

MEMORANDUM

Date: May 8, 2020

To: City of New Port Richey, Florida (the "City")

From: Bryant Miller Olive P.A.

Re: Proposed Parking Garage Financing

The City has asked for our advice as to whether a proposed parking garage to be constructed within the City (the "Garage") could be financed in whole or in part from proceeds of the issuance of tax-exempt debt. The approximately 350-space Garage will be owned by the City on land contributed by Keenan Development (the "Developer"), and will be adjacent to commercial project to be owned by the Developer and leased to Keiser University, a section 501(c)(3) tax-exempt organization ("Keiser"). As part of the Developer's agreement with the City, Keiser would have the right to exclusive use of approximately 140 spaces in the Garage on a long-term basis. The remaining spaces in the Garage would be used by the City for public parking. In addition, the Developer will agree to pay the portion of the annual operating and maintenance expenses of the Garage attributable to the 140 spaces to be occupied by Keiser. Based upon our previous discussions with City staff, we are assuming that the Developer will have a long-term right to use the 140 spaces even if Keiser is no longer the tenant in its project.

The City's ability to issue tax-exempt bonds to finance the Garage will depend on whether such bonds would constitute "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code") and the Regulations thereunder. With certain limited exceptions, interest on private activity bonds issued by a State or local government is not excluded from gross income for federal tax purposes. Under Section 141 of the Code, a bond is a private activity bond if (1) more than 10% of the proceeds of such bond is used in a trade or business carried on by a nongovernmental person (the "private business use test"), and (2) the payment of more than 10% of the debt service on the bond issue is directly or indirectly derived from payments in respect of property used for a private trade or business (the "private payment test").

As a result of the Developer's and Keiser's long-term control and use of 140 spaces in the Garage (more than 10%), bonds issued by the City to finance the Garage in its entirety would meet the private business use test described above. Whether the bonds would constitute an issue of taxable private activity bonds will depend on whether the private payment test described above is also satisfied. Under the proposed business arrangement for the Garage, the only payments being made by a private user of the facility would be the Developer's payments of the annual operation and maintenance costs for the Garage attributable to the 140 spaces used by Keiser. It is our understanding that neither the Developer nor Keiser will make any lease

payments to the City for the use of the 140 spaces. Under a special rule in the IRS Regulations, payments made by a private user of a bond financed facility as a reimbursement for the operation and maintenance costs attributable to their use of the facility will not be treated as private payments for purposes of applying the private payment test. Based upon the proposed business arrangement for the use of the Garage, there would be no private payments to the City and any bonds issued to finance the construction of the Garage would not meet the private payment test described above. As a result, despite the Developer's and Keiser's long-term use rights to the 140 spaces, bonds issued by the City to finance the construction of the garage should be able to be done on a tax-exempt basis.