CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION 12-003

TO: Mayor and Members of the City Commission

FROM: Julie O. Bru, City Attorney JA+

DATE: March 2, 2012

RE: Ad Valorem Tax Exemption – Parking Garage Marlins Stadium

Matter ID No.: 07-776.003

You have asked:

WHETHER THE AD VALOREM TAX EXEMPTION UNDER ARTICLE VII, SECTION 3(a) OF THE FLORIDA CONSTITUTION APPLIES TO MUNICIPAL PARKING FACILITIES LEASED TO AND OPERATED EXCLUSIVELY BY THE CITY'S PARKING AGENCY.[1]

The answer is in the affirmative. Under Article VII, Section 3, of the Florida Constitution, all property owned by a municipality and used exclusively by it for municipal or public purposes is exempt from taxation. The Florida Supreme Court has concluded that the "municipal or public purposes" for which municipal owned property must be exclusively used to qualify for an ad valorem tax exemption encompasses activities that are essential to the health, morals, safety, and general welfare of the people within the municipality. *See* Article VII, Section 3(a), Florida Constitution.

The City of Miami (the "City") has financed and built parking structures and surface parking lots which will provide a total of 5,642 new off-street parking spaces in conjunction with Miami-Dade County's (the "County") development of a new major league baseball stadium for the Miami Marlins (the "Team").[2] The parking facilities have been developed and constructed by the City under an agreement entered into by and between the City, the County and Marlins Stadium Operator, L.L.C., (the "Stadium Operator"), dated April, 15, 2009 (the "City Parking Agreement").[3]

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[1] Any and all agreements, legislation, and references cited herein may be found at www.miamigov.com/cityattorney - click on "City Attorney Opinions".

[2] The County issued bonds for the construction and development of the baseball stadium. The public purposes of the County bonds were challenged and upheld by the trial court and the court of appeal. *See Braman v. Miami-Dade County,* 18 So.3d 1259 (Fla. 3d DCA 2009).

[3] Under the Assignment and Assumption Agreement dated May 7, 2010, (the "Assignment and Assumption Agreement"), *inter alia*, (i) the Stadium Operator has assigned to Stadium Parking, LLC ("Stadium Parking Operator"), all of Stadium Operator's rights under the City Parking Agreement to receive revenues derived from the use of the Parking Facilities for stadium events, and (ii) Stadium Parking Operator has assumed all of Stadium Operator's obligations to pay the City for (a) the advance bulk purchase of Parking Facilities spaces for MLB Home Games and (b) related taxes and surcharges on parking revenues for stadium events conducted by the Stadium Operator.

Under Section 23 of the Miami City Charter, the City's Department of Off-Street Parking, (the "Miami Parking Authority" or "MPA") which is a governmental agency, is vested with the responsibility for operation, management, and control of the off-street parking facilities of the City. Consequently, the City and MPA entered into the Miami Ballpark Parking Facilities Interlocal Cooperation & Lease Agreement, dated December 15, 2011 (the "MPA Lease"), whereby the City has leased to MPA all the real property related to the parking structures and the surface lots ancillary to the County's baseball stadium.

The City has condominiumized the real property related to the parking structures ancillary to the County's baseball stadium for purposes of discretely identifying those portions of the parking facilities that will be used by MPA for "municipal or public purposes" and those that will be sub-leased by MPA for commercial purposes including retail and entertainment. The multi-story parking structures and surface lots, including the areas therein that will be used for retail and commercial purposes will be referred to herein as the "Project".

The issue is whether the portions of the Project that will be used by MPA to provide public parking are exempt from ad valorem taxes. Accordingly, this opinion addresses the taxability of only the portions of the Project that will be used for parking purposes for which the City has submitted an application for ad valorem tax exemption dated March 1, 2012. These areas which are specifically identified in the legal descriptions in the attached Exhibit "A" shall hereinafter be referred to as the "Parking Facilities".

Based on the analysis below, I opine that the use of the Parking Facilities by MPA, for the operation, management and control of public off-street parking is a "municipal or public purpose" that qualifies for the constitutional ad valorem tax exemption. *See Florida Department of Revenue v. City of Gainesville,* 918 So.2d 250 (Fla. 2005) ("municipal or public purpose" for the ad valorem tax exemption encompasses activities that are essential to the health, morals, safety and general welfare of people within the municipality); *see also Boschen v. City of Clearwater,* 777 So.2d 958 (Fla. 2001) (courts have recognized health and safety concerns inherent in regulating traffic congestion); *Gate City Garage, Inc. v. Jacksonville,* 66 So.2d 653 (Fla. 1953) (regulation of traffic on streets, elimination of congestion and hazards to life and property, and safety and convenience of travelling public constitute a vital part of police power of municipalities).

LEGAL ANALYSIS

OVERVIEW OF THE PROJECT

On October 22, 2009, June 24, 2010 and July 8, 2010, the City authorized the issuance of special obligation parking revenue bonds that were subsequently issued on July 29, 2010 in two series on a tax-exempt and taxable basis. The bonds were issued to finance the costs of development and construction of the Project, that is an essential and necessary ancillary facility in connection with the County's baseball stadium (the "Stadium").[4] Approximately 5,642 new

[4] The two series of bonds issued for the Project are (1) $84,540,000 City of Miami, Florida Tax-Exempt Special Obligation Parking Revenue Bonds, Series 2010A (Marlins Stadium Project) for the public portions of the Project (the "Series 2010A Tax-Exempt Bonds") and (2) $16,830,000 City of Miami, Florida Taxable

parking spaces will be located adjacent to the Stadium. The Parking Facilities will be open, available and staffed as a public parking facility 24 hours a day, 365 days a year.

The City has relied on parking statistics that demonstrate a 24-hour use of other public parking facilities within a 5/8th mile radius of the Project at a rate in excess of the number of new parking spaces to be provided by the Project. Additionally, the area surrounding the Project is an area designated for economic development by the City and the City anticipates and expects that the surrounding area will be the subject of commercial development, resulting in a concurrent anticipated increase in general public use demand for the Project and the Parking Facilities in particular.

The Project is being financed by the City's pledge as security for the bonds of (i) the City's portion of the proceeds of the tax imposed by the County on transient rental accommodations as authorized by the Convention Development Tax Act, (ii) eighty percent (80%) of the City's Parking Surcharge which is derived from the Parking Facilities as authorized pursuant to Section 166.271, Florida Statutes (2011), and (iii) all parking fees and charges received by the City from the Stadium Operator in connection with Major League Baseball Home Games. These revenues include a negotiated bulk sale of every available parking space for every one of the 81 home games and the special stadium events (the "Stadium Event Parking").

The City has determined that the total annual parking spaces hours available for all uses at the Parking Facilities is 49,423,920 hours (365 days x 24 hours x 5642 spaces). The annual parking spaces hours allocated to exclusive use for the Stadium Operator reserved uses is 2,190,000 hours (365 days x 24 hours x 250 spaces) (the "Team Reserved Parking").[5] The total annual parking spaces hours allocated to the home game day spaces is 4,367,520 (81 games x 10 hours per game x 5,392 spaces). The City has determined that a reasonable estimate of game day use by persons attending a game is 10 hours, which leaves 14 remaining hours available for use by MPA each game day. Parking spaces hours allocated to special events is 808,800 (25 special events x 6 hours x 5,392 spaces). Although the City Parking Agreement does not establish a maximum number of special events, the City and the Stadium Operator do not expect more than 10 a year, but assuming that 25 special events could be scheduled in a year is a reasonable basis for the foregoing calculation regarding the allocation of use of the Parking Facilities.

Therefore, the City has concluded that the reasonably expected average use of the Parking Facilities by the Stadium Operator equals 7,366,320 annual parking spaces hours, or 14.9% of the total available annual parking spaces hours (7,366,320/49,423,920).

Special Obligation Parking Revenue Bonds, Series 2010B (Marlins Stadium Project) for the commercial and retail portions of the Project (the "Series 2010B Taxable Bonds").

[5] Under Article 6.1 of the City Parking Agreement, the Stadium Operator, the Team and their employees and guests have exclusive use of 250 parking spaces in the Parking Facilities, at no cost, on a 24 hour a day basis throughout the term of the City Parking Agreement. The Team Reserved Parking shall be separately secured and the Stadium Operator is responsible for paying all of the City's incremental costs incurred or requested by the Stadium Operator in separately securing the spaces, such as additional fencing or security cameras.

The Miami-Dade County Property Appraiser questions whether the financing structure described above resulting in the advance purchase and exclusive use by the Stadium Operator of approximately 14.9% of the total available annual parking spaces hours under the City Parking Agreement constitutes a lease to a non-governmental lessee subject to ad valorem taxes. The answer turns on whether the City Parking Agreement constitutes a lease or merely provides a financing arrangement that helped to defray the City's funding contribution towards the development and construction of an essential ancillary facility to the County owned Stadium.

THE CITY PARKING AGREEMENT DOES NOT CONVEY A LEASEHOLD INTEREST IN THE CITY OWNED PARKING FACILITIES TO THE STADIUM OPERATOR

The provisions of Article VII, Section 3(a) of the Florida Constitution which are both self-executing and mandatory, provide that all property owned by a municipality and used exclusively by it for a municipal or public purpose shall be exempt from taxation. The Florida legislature has implemented this constitutional mandate by removing from the exemption afforded to municipal owned property all leasehold interests which do not serve or perform a governmental, municipal, or public purpose or function as defined in Section 196.012(6), Florida Statutes (2011), thereby subjecting the leasehold interest of the non-governmental lessee to ad valorem taxes.

Specifically, Section 196.001, Florida Statutes (2011), provides:

> § 196.001. Property subject to taxation
> Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
> (1) All real and personal property in this state and all personal property belonging to persons residing in this state; and
> (2) *All leasehold interests in property of* the United States, of the state, or any political subdivision, *municipality*, agency, authority, or other public body corporate of the state. (Emphasis supplied).

The provisions of the City Parking Agreement under which the Stadium Operator gets exclusive year round use of 250 reserved parking spaces, and exclusive use of the home game days parking hours, and the special events parking hours do not constitute a conveyance of a leasehold interest.

While it is generally recognized that tax exemption provisions must be strictly construed in favor of the taxing agency and against the taxpayer, nonetheless such construction must be fair and reasonable with due regard for the ordinary meaning of the language used and the objective sought to be accomplished. The City Parking Agreement provides that the Team and its employees and guests shall have exclusive use of 250 of the parking spaces at the Parking Facility at no cost, on a 24 hour a day basis, year round. Why do the Stadium Operators and the Team need those spaces year-round? Because under the Operating Agreement with the County, the Team and the Stadium Operator maintain their daily business operation offices at the Stadium and the necessary required ancillary parking is to be located and provided by the City at

the Parking Facilities.[6] Additionally, the City has sold and the Stadium Operator has purchased 5,175,520 hours of parking spaces hours out of the total available annual parking spaces hours of 49,423,920. Such use of parking spaces by the Stadium Operator constitutes, at most, a license.

The City Parking Agreement grants exclusive "use," of the Team Reserved Parking and the advanced purchased parking space hours, not exclusive "possession" of the Parking Facilities. *See* 34 Fla.Jur.2d *Landlord and Tenant* §§ 30, 35 (2011) (requiring exclusive possession for existence of lease); 4-50 Fla. Real Estate Trans. *Landlord and Tenant* §50.04 (2011) (same); *State Road Department v. White*, 148 So.2d 32, 34 (Fla. 2d DCA 1962) (lease as equivalent to absolute ownership).

What constitutes a "leasehold interest"?

A lease is a conveyance by the owner of an estate to another of a portion of his or her interest therein for a term less than his or her own, and it passes a present interest in the land for the period specified. 34 Fla.Jur.2d *Landlord and Tenant* § 30 (2011).

The typical factors indicating that an arrangement is a lease, as opposed to a license, include the following: (1) periodic rent is to be paid on the premises; (2) the agreement is for a definite term of years; (3) the agreement is referred to as a lease; (4) the "lessee" has exclusive possession of a particularly described area; and (5) the parties intended a lease. 4-50 Fla. Real Estate Trans. *Landlord and Tenant* §50.04 (2011) (citing *Bodden v. Carbonell,* 354 So.2d 927 (Fla. 2d DCA 1978)). A lease and a license can be distinguished as a tenant in a lease has a right to exclusive possession of a defined physical area while a licensee does not. *Id.*

Importantly, under Florida law, a lease is an agreement that transfers "exclusive possession of lands, tenements, or hereditaments for life, for a term of years, or at will, usually for a specified rent or compensation; it creates in the lessee an interest in the real estate." 34 Fla.Jur.2d *Landlord and Tenant* § 30 (2011). "A lessee's possession of the leased premises is essential to the character of a lease. To create a leasehold estate, the tenant must be vested with exclusive possession of the property, even against the owner of the fee." 34 Fla.Jur.2d *Landlord and Tenant* § 35 (2011).

"Inherent in a leasehold interest is the right to possession, and something less than the right to possession cannot constitute lease." 34 Fla.Jur.2d *Landlord and Tenant* § 30 (2011). A lessee's interest in a leasehold estate is thus stated: "During the life of a lease, the lessee holds an outstanding leasehold estate in the premises, which for all practical purposes is equivalent to absolute ownership. The estate of the lessor during such time is limited to his reversionary interest, which ripens into perfect title at the expiration of the lease." *State Road Department v. White*, 148 So.2d 32, 34 (Fla. 2d DCA 1962) (emphasis added).

The parties to the City Parking Agreement did not intend to create a leasehold interest.

[6] The Operating Agreement, dated April 15, 2009, by and among the County, the Stadium Operator, the Team, and the City grants to the Stadium Operator the exclusive right to manage and operate the County owned baseball stadium for a term of 35 years.

In this case, it is clear from the plain language of the City Parking Agreement that there was no intent by the parties to create a lease. The parties, including the County, did not use the term "lease" anywhere to describe the agreement. The agreement specifically provides that the contract is solely for the "construction, operation, and use of the parking facilities to be made available to users of the Baseball Stadium." *See* Recital C. The agreement states only that "No partnership or joint venture is established among the Parties under this Agreement," and does not contain any indicia that the parties intended to create a landlord/tenant relation.

Under Article III, Section 3.3, the City Parking Agreement terminates for the Stadium Operator if the Operating Agreement for the Stadium (between County and Stadium Operator) terminates; however, the City Parking Agreement would continue between the City and the County in that circumstance with the County either managing and operating the Stadium itself or finding a new, different operator for the Stadium. Hence, the clear language of the City Parking Agreement, defies any interpretation that the parties intended to enter into a lease agreement.

"When the language of a contract is clear and unambiguous, courts must give effect to the contract as written and cannot engage in interpretation or construction as the plain language is the best evidence of the parties' intent." *Talbot v. First Bank Fla.*, 59 So.3d 243, 245 (Fla. 4th DCA 2011).

Under the City Parking Agreement the City retained all the indicia of ownership, possession and control thereby negating that the Stadium Operator's use of the 14.9% of available annual parking spaces hours constitutes the exercise of any right or power over the Parking Facilities incident to the ownership of the property.

As further evidence of the absence of a "lease" between the City and the Stadium Operator, the City Parking Agreement expressly describes and ascribes to the City all of the indicia of ownership, possession and control. For example, under the City Parking Agreement, the City manages and controls the design of the Parking Facilities. *See* Section 4.1. The City is also responsible for managing, directing, supervising, coordinating, and controlling the construction of the Parking Facilities. *See* Section 4.4. The City is required to "operate and provide access to" the Parking Facilities as set forth in the City Parking Agreement. *See* Article II.

Specifically, subject only to the provisions of the Article VI of the City Parking Agreement which describes the advance purchase of the Stadium Event parking hours and the allocation of Team Reserved Parking, Article V of the City Parking Agreement describes the City's exclusive use, operation, management and control of the Parking Facilities. Additionally, subject only to the fees negotiated for the aforementioned advanced purchased parking spaces and the City's obligation to provide Team Reserved Parking spaces, the City has the right to establish prices for, and to collect and retain, all parking fees in the Parking Facilities. *See* Section 5.2. In fact, even for Stadium Events, the City still controls the operation of the Parking Facilities and provides the cashiers and all other personnel necessary to meet the operating standards that have been agreed to by the parties. All Parking Facilities personnel are considered employees of the City or MPA, not of the Stadium Operator.

Indeed, the City Parking Agreement provides that the City has the exclusive right, authority and responsibility to operate, manage, maintain and control the Parking Facilities on a year-round basis. These rights are specifically described in the City Parking Agreement and include:

(a) determining staffing levels, scheduling hours of operation and establishing parking rates for the Parking Facilities;[7]

(b) Employing, terminating and supervising all personnel necessary for the operation of the Parking Facilities, including cashiers, maintenance crews and security personnel;

(c) Procuring and entering into contracts for the furnishing of all utilities, equipment, services and supplies necessary for operation of the Parking Facilities;

(d) Performing, or causing to be performed, all maintenance and repairs;

(e) Maintaining or causing to be maintained all necessary licenses, permits and authorizations for the operation of the Parking Facilities;

Finally, subject to certain limited exceptions, the Stadium Operator is not permitted to sell, assign, convey, transfer, pledge or otherwise dispose voluntarily or involuntarily of any of its rights under the City Parking Agreement without the prior written consent of the City. *See* Section 11.9.

In contrast to the City Parking Agreement, the *Garage Easement Agreement* between the Miami Beach Redevelopment Agency[8] and Miami Beach Redevelopment, Inc. ("MBRI"), dated September 20, 1996, effectuates a conveyance of exclusive possession of a parking garage. The *Garage Easement Agreement* served to accommodate the required parking needs of the Loews Miami Beach Hotel, which was to be owned, developed and operated by MBRI, a non-governmental entity. Under the *Garage Easement Agreement,* MBRI is granted exclusive use of 560 out of 800 parking spaces. *See Garage Easement Agreement,* Recital A, B. Under that agreement, MBRI pays an annual user fee of $550,000. *See* Section 4. However, MBRI is paid up to 41.7% of the gross parking revenues. *See* Section 4. Moreover, the garage is operated by a private entity selected by the Miami Beach Redevelopment Agency ("Agency"). *See* Section 5.

Importantly, under the *Garage Easement Agreement,* the Agency is severely limited in its ability to convey or otherwise dispose of the property. *See* Section 27. To this end, MBRI has a right to first offer of sale of the property. *See* Section 27. Further, the Agency cannot sell a

[7] Subject to the schedule of rates established under Section 6.3 that represents the negotiated in advance purchase of available parking spaces hours for each home game.

[8] The Miami Beach Redevelopment Agency was created in 1973 under the authority of Florida's Community Redevelopment Act of 1969.

portion of the property. *See* Section 27. Even if MBRI refuses to purchase the property, the ultimate purchaser must grant the same easement to MBRI. *See* Section 27.

Consequently, the City Parking Agreement bears no resemblance to the *Garage Easement Agreement.* Specifically, the amount of parking spaces conveyed to MBRI is substantial; MBRI is paid almost 50% of the gross revenues; the garage is operated by a private entity; and the Agency is significantly limited is its ability to dispose of the property.

Under the MPA Lease, the City's parking agency has exclusive possession, use and control of the Parking Facilities.

Pursuant to the MPA Lease, MPA has assumed responsibility for the management and operation of the Project including the Parking Facilities.[9] The City's conveyance of a leasehold interest to MPA in 2011 is inconsistent with a finding that the advance purchase of parking spaces hours contained in the City Parking Agreement constituted a conveyance of a leasehold estate to the Stadium Operator.

Under the City Parking Agreement, the purpose of the MPA Lease was "to accomplish various governmental purposes, including the City's obligations set forth in the City Parking Agreement, to promote economic development, provide the public with convenient and affordable parking, and to maximize the revenues generated by the Project, thereby providing the City with additional monies to achieve the improvement of the City overall."

To effectuate the above purpose, the City and the MPA, using clear language, agreed to the following: "The City hereby leases to the MPA, and the MPA hereby leases from the City, subject to the terms and conditions of this Agreement, to have and to hold, the Property, tenements and hereditaments, with all of the rights, privileges and appurtenances, thereunto belonging and pertaining unto the MPA for the term." *See MPA Lease,* Section 3.2. The MPA therefore agreed to operate, manage, direct, and supervise the use of the Parking Facilities. *See MPA Lease* Section 4.1. "Subject to the scheduling priorities set forth in the City Parking Agreement, the MPA agrees to operate and make available to the public, the Parking Facilities, on a twenty-four (24) hour per day/seven (7) day per week basis." *See MPA Lease* Section 4.1.1. This agreement constitutes a lease; the City Parking Agreement does not.

The use by the Stadium Operator of 14.9% of the total available annual parking spaces hours as a result of the advance purchase negotiated in the City Parking Agreement is not inconsistent with a finding that the Parking Facilities are being used exclusively by the City for a municipal or governmental purpose.

Under Section 196.012(1) (2011), Florida Statutes, "*Exempt use of property*" or "*use of property for exempt purposes*" means predominant or exclusive use of property owned by an exempt entity for educational, literary, scientific, religious, charitable or governmental purposes. Under Section 196.012(3), Florida Statutes, (2011), "*Predominant use of property*" means use of property for exempt purposes in excess of 50%, but less than exclusive. Additionally, under

[9] Under Section 23 of the City Charter, the MPA which is a governmental agency is vested with responsibility for operation, management, and control of the off-street parking facilities of the City.

Section 196.012(4) Florida Statutes, (2011) "*Use*" means the exercise of any right or power over real or personal property incident to the ownership of the property.

The City's negotiated sale to the Stadium Operator of 14.9% of the total number of available annual parking spaces hours does not remove the City's constitutional exemption because such bulk sale of parking spaces hours does not convey to the Stadium Operator the *exclusive possession* of the parking spaces. It merely guarantees that 14.9% of the total number of available annual parking spaces hours will be available to the Stadium Operator for use in connection with Stadium Events in exchange for the payment to the City of the negotiated parking revenues. That "*use*" is clearly not the exercise of any right or power over real or personal property incident to the ownership of the property as described in Section 196.012(4), Florida Statutes (2011). Indeed, the projected 14.9% use by the Stadium Operator is far less than the "in excess of 50%" that would be required to negate the MPA's *predominant use* of the Parking Facilities for governmental, municipal, or public purposes or functions under Section 196.012, Florida Statutes (2011). Accordingly, the MPA is the predominant user of the Parking Facilities and the governmental use tax exemption remains intact. During the estimated 85.1% of the total available annual parking spaces hours of operation, not only MPA, and the general public are able to continue public use of the Parking Facilities, but the County also has access to use those same Parking Facilities for County events at the Stadium.

The City Parking Agreement here is comparable to the contract in *Turner v. Florida State Fair Authority,* 974 So.2d 470 (Fla. 2d DCA 2008). In the *Turner* case, the Florida State Fair Authority ("Authority") challenged an assessment of ad valorem taxes for two years against part of the Florida State Fairgrounds. *Id.* The Appraiser made the assessment after the Authority had entered into a written agreement that permitted Roadmaster Driver's School, Inc. to use part of the Fairgrounds to operate its truck-driver school at times when the Authority did not require use of the property. *Id.* at 471.

The agreement between Roadmaster and the Authority provided that Roadmaster shall have a nonexclusive license to occupy the licensed premises during hours necessary for it to operate its truck driver school. *See Contract for Roadmaster Driver's School, Inc.,* Section 1. The agreement provided that Roadmaster would be the exclusive truck driver school located on the Fairgrounds. *See* Section 1. The agreement permitted Roadmaster to have and maintain on the premises a one-quad wide manufactured building and trucks, vehicles, and other equipment as necessary to operate a truck driver school. *See* Section 2. During daily business operations, Roadmaster was permitted to place on the premises the vehicles of its employees, clients, guests, and students. *See* Section 2. Roadmaster was required to *inter alia* keep the premises and all improvements thereon in good condition and repair; maintain the lighting system and the fixtures on the premises in good condition, repair, and in working order; pay the costs of utilities used in connection with Roadmaster's use of the premises; maintain electrical fixtures on the premises; arrange for and pay costs of security; and maintain septic tanks and/or sanitary sewer facilities necessary for operation of truck driver school. *See* Section 5. The agreement was for five years. Monthly payments ranged from $7,562.50 to $8,333.33. *See* Section 7. Roadmaster was required to pay a security deposit of $5,000. *See* Section 7. The agreement could be assigned only with the consent of the Authority. *See* Section 15.

The Second District in *Turner* found that the agreement did not create a taxable leasehold interest:

> A tenant under a lease is one who has been given a possession of land which is exclusive even of the landlord except as the lease permits his entry, and saving always the landlord's right to enter to demand rent or to make repairs. A licensee is one who has a mere permission to use land, dominion over it remaining in the owner and no interest in or exclusive possession of it being given to the occupant.

Id. at 473-474.

The court ruled that the agreement merely permitted Roadmaster to "use the subject parcel at designated times for its truck-driver school under detailed terms and conditions"; it did not make Roadmaster a tenant or give it any interest in the subject parcel. Fla. Stat. 196.199(4) was thus inapplicable and the property was not subject to ad valorem taxation.

Finally, similar to the issue at hand, the Florida Third District Court of Appeal ("Third DCA") has considered the ad valorem tax exemption in the context of the municipal operation of a recreational marina. In *Islamorada, Village of Islands v. Higgs,* 882 So.2d 1009 (Fla. 3d DCA 2003) (rehearing en banc denied), the Village exclusively owned and operated a marina for the purpose of serving the recreational needs of both its residents and the general public. Boat slips at the marina were rented on a daily, weekly, monthly or annual basis. The Property Appraiser denied the Village's application for exemption of ad valorem taxation for the Marina. The issue before the Third DCA was whether a marina that was owned and operated by a municipality was entitled to an ad valorem tax exemption when the marina served both residents and nonresidents, despite operating in competition with other marinas in the area and generating a profit. The Third DCA ruled in favor of the Village, holding that the marina was entitled to the tax exemption, as the Marina existed and operated for the comfort, convenience, safety, and happiness of the citizens of the Village.

CONCLUSION

The operation of off-street parking facilities has long been recognized in this state and throughout the country as essential to the public safety. It is unquestionable that a large portion of the population that will be attending events and otherwise visiting the County owned Stadium will travel from one place to another by automobile or other means of transportation that use the City's streets. The resulting traffic congestion and gridlock will directly affect the safety of pedestrians on the City streets and the value and protection of the quality of life in the adjacent residential areas. Consequently, it is unquestionable that providing off-street parking at the Parking Facilities encompasses activities that are essential to the health, morals, safety, and general welfare of the people within the City.

Additionally, the foregoing analysis of the relevant documents and agreements related to the leasing and financing of the Parking Facilities, and the pertinent constitutional and statutory provisions governing ad valorem tax exemption of municipal owned property, establishes that

the Parking Facilities are owned by the City and used exclusively by it through MPA for an essential municipal or public purpose. The financing structure consisting of the Stadium Operator's advanced purchase of Stadium Event Parking and the City's obligation to provide the year round parking required by the Operator of the County owned Stadium do not constitute leases. Such incidental use by the Stadium Operator does not defeat the tax exemption of this City owned and used property.

Finally, the parking revenue structure that was negotiated with the Stadium Operator was intended to provide a dedicated source of funding to pledge in connection with the bonds that have been issued for the development and construction costs associated with the Project. It would be inequitable and contrary to existing case law to remove the constitutional tax exemption of the public Parking Facilities where the use of parking spaces by the Stadium Operator constitutes less than 15% of the available parking hours and was an essential and integral part of the overall development by the County of the Stadium.[10]

Thus, for the reasons expressed above the Parking Facilities properties are exempt from taxation under Article VII, Section 3(a), of the Florida Constitution.

[10] Previously, the County and the City made multiple findings and entered into numerous documents evidencing the public purposes and uses of both the Stadium and the Project. The attached County Commission Resolution No. 188-08, adopted February 21, 2008, and City Commission Resolution No. R-08-0089, adopted February 21, 2008, authorized the initial Baseball Stadium Agreement, subsequently executed as of March 3, 2008, and evidenced the intentions, *inter alia,* to issue bonds and commit public funding by both the City to the Stadium infrastructure and the Project, and by the County to the Stadium in addition to funding for the Stadium by the Stadium Operator. Subsequently in addition to the City Parking Agreement, the City Commission pursuant to Resolution No. R-09-130 adopted March 19, 2009 and the County Commission pursuant to Resolution No. R-318-09 adopted March 23, 2009 (both attached) authorized, among other documents the Construction Administration Agreement and the Operating Agreement, both executed April 15, 2009, among the County, the City and the Stadium Operator to set forth the terms and conditions surrounding the construction and operation of the Stadium and the relationship to the City Parking Agreement. Additionally, on July 1, 2009, by Interlocal Agreement, the County and the City reallocated specified portions of the Convention Development Tax in order to assist with designated revenues pledges by the County for financing construction through its Stadium bonds and by the City for financing construction of the Project through its parking revenue bonds.

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
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