank@coralgables.com>; Mena, Michael <mmena@coralgables.com>; Iglesias, Peter <piglesias@coralgables.com>; Trias, Ramon <rtrias@coralgables.com>
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**Subject:** Opinion regarding ownership of Garage 1 and 4

Mayor, Commissioners, and Mr. Manager,

In response to the question that came up during yesterday's Sunshine Meeting regarding Garage 1 and 4, please find the City Attorney Opinion attached.

Please do not reply all and please call with questions.

*Miriam Soler Ramos, Esq., B.C.S.*
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