

**Memorandum**

**To:** Steve Patterson  
Jeff Grossfeld

**From:** Gary A. Saul  
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**Date:** 5 December 2017

**Re:** Coral Gables Garages

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The following is a summary of the proposed legal structure that we discussed for the redevelopment of the Coral Gables parking garages.

It is our understanding that each existing garage is intended to be demolished and then replaced with a structure (the “Project”) containing: (i) public parking (“City Parking”), (ii) some street level retail (“Retail”), (iii) an office tower at one garage and a residential component at the other garage (for simplicity in this memorandum, “Office”, recognizing that it will be residential in one location); (iv) parking to serve the Retail and Office, as distinguished from the City Parking (“Private Parking”) and (v) shared infrastructure, including the underlying land (“Shared Facilities”). For simplicity in this memo, each portion of the project which is intended for private ownership and use will be referred to as a “Parcel”, as distinguished from the Shared Facilities. Upon completion of the improvements, it is contemplated that the City of Coral Gables will have fee title to the City Parking, with you having title to the remaining Parcels and Shared Facilities.

All of the Parcels and Shared Facilities will be governed by a master set of covenants, conditions, restrictions and easements (the “Master Covenants”). The Master Covenants will, among other things, establish the boundaries of the various Parcels, create the easements necessary to facilitate the operation, repair, replacement and alteration of the Project, create certain use and architectural restrictions, allocate maintenance responsibilities for the Project among the Parcels and allocate financial responsibility for the operation, repair, replacement and alteration of the Project among the Parcels. By creating the Parcels via the Master Covenants, rather than through a condominium structure, you can avoid the overlay of the Florida Condominium Act, which would impose numerous provisions onto the Project that may or may not be consistent with the business deal that the parties agree upon. For instance:

(i) the Condominium Act contemplates that control of the common areas will be vested in an association, with a Board that changes periodically and mandates that control of the association must transfer from the original “developer” to “non-developer” owners based on

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certain defined thresholds. This creates constant fluctuation in controlling the Shared Facilities, which could be avoided in Master Covenants. The Master Covenants would dictate who would control the Shared Facilities, establish the standards for the operation, maintenance, repair and replacement of the Shared Facilities and establish protective remedies for the other owners if the articulated standards are not met. In a condominium structure, the unit owners have very little ability to exercise self-help when they feel that the Board is not properly upholding their responsibilities.

(ii) the Condominium Act dictates that each owner shall pay common expenses in accordance with its allocated ownership percentage of common elements. All costs must be allocated in the same manner. The Condominium Act does not allow the parties to vary the percentage of responsibility for costs on a line item by line item basis and/or allow an owner to be excused from payment of certain costs related to Shared Facilities. This rigid method for allocating costs would be avoided by use of Master Covenants. In the Master Covenants, the parties could allocate costs in any manner they choose.

(iii) the Condominium Act imposes routines for even the most basic day-to-day activities – meetings, posting of notices, maintenance of official records, voting, etc., all of which seems nonsensical when parties can more directly agree on what procedures they deem appropriate.

The reality is that by using Master Covenants, the parties can write an agreement that simply reflects their business deal. If instead, a condominium structure were used, you have the entire Condominium Act foisted into the document, whether visible or not. For these reasons, the Master Covenants structure has been used routinely to govern mixed-use projects, including at the following: Brickell CityCenter (hotel, retail, parking, two residential towers, two office towers), Four Seasons Miami (retail, office, hotel, spa, parking, residential condo parcel, condo hotel parcel), All Aboard Florida (retail, residential, office, train station), IconBrickell (hotel, residential, retail); downtown Whole Foods/Monarc apartments.

If you need further details, or have questions or comments, please let me know.