

SUPREME COURT OF FLORIDA

Case No: **SC22-741**

CITY OF GULF BREEZE, a
municipal corporation,

Petitioner,

L.T. Case Nos.:
1D19-4245
57-2017-CA-12

vs.

GREGORY S. BROWN, as
Santa Rosa County Property
Appraiser, et al.,

Respondents.

_____ /

**ANSWER BRIEF OF RESPONDENT
GREGORY S. BROWN, SANTA ROSA COUNTY
PROPERTY APPRAISER**

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PRELIMINARY STATEMENT

Petitioner, City of Gulf Breeze will be referred to herein as the “City.” Respondent, Gregory S. Brown, Santa Rosa County Property Appraiser, will be referred to herein as the “property appraiser.” References to the record on appeal will be delineated as (R-page #). References to Petitioner’s Initial Brief on the Merits will be delineated as (IB-page #). References to Amicus Curiae Brief of Florida League of Cities, Inc., will be delineated as (AB-page #).

STATEMENT OF THE CASE AND FACTS

This ad valorem tax case involves the taxable status of a city-owned golf course, driving range, clubhouse, restaurant, bar, and pro shop (golf course facilities). Although the City initially operated the golf course facilities after acquiring them, it subsequently entered into an agreement with a for-profit golf course management company to be responsible for the day-to-day operations. (R-39, 713, 7769) As a result, the property appraiser determined that the golf facilities were no longer entitled to the exemption for property owned by a municipality and used exclusively by it for municipal or public purposes as set forth in Article VII, Section 3, Florida Constitution.

The First District Court held that the golf course facilities were taxable. *Brown v. City of Gulf Breeze*, 336 So.3d 1226 (Fla. 1st DCA 2022). A “municipal-owned golf course, even if open to the public, is not used *exclusively* for a municipal or public purpose when it is operated by a private company that retains the profits generated from the use of the property.” *Id.* at 1230 (italics in original). The district court certified the following question to this Court:

IS A CITY'S PUBLIC GOLF COURSE STILL BEING 'USED EXCLUSIVELY BY IT FOR MUNICIPAL OR PUBLIC PURPOSES,' SO THAT IT REMAINS TAX EXEMPT UNDER ARTICLE VII, SECTION 3 OF THE FLORIDA CONSTITUTION, IF THE CITY TURNS THE COURSE AND ITS APPURTENANT FACILITIES OVER TO A PRIVATE BUSINESS TO OPERATE AND MANAGE FOR THE BUSINESS'S OWN PROFIT OR LOSS, IN RETURN FOR AN ANNUAL FEE THAT THE BUSINESS PAYS TO THE CITY FOR THE PRIVILEGE?

Id. at 1237. This Court respectfully is requested to answer the certified question in the negative and approve the First District Court's decision.

The City acquired what was known as the Tiger Point Golf and Country Club (Tiger Point) in 2012, which included the golf course facilities and another 18 holes referred to as the "West Course." (R-3804-5) Tiger Point was part of a residential subdivision located outside of the City boundaries. (R-7764)

The West Course included 9 operational holes and 9 closed holes. (R-4489-90) The operational 9 holes subsequently closed. (R-4491) In the tax years subsequent to the acquisition of the West Course, the property appraiser exempted it from ad valorem

taxation as city-owned and maintained property and it was not involved in the instant case. (R-4287, 7753)

To obtain the funds necessary to finance the purchase of Tiger Point, the City drew on a \$3 million line of credit. (R-3784, 6743) The City later secured permanent financing. Revenue bonds were issued to repay the loan. (R-6273-6276) The City pledged revenues of the utility system to secure the revenue bonds. (R-6276)

For tax years 2013-2015, the property appraiser recognized the golf course facilities as exempt from ad valorem taxation. (R-4279) During that time, the City owned and operated the property. (*Id.*)

In October 2015, the City entered into an Agreement with an independent contractor, Integrity Golf, LLC (Integrity Golf), to conduct the day-to-day operations of the golf course facilities. (R-033, 1766, 7670) The Agreement required Integrity Golf to pay a fee to the City for the right to operate the golf course, driving range, clubhouse, restaurant, bar, and pro shop. Integrity Golf was entitled to all profits generated by its operations; subject to a portion of the profits being owed to the City if certain gross revenue thresholds were accomplished. (R-033-073)

The term of the Agreement was for seven years, with consecutive five-year renewals thereof. (R-038-9) The Agreement required Integrity Golf to annually pay the greater of \$100,000 or a percentage of the gross revenues to the City for the right to generate and retain profits from the operation of the golf course. (R-041) The Agreement provided that:

As payment for managing, operating and maintaining the Facility, for each Fiscal Year during the term of this Agreement *Contractor shall be entitled to retain the Profits from operations of the Facility resulting during that Fiscal Year provided that Contractor has paid an 'Annual Fee' to the City as follows:*

A. If Fiscal Year Gross Revenues are Less Than \$2,500,000.00: During each of the first three Fiscal Years during the Initial Term hereof, Contractor shall pay an Annual Fee to the City that is the greater of \$100,000.00 or five percent (5%) of Gross Revenues realized during that Fiscal Year. For each Fiscal Year thereafter, including such Fiscal Year in an Extension Term, Contractor shall pay an Annual Fee to the City that is the greater of \$100,000.00 or seven percent (7%) of the Gross Revenues realized during that Fiscal Year.

B. If Fiscal Year Gross Revenues Equal or Exceed \$2,500,000.00: During each of the first three Fiscal Years during the Initial Term hereof, Contractor shall pay an Annual Fee to the City that is the greater of \$100,000.00 or seven percent (7%) of Gross Revenues realized during that Fiscal Year. For each Fiscal Year thereafter, including such Fiscal Year in an

Extension Term, Contractor shall pay an Annual Fee to the City that is the greater of \$100,000.00 or nine percent (9%) of the Gross Revenues realized during that Fiscal Year.

(Id., emphasis added)

In addition to the annual fee, Integrity Golf was responsible for the payment of “all future taxes and assessments, including but not limited to ad valorem taxes, . . . charged or imposed on the Facility, including but not limited to improvements and equipment.” (R-056-7) Integrity Golf further agreed to indemnify and defend the City for any claim related to all future taxes and assessments, including ad valorem taxes. (R-057)

The Agreement required Integrity Golf to manage and operate the golf course facilities as an 18-hole championship golf course and such other City-approved uses and amenities. (R-039) Integrity Golf was responsible for performing all tasks that may be reasonably necessary or appropriate in connection with the operation, management, promotion, maintenance, repair, and upkeep of the facilities. (R-039-073) All costs and expenses relating to the operation, maintenance, and use of the facilities were the responsibility of Integrity Golf. (R-039) It was required to make

capital improvements, repair and maintain the property during the term of the Agreement, and pay all utilities. (R-044-5)

Integrity Golf was required to perform all food and beverage operations at the facilities. (R-046-7) All revenue from food and beverage operations was to be included in gross revenues. (R-046) All operating expenses for food and beverage operations was the responsibility of Integrity Golf. (*Id.*) Integrity Golf was to obtain a liquor license. (*Id.*) The City, however, reserved the right to transfer food and beverage operations to a third party. (*Id.*)

Upon expiration of the term, Integrity Golf was required to surrender the property to the City in good condition and repair. (R-066) If the City terminated the Agreement without cause, Integrity Golf was entitled to recapture amounts paid for capital improvements, including interest, and to be paid a portion of any operating losses during the first three years of the initial term of the Agreement. (R-064)

The City, through its employees, agents and contractors, was entitled at all times to have access to the golf course facilities. The City had the right to enter and inspect the facilities, to perform any repair or maintenance thereof, and to do anything required of

Integrity Golf under the Agreement if it had failed to do so in a timely manner. (R-043)

The City retained the rights under the Agreement to continue to utilize the golf course facilities for the purpose of effluent disposal via the irrigation system. (R-067) The City had the “absolute and unfettered right to continue to conduct Treated Effluent Disposal Operations on or about the Facility in any manner that the City deems appropriate or desirable including, without limitation, disposal of as much treated effluent through or by use of the Facility’s irrigation system or through or by use of other means of disposal as the city may in its discretion determine to be appropriate or desirable, and disposal of treated effluent on or about the Facility at such times, at such locations, and in such manners on or about the Facility as the City may determine in its sole discretion.” (R-067-8)

The City reserved the right to sell all or any portion of the golf course facilities during the term of the Agreement. Integrity Golf, however, had the right of first refusal of any third-party bona fide offer to the City to purchase all or any portion of the golf course facilities. (R-068)

The golf course facilities were required to be open to the general public. Public memberships were offered. The City honored “lifetime memberships” that had been acquired from the prior owner of the golf course. (R-4521) Members were entitled to certain preferential benefits, including tee times. (R-4522-3)

For the 2016 tax year, the property appraiser removed the exemption for the golf course facilities. (R-4385-4390) The decision was made because Integrity Golf took over and started managing, operating, and running an active golf course with a clubhouse and driving range. (R-4287) There was no private entity involved with the West Course and, therefore, it remained exempt as city-owned and maintained. (*Id.*)

The City challenged the denial by filing a petition with the Value Adjustment Board (VAB). The special magistrate for the VAB concluded that the Agreement was not a lease but, rather, a management agreement. Under the management agreement, the City was “relieved of the operational and financial burdens associated with self-management of the club by a professional golf club manager” and “such arrangements are not only consistent with, but serve to promote this traditional municipal or public function.” (R-

110-1) Accordingly, the golf course facilities were deemed exempt from ad valorem taxation.

The property appraiser subsequently filed suit against the City contesting the VAB's decision as authorized pursuant to section 194.036(1)(a) and (b), Florida Statutes (2022). During the pendency of the suit involving the 2016 tax year, the property appraiser denied the exemption for the golf course facilities for the 2017 tax year. (R-4455-4458) Instead of proceeding to the VAB, the City filed suit against the property appraiser. The suit subsequently was consolidated into the instant case. (R-768) The consolidated case was resolved via two separate summary judgment proceedings. (R-712-721, SR1-7970-8003)

The first summary judgment proceeding addressed whether the Agreement between the City and Integrity Golf should be characterized as a "management agreement" or a "lease." (R-232-7, 702-710, 674-692) The import of the distinction, from the City's viewpoint, was that the golf course facilities were not potentially subject to ad valorem taxation unless they were leased to a private entity. (R-173-176) The property appraiser asserted that any distinction between a management agreement and a lease was not

dispositive of whether the golf course facilities were subject to ad valorem taxation. (R-679)

The trial court ruled that the Agreement should be characterized as a management agreement. (R-712-21) The court stated:

In sum, the ‘exclusive possession’ or ‘dominion’ over the real property at issue remained with the City during the life of the Management Agreement as established by the terms of the Agreement itself. The City retains the right to control the use and access to the property and the management company. None of the provisions of the Agreement grant the Management company exclusive right of possession equivalent to ownership. Thus, the agreement is a management agreement and not a lease.

(R-730) The trial court further observed that, if “there were no such distinction between the two [management agreement or lease], municipalities would lose the tax exempt status of recreational facilities if they elected to privatize the management of those facilities in hopes of saving taxpayer dollars.” (R-717)

The second summary judgment proceeding involved whether the golf course facilities were entitled to ad valorem tax

exemption, in whole or in part, for tax years 2016 and 2017. (R-173-176, 7537-7569, 7623-7656, 7741-7895)

The trial court ruled that the golf course facilities were entitled to exemption from ad valorem taxation. (SR1-7970-8003) The trial court ruled that Article VII, Section 3(a) was “enacted by Section 196.199, Florida Statutes,” which provided that all property of municipalities “used for governmental, municipal, or public purposes” was exempt from ad valorem taxation. (*Id.* at 7974) The trial court’s conclusion was, because the property was not leased to Integrity Golf, it was exempt from taxation. “The City’s delegation of day-to-day management functions to the Management Company does not mean the City has ceased to ‘use’ or ‘operate’ the facilities for the purposes of its ad valorem exemption.” (*Id.* at 7980)

The First District Court, in a 2-1 decision, reversed the trial court’s decision. *Brown*, 336 So.3d at 1231-2. The majority held that the municipally-owned golf course facilities were taxable when they were operated by a private company that retained the profits generated from its use of the property. *Brown*, 336 So.3d at 1230. Because the golf course facilities were not used exclusively for municipal or public purposes, the majority opined that it was

unnecessary to decide whether the agreement between the City and Integrity Golf was, in substance, a lease. *Id.* “Thus we need not determine whether to apply the governmental-governmental test, which Florida courts have historically applied to governmental property leased to private parties, to determine the tax-exempt status of the property.” *Id.*

The dissenting judge opined that the distinction between use of the golf course facilities by Integrity Golf pursuant to a management agreement as opposed to a lease controlled the taxable status thereof. *Id.* at 1234. The dissent warned that the majority’s decision would preclude municipalities from ever outsourcing management of their facilities to a for-profit company without losing the tax exempt status of the property. *Id.*

The majority responded that its holding should not be so broadly interpreted and distinguished the facts of the instant case from situations where the municipality merely paid a management fee to a private operator. As the majority decision stated:

Under this decision, a municipality may enter an agreement with a private company whereby the municipality pays the company a fee to manage the municipality's property—and the private management company can generate

profits under that agreement by collecting a management fee—without running afoul of article VII, section 3, subsection (a) of the Florida Constitution.

Id. at 1231.

Before proceeding to the argument, a factual statement in the City’s Initial Brief must be clarified to avoid any potential misconstruction. The City states that the “primary purpose of the subject property is to serve as an effluent spray field for the treating and disposing of wastewater. Secondary public purposes include recreational uses (e.g. jogging, walking, fishing, playing soccer, using ball fields, etc.), open green space, and storm water drainage and retention for subdivisions in the area. The City also makes ancillary recreational use of the property as a public golf course and related facilities, which is commonly referred to as Tiger Point Golf and Country Club (City Golf Course).” (IB-1) The City cites as record support the partial summary judgment order, a provision in the Agreement with Integrity Golf, the testimony of the City Mayor at the Value Adjustment Board (VAB) hearing, and the Statement of Facts and Conclusions of Law by the special magistrate for the Value Adjustment Board. (*Id.*)

The partial summary judgment order included the above language in the section “Procedural History and Relevant Facts.” (R-712-3) The issue decided in that order, however, was whether the Agreement with Integrity Golf was properly characterized as a management agreement or a lease. The trial court made no finding of fact or factual determination regarding the uses of the property. The use of the property was irrelevant to the question at issue.

Likewise, the City’s reference to the special magistrate’s recommended order and the VAB testimony of the City Mayor are not factual findings or testimony pertinent to the circuit court proceeding. Review of a VAB decision in circuit court is de novo. § 194.036(3), Fla. Stat. (2022). The circuit court action is an original proceeding and not an administrative appeal. *Williams v. Law*, 368 So.2d 1285 (Fla. 1979); *Crapo v. Academy for Five Element Acupuncture, Inc.*, 278 So.3d 113, 121 (Fla. 1st DCA 2019).

The trial court’s Final Judgment, moreover, did not rely upon findings regarding the primary or secondary uses of the property. (SR1-7970) The central issue involved interpretation of the constitutional limitation of the municipal exemption to property owned and used exclusively by it for municipal or public purposes.

Regardless of how the City viewed the use of the golf course facilities, the undisputed fact was that Integrity Golf had the contractual right to operate the golf course and to use the clubhouse as a restaurant, bar, pro shop, and related banquet facilities. (R-033-095)

SUMMARY OF ARGUMENT

I. THE GOLF COURSE FACILITIES WERE NOT USED EXCLUSIVELY BY THE CITY FOR MUNICIPAL OR PUBLIC PURPOSES AND, THEREFORE, ARE SUBJECT TO AD VALOREM TAXATION.

To be entitled to exemption under Article VII, Section 3(a), municipally-owned property must be used “exclusively by it” for municipal or public purposes. It is undisputed that the City was not the exclusive user of the golf course facilities. Rather, the City privatized the operation of the golf course facilities and allowed a for profit corporation to utilize the facilities to generate profits.

Whether the use of the golf course facilities by Integrity Golf was pursuant to a lease or a management agreement or whether the City acted in good faith to preserve government resources or in bad faith to avoid taxation are not the dispositive questions. Just as neither the legislature nor the courts may expand the exemptions permitted under a self-executing provision of the constitution, the

parties to a contractual agreement cannot avoid the clear and explicit language of Article VII, Section 3(a). The nomenclature of the document authorizing a private, for-profit corporation to utilize municipally-owned property for proprietary, profitmaking purposes cannot avoid the clear command of the Constitution. Otherwise, there no longer would be any private use of government property that would result in taxation. Any potential obligation for payment of ad valorem taxes could be eliminated through legal advice and contract drafting.

The City effectively is requesting this Court to rewrite the Florida Constitution to delete the phrase “used exclusively by it.” Because Integrity Golf used and operated the golf course facilities for its own profitmaking purposes, the constitution requires that the property be subject to ad valorem taxation.

STANDARD OF REVIEW

The interpretation of the constitution is a pure legal issue that is reviewed *de novo*. *Garcia v. Andonie*, 101 So.3d 339, 343 (Fla. 2012); *Zingale v. Powell*, 885 So.2d 277, 280 (Fla. 2004). A final summary judgment order is reviewed *de novo*, with the appellate court viewing the facts in a light most favorable to the non-moving

party. *Maronda Homes, Inc., of Fla. v. Lakeview Reserve Homeowners Ass'n, Inc.*, 127 So.3d 1258 (Fla. 2013).

ARGUMENT

I. THE GOLF COURSE FACILITIES WERE NOT USED EXCLUSIVELY BY THE CITY FOR MUNICIPAL OR PUBLIC PURPOSES AND, THEREFORE, ARE SUBJECT TO AD VALOREM TAXATION.

The Florida Constitution requires a just valuation of all property for ad valorem taxation, with certain exceptions that are inapplicable in this case. Art. VII, § 4, Fla. Const. “By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation.” *Id.*; *see also* § 196.001, Fla. Stat. (2022) (all property is subject to taxation unless expressly exempted).

The state and counties are immune from taxation. *Canaveral Port Auth. v. Dep't of Revenue*, 690 So.2d 1226 (Fla. 1996). Cities, which are not political subdivisions of the state, are subject to taxation absent an exemption. *Dep't of Revenue v. City of Gainesville*, 918 So.2d 250, 255 (Fla. 2005). An exemption presupposes an ability to tax, whereas an immunity implies the absence of that ability. *Id.*

The constitution confers an exemption from ad valorem taxation for municipally-owned property only under certain circumstances. Art. VII, § 3(a), Fla. Const. To qualify for the exemption, the property must be “both *owned* by a municipality and *used* exclusively by the municipality for municipal or public purposes.” *City of Gainesville*, 918 So.2d at 255 (emphasis in original). The constitutional provision states in its entirety as follows:

All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

Art. VII, § 3(a), Fla. Const. (emphasis added).

The City argues that there is a trend towards municipalities privatizing management of government facilities. (IB-31) “A city should not be penalized for maximizing its fiscal responsibility to its citizens . . .” (IB-32) The Florida League of Cities, in its amicus brief, also asserts that management agreements with private partners does not change the fact that the property is owned

by the municipality and “used exclusively for public purposes, regardless if the private partner might potentially make a return on profit from the arrangement.” (AB-13) In other words, the City and its supporting amicus assert that the constitutional requirement that municipally-owned property be used “exclusively by it” should be interpreted to allow use of such property by a for-profit independent contractor if (a) the City’s decision to utilize such services was fiscally prudent, and (b) the contract is drafted as a management agreement as opposed to a lease.

Such an argument is flatly contrary to the plain language of the constitution and should be rejected. The argument also ignores the historical significance of the change in the 1968 constitution to limit the municipal exemption to property used “exclusively by it” for municipal or public purposes instead of the language in the 1885 constitution that only required the property to be “used exclusively” for municipal purposes. *Compare* Art. VII, § 3(a), Fla. Const. (1968) *with* Art. XVI, § 16, Fla. Const. (1885).

A. Under the plain language of Article VII, Section 3(a), property owned by a municipality must be used exclusively by it for municipal or public purposes to be exempt from ad valorem taxation.

Any inquiry into the proper interpretation of a constitutional provision must begin with an examination of that provision's explicit language. *Zingale*, 885 So.2d at 282. When construing a constitutional provision, the court first looks to the plain language. *Endsley v. Broward Cnty.*, 189 So.3d 938, 941 (Fla. 4th DCA 2016). “When the language of the constitutional provision is clear and unambiguous and conveys a clear and definite meaning, the constitutional provision must be given its plain and obvious meaning.” *Baldwin v. Henriquez*, 279 So.3d 328, 333-4 (Fla. 2d DCA 2019).

This Court has observed that it adheres “to the ‘supremacy-of-text principle’: ‘The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.’ Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012).” *Advisory Op. to Gov. Re: Interpretation of Amendment 4, The Voting Restoration Amendment.*, 288 So.3d 1070, 1078 (Fla. 2020). This Court also adheres “to the

view expressed long ago by Justice Joseph Story concerning the interpretation of constitutional texts (a view equally applicable to other texts): “[E]very word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.” Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), *quoted in* Scalia & Garner, *Reading Law* at 69.” *Id.* Every word of a constitutional provision should be given effect so that no word is construed as mere surplusage. *Hardee Cnty. v. FINR II, Inc.*, 221 So.3d 1162, 1165 (Fla. 2017).

This Court recently has discussed the proper interpretation of “municipal or public purpose” as used in Article VII, Section 3(a) in *Treasure Coast Marina LC v. City of Ft. Pierce*, 219 So.3d 793 (Fla. 2017), and *City of Gainesville*. In those cases, the property was unquestionably owned and used exclusively by the municipality. The exempt status of the golf course facilities in the instant case requires consideration of a different portion of the same constitutional provision, to wit: the requirement that municipally-owned property must be “used exclusively by it” for municipal or public purposes to be entitled to the ad valorem tax exemption.

This Court has held that a “reading of section 3(a) of article VII clearly establishes that it is a self-executing provision and therefore does not require statutory implementation.” *City of Sarasota v. Mikos*, 374 So.2d 458, 460 (Fla. 1979). Accordingly, the statutory definition of municipal or public purpose found in section 196.012(6), Florida Statutes (2022), “does not control the construction of the term ‘municipal or public purposes’ in the constitutional provision.” *City of Gainesville*, 918 So.2d at 257; *Sebring Airport Auth. v. McIntyre*, 783 So.2d 238, 252-3 (Fla. 2001) (*Sebring II*); *see also City of Bartow v. Roden*, 286 So.2d 228, 229 (Fla. 2d DCA 1973) (statute “could not and did not change” the constitutional requirement that municipal property used exclusively for public purposes shall be exempt from taxation). “It is axiomatic that, absent an express exemption, all real property owned by a municipality and situated within the limits of that municipality is subject to ad valorem taxation by the county in which the municipality is located.” *Grove Key Marina, LLC v. Casamayor*, 166 So.3d 879, 882 (Fla. 3d DCA 2015).

Because the “constitutional provision is self-executing, it does not require legislative authorization to activate the exemption

for property owned and used exclusively by the municipality for municipal or public purposes.” *City of Gainesville v. Crapo*, 953 So.2d 557, 561 (Fla. 1st DCA 2007). “Stated differently, the exemption is not contingent on the legislature declaring that an activity serves a municipal purpose and is, therefore, tax exempt.” *Id.* at 561-2. Any attempt to expand the exemption beyond that which is authorized is constitutionally infirm. *City of Gainesville*, 918 So.2d at 259; *Sebring Airport II*, 783 So.2d at 252-3. As one commentator has explained:

The municipal purpose exemption is unique. Unlike the other ‘use’ exemptions authorized in the constitution, it is mandatory and self-executing; it prescribes the identity of the owner and requires *exclusive (rather than predominant) use by such owner for the specified exempt purpose*; and (unlike other governmental purpose exemptions), it is expressly contemplated in the constitution.

Fla. State & Local Taxes, Vol. II, ¶ 5.03[4], (The Fla. Bar 1984) (emphasis added).

The common meaning of the term “exclusively” is apart from all others or only. *Lee v. Gulf Oil Corp.*, 4 So.2d 868, 870 (Fla. 1941). Exclusively has been defined as “[a]part from all others; only; solely; substantially all or for the greater part. To the exclusion of all

others; without admission of others to participation, in a manner to exclude.” *Black’s Law Dictionary* (6th ed. 1990). Exclusive “means ‘with no exceptions’ and should be used carefully.” *Garner’s Dictionary of Legal Usage*, (3d ed. 2011). Exclusive is defined as shutting out all others from a part or share, noting that in which no others have a share, single or sole, not admitting of something else. *Webster’s Encyclopedic Unabridged Dictionary* (ed. 1996).

To be entitled to exemption under Article VII, Section 3(a), municipally-owned property must be used “exclusively by it” for municipal or public purposes. Here, the golf course facilities are not used exclusively by the City. To the contrary, Integrity Golf has the right to utilize the facilities to generate business profits for itself pursuant to a contractual agreement with the City. The use of the facilities by a private, for-profit corporation for its own proprietary, profitmaking purposes therefore requires taxation. The City’s argument would effectively eliminate the qualifying phrase “exclusively by it” from the constitutional provision.

B. The intent of Article VII, Section 3(a) was to require private, for profit users of municipally-owned property to pay ad valorem taxes.

Assuming *arguendo* that the language of Article VII, Section 3 is unclear and requires this Court to resort to secondary sources to understand the drafters' intent, the historical context has been well developed. This Court has acknowledged that the requirement that city-owned property must be used exclusively by it for municipal or public purposes to be entitled to an ad valorem tax exemption was added to the constitution in 1968 in response to *Daytona Bch. Racing & Rec. Facilities Dist. v. Paul*, 179 So.2d 349, 353 (Fla. 1965). *City of Gainesville*, 918 So.2d at 260; *Sebring Airport II*, 783 So.2d at 245-6. *Paul* held that municipal property leased to a corporation for a racetrack served a public purpose because it contributed to the economic well-being of the community. *City of Gainesville*, 918 So.2d at 260. "Perceiving decisions of this kind as creating inequities in the tax structure, the draftsmen of the Constitution of 1968 limited the municipal purpose exemption to 'property owned by a municipality and used exclusively by it for municipal or public purposes.'" *Volusia Cnty.*, 341 So.2d at 501.

Under the previous 1885 Constitution, tax exemptions for property used for municipal purposes were set forth in two different provisions:

The Legislature shall provide for a uniform and equal rate of taxation, ... and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, *excepting such property as may be exempted by law for municipal*, educational, literary, scientific, religious, or charitable purposes.

Art. IX, §1, Fla. Const. (1885) (emphasis supplied).

The property of all corporations ... shall be subject to taxation *unless such property be held and used exclusively for* religious, scientific, *municipal*, educational, literary, or charitable purposes.

Art. XVI, § 16, Fla. Const. (1885) (emphasis supplied). *See City of Gainesville*, 918 So.2d at 257.

This Court set forth a detailed discussion of the municipal exemption under the 1885 Constitution and the intent of the 1968 constitutional revision in *City of Gainesville*, 918 So.2d at 257-261. This Court concluded that the 1968 revision differed from the 1885 Constitution in two significant ways: (1) it was self-executing and (2)

it required “use of the property by the municipality that owns it.” *Id.* at 259. This Court stated:

This provision differs from its antecedents in the 1885 Constitution in two significant ways. *First, as stated above, it does not require legislative authorization to activate the self-executing exemption for property owned and used exclusively by the municipality for municipal or public purposes.* In other words, no longer was the exemption contingent upon the Legislature declaring that an activity served a municipal purpose and was therefore tax exempt. See *Mikos*, 374 So.2d at 460 (holding change in statutory language on exemption irrelevant because provision is self-executing ‘and therefore does not require statutory implementation’); see generally 2 Tax Section, *The Florida Bar, Florida State and Local Taxes*, ¶ 5.03[4], at 215 (1984) (describing exemption in article VII, section 3(a) as ‘unique, ... mandatory and self-executing’).

Second, the self-executing exemption requires use of the property by the municipality that owns it, whereas article XVI, section 16 of the 1885 Constitution did not require ownership and use by the municipality as long as the property was ‘held and used exclusively’ for municipal purposes. A tax exemption for portions of property used ‘predominantly’ for municipal purposes, regardless of ownership, still requires legislative authorization under the express terms of article VII, section 3(a).

Id. at 259-60 (emphasis added).

This Court reiterated the importance of ownership and exclusive use by the municipality in *Treasure Coast Marina*. In *City of Gainesville* “we recognized that although the constitutional tax exemption provision was revised from its counterpart contained in the 1885 Constitution to curb perceived abuses in favor of private operators seeking a profit, that end was not advanced by changing the definition of ‘municipal or public purposes,’ but rather by requiring ownership and use by the municipality.” *Treasure Coast Marina*, 219 So.3d at 796.¹

When the property is owned by a municipality and used exclusively by it, the property is entitled to an exemption if the use “encompass activities that are essential to the health, morals, safety, and general welfare of the people within the municipality.” *Treasure Coast Marina*, 219 So.3d at 797, quoting *City of Gainesville*, 918 So.2d at 264. This test for exemption, because the constitutional provision is self-executing, was not derived from any statutory

¹ In 1998, the electorate rejected a proposed amendment to the Constitution that would have amended Article VII, Section 3(a) to delete the term “exclusively” and to specifically add special districts to the governmental entities entitled to exemption. *Sun ‘N Lake Imp. Dist. v. McIntyre*, 800 So.2d 715, 721, n. 4 (Fla. 2d DCA 2001).

implementation or interpretation. *City of Gainesville*, 918 So.2d at 257.

The analysis of the drafters' intent in the adoption of Article VII, Section 3(a), therefore, is consistent with its plain language. The exemption of municipally-owned property must be limited to property used "exclusively by it" for municipal or public purposes. Further, the self-executing language does not require legislative implementation or authorize the legislature to expand the scope of the exemption for municipally-owned property.²

C. Private, for-profit use of municipally-owned property requires ad valorem taxation regardless of the form of the agreement between the parties.

This Court in *City of Gainesville* specifically distinguished the test for exemption for property owned by a municipality and used exclusively by it from the test for private interests in municipally-owned property. "Our review of the history of article VII, section 3(a) and the pertinent case law demonstrates that the test for private interests in municipally owned property was never intended to apply

² The legislature has declared that special districts shall be treated as municipalities for the purpose of section 196.199(1), Florida Statutes (2022). § 189.055, Fla. Stat. (2022).

to property both owned and used exclusively by a municipality for municipal or public purpose.” *City of Gainesville*, 918 So.2d at 261. The test applicable when the property is not used exclusively by the municipality has become known as the “governmental-governmental” versus “governmental-proprietary” use test. *Id.* at 260 (collecting cases); *see also Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975) (Taxation of leasehold interest in governmentally-owned property on Santa Rosa Island is required because all “privately used property bears a tax burden in some manner and this is what the Constitution mandates.”); *St. John’s Assocs. v. Mallard*, 366 So.3d 34 (Fla. 1st DCA 1978) (lessee’s use of port property for profit competes with other private business operations and requires taxation). To be clear, historically all of these cases have involved use of governmentally-owned property by a for-profit company pursuant to a lease.

In 1994, this Court reiterated the continued application of the governmental-governmental versus governmental-proprietary use test with regard to exemptions from ad valorem taxation first announced in the Court's 1976 decision in *Williams*. *Sebring Airport Auth. v. McIntyre*, 642 So.2d 1072 (Fla. 1994) (*Sebring Airport I*). That case involved the exempt status of the Sebring Raceway, which was

owned and operated by the airport authority and leased to a for-profit operator to alleviate the authority's financial difficulties so that the racing activities could be continued. *Id.* at 1073. As this Court stated:

Serving the public and a public purpose, although easily confused, are not necessarily analogous. A governmental-proprietary function occurs when a nongovernmental lessee utilizes governmental property for-proprietary and for-profit aims. We have no doubt that Raceway's operation of the racetrack serves the public, but such service does not fit within the definition of a public purpose as defined by section 196.012(6). Raceway's operating of the race for profit is a governmental-proprietary function; therefore, a tax exemption is not allowed under section 196.199(2)(a).

Sebring Airport I, 642 So.2d at 1073-74 (emphasis added).

This Court specifically rejected the airport authority's argument that "a governmental lease to a nongovernmental lessee is exempt from ad valorem taxation if the lessee serves a public purpose, *regardless of the for-profit motive.*" 642 So.2d at 1073 (emphasis added). This Court then defined the difference between governmental and proprietary functions as "[p]roprietary functions promote the comfort, convenience, safety and happiness of citizens, whereas governmental functions concern the administration of some

phase of government.” 642 So.2d at 1074, n. 1. A governmental function involves “exercising or dispensing some element of sovereignty.” *Sebring Airport Auth. v. McIntyre*, 718 So.2d 296, 299 (Fla. 2d DCA 1998).

After *Sebring Airport I*, the legislature effectively attempted to overrule that decision by enacting language modifying the definition of municipal or public purpose set forth in section 196.012(6), Florida Statutes (2022), as follows:

The use *by a lessee, licensee, or management company* of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission.

Ch. 94-353, § 59, Laws of Fla. (1994) (emphasis added).

The case subsequently returned to this Court. After discussing the lengthy history regarding the taxation of governmentally-owned property, this Court emphasized the continuing viability of the governmental-governmental test and held that “it has long been clear that, based upon the amendments which resulted in the 1968 Constitution, the ‘public purpose’ standard

applicable in tax exemption cases is the ‘governmental-governmental’ standard first established in *Williams*, later confirmed in *Volusia County*, and consistently applied in subsequent cases involving claimed tax exemptions for private leasehold interests.” *Sebring Airport II*, 783 So.2d at 247. Because the legislature lacked the ability to expand the scope of the municipal exemption by statute, this Court declared the 1994 amendment unconstitutional. *Id.* at 253. As this Court held:

We certainly understand that there is enormous competition to secure professional athletic teams and other forms of entertainment and economic development which benefit Florida citizens. We also recognize the tremendous economic forces and implications that become involved in this type of issue and the good faith legislative attempts to balance these concerns. However, as long as the people of Florida maintain the constitution in the form we are required to apply today, neither we nor the Legislature may expand the permissible exemptions based on this type of argument. The people of Florida have spoken in the organic law and we honor that voice. *It is not for this Court or the Legislature to grant ad valorem taxation exemptions not provided for in the present constitutional provisions. That decision rests solely with the people of Florida as voiced in our constitution, and not through legislation.*

Id. (emphasis added).

Importantly, this Court held the entire provision unconstitutional. If taxation of municipally-owned but privately-used property were dependent upon uses by lessees as distinguished from licensees or management companies, this Court could have preserved part of the statutory amendment.

In reaching its decision, this Court also observed that the ad valorem governmental exemption set forth in Article VII, Section 3 parallels Article VII, Section 10(c), Florida Constitution. *Id.* at 251; *see Volusia Cnty.*, 341 So.2d at 498. That provision provides that:

(c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. *If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.*

Art. VII, § 10(c), Fla. Const. (emphasis added). Thus, the constitution requires the taxation of certain governmentally-owned property financed by revenue bonds if it is “*occupied*” or “*operated*” by a private corporation pursuant to “*contract*” or “*lease*.”

This Court observed the impact of section 10(c) in rejecting the argument that the “public purpose” necessary to support a bond issue was the same test to be applied in ad valorem exemption cases in *Sebring Airport II*. As this Court stated:

Additionally, Raceway’s argument predicated upon bond validation cases falls far short of complete analysis and fails to accommodate other constitutional provisions. As previously noted, the Florida Constitution expressly contemplates that, even when it is determined in the bond validation context that a particular project is appropriate under the standards of article VII, section 10, when certain projects are occupied or operated privately pursuant to contract or lease, the property interest *shall be subject to taxation to the same extent as other privately owned property*. See Art. VII, § 10(c).

Sebring Airport II, 783 So.2d at 251 (italics in original, emphasis added).

It would be inconsistent to interpret Article VII, Section 3(a) to require ad valorem taxation only when the municipally-owned property is leased when the corollary provision in Section 10(c)

requires taxation regardless of whether the private use was pursuant to contract or lease. If the golf course facilities were used primarily for effluent disposal, as the City argues, they would qualify as an industrial facility. Because the City issued revenue bonds to pay for the facilities, taxation would be required under Article VII, Section 10(c) regardless of the form of the agreement between the parties.

In accord with the test set forth in *City of Gainesville*, and later clarified in *Treasure Coast Marina*, a marina owned and used exclusively by a municipality was entitled to ad valorem tax exemption as serving an activity essential to the general welfare of the people within the municipality. *Treasure Coast Marina*, 219 So.3d at 800; see *Islamorada, Village of Islands v. Higgs*, 882 So.3d 1009 (Fla. 3rd DCA 2003) (marina operated without involvement of a non-governmental lessee or operator is exempt). The exempt status of a marina, however, changes when it is no longer used exclusively by the municipality for municipal or public purposes.

For example, the same city-owned marina in Fernandina Beach that was exempt when used exclusively by the City became taxable upon the use by a private, for-profit operator. *Page v. City of*

Fernandina Bch., 714 So.2d 1070 (Fla. 1st DCA 1998). As the district court stated:

Municipal operation of a marina is a legitimate municipal corporate undertaking for the comfort, convenience, safety, and happiness of the municipality's citizens. Indeed, the uncontradicted expert testimony was that operation of this marina constituted a proper municipal or public function. When a city operates a marina it owns, marina property it has not leased to a nongovernmental entity is exempt from ad valorem taxation. Evidence indicated that some of these marina facilities had previously been operated by the City, and that, by the time of trial in January of 1996, operational responsibilities had once again been assumed by the City. *But operating a marina partakes of no aspect of sovereignty and does not warrant an exemption for a marina leased to a nongovernmental operator seeking profits.*

Id. at 1076-7 (emphasis added).

In this case, the City's operation of the golf course facilities in 2013-2015 was a valid municipal purpose.³ The operation of the golf course facilities by a for profit, private company for the purpose of generating profits for itself, on the other hand, is considered a

³ With the exception of the portions of the clubhouse used as a bar, restaurant, and pro shop, which would not be considered a valid municipal or public purpose as defined in *City of Gainesville and Treasure Coast Marina*.

proprietary use. In such circumstances, ad valorem taxation of the municipally-owned property is required. As this Court has observed, the test for private interests in municipally-owned property is the more restrictive governmental-governmental test.

In the instant case, the City explained that the decision to involve a private operator for the golf course facilities was motivated by its efforts to avoid financial losses and the potential of shutting down operations. (R-5572, 7749) The same financial concerns were present in the *Sebring Airport* cases. If the City had leased the golf course facilities, therefore, the property would have been clearly taxable. See *Capital City Country Club v. Tucker*, 613 So.2d 448 (Fla. 1997); *Turner v. Concorde Props.*, 823 So.2d 165 (Fla. 2d DCA 2002).

This Court's decision in *Capital City* involved the taxable status of a golf course subject to a 99-year lease to a nonprofit corporation. *Capital City*, 613 So.2d at 450. Under the lease, the club was responsible for all ad valorem taxes levied against the property.

There, the club conceded that the golf course was not being used for municipal or public purposes. *Id.* Instead, the club contended that, because it paid intangible taxes on the value of its

leasehold interest, the ad valorem taxation of the real property constituted double taxation. This Court rejected the argument, observing that the leasehold interest and real property were separate property interests.

In *Concorde Props.*, the Hillsborough County Aviation Authority owned golf course property that was leased to a private, for-profit business entity. The trial court ruled that, because the golf course property was open to the public, it was entitled to exemption from ad valorem taxation. The Second District Court reversed, holding that “the operation of a golf course by a for-profit business falls within the definition of the governmental-proprietary operation, which is, by definition, not a ‘public purpose’ and is not entitled to an ad valorem tax exemption as defined by the Florida Supreme Court.” *Concorde Props.*, 823 So.2d at 167. Considering the holdings of *Capital City* and *Concorde Props.*, it is easy to see why the City would be concerned with describing the Agreement with Integrity Golf as anything but a lease.

The use and function of the property does not change depending upon the type of operating agreement that the governmental entity negotiates with the private, for-profit user of its

property. Any ruling to the contrary would effectively eviscerate the long line of Florida Supreme Court cases distinguishing governmental-governmental from governmental-proprietary uses of property because the parties involved could control the taxable status of property by contract. Indeed, this Court has held that the exempt status of governmentally-owned property “may be lost or legally abandoned when the same is leased *or otherwise used* for a predominantly private purpose, and only incidentally for a public purpose.” *Hillsborough Cnty. Aviation Auth. v. Walden*, 210 So.2d 193 (Fla. 1968) (emphasis added).

This Court has described the governmental-governmental test as a “function by utilization test.” *Walden v. Hillsborough Cnty. Aviation Auth.*, 375 So.2d 283 (Fla. 1979). The change to the constitution in 1968 only permits exemption of municipally-owned property “used exclusively by it” for municipal or public purposes. Use of municipally-owned property by a private party for profitmaking purposes requires taxation unless it is used for governmental-governmental functions.⁴ The City’s argument

⁴ Article VII, section 3(a) allows the legislature to exempt property “used predominantly for educational, literary, scientific, religious or

necessarily would change the function by utilization test to a function by form of the contractual agreement test.

D. Municipalities cannot contractually avoid the constitutional limitations on their entitlement to ad valorem tax exemption.

It is well-established that municipalities cannot contractually agree to avoid or waive ad valorem taxation. *Lykes Bros., Inc. v. City of Plant City*, 354 So.2d 878 (Fla. 1978). There, Plant City created an industrial park and invited Lykes to move its meat packing plant from Tampa. As an incentive for the move, Plant City contractually promised to never impose ad valorem taxes on Lykes' property.

The lease provided that, if the property were annexed, Lykes' property would not be rendered liable for taxes. If taxes were levied, the city agreed to pay the taxes and indemnify Lykes for the tax liability and all attendant expenses. The express purpose was

charitable purposes.” The legislature has authorized an exemption when the municipally-owned property “is leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.” § 196.199(2)(c), Fla. Stat. (2022). Similar language is included in section 196.199(4), Florida Statutes (2022).

that Lykes' property "shall be completely free from all municipal taxes." *Id.* at 879-80.

Lykes agreed to move its facility to the industrial park, which originally was located outside Plant City. The city subsequently annexed the industrial park and began to impose taxes.

Lykes filed suit. Lykes acknowledged that municipalities generally are unable to contract away their taxing power, but argued that the transaction should be viewed as nothing more than a net lease in which the city assumed the responsibilities of Lykes' ad valorem taxes. A "municipal landlord has the same contract powers as private lessors with respect to the allocation of property taxes between landlord and tenant." *Id.* at 879.

This Court rejected Lykes' argument. As this Court held:

As to whether a city's tax exoneration contract is valid, our decisions uniformly hold that municipal contracts promising not to impose taxes, or granting tax exemptions, are ultra vires and void in the absence of specific legislative authority. At the time this contract was made the only legislative grant of authority pertaining to municipal leases provided that leasehold interests such as that contemplated by this agreement 'shall be assessed and taxed to the same extent and in the same manner as other

real or personal property’ unless the use fell within certain enumerated ‘public purpose’ exceptions. Lykes does not contend that its use of the property was in any way devoted to a ‘public purpose’.

Id. at 880 (citations omitted, emphasis added).

This Court further rejected Lykes’ reliance upon section 196.199(3), Florida Statutes (2022), which provided that taxes could not be imposed if the property were subject to an agreement entered into prior to 1976 that contained a covenant not to impose taxes. “At the time Section 196.199(3) was enacted, the Legislature no longer possessed the constitutional power to authorize tax exoneration of property owned by a municipality and used by a private lessee predominantly for non-public purposes.” *Id.* at 881.

That same year, this Court again addressed the question of whether a governmental entity may indirectly permit an ad valorem tax exemption for a private user of its property. *Archer v. Marshall*, 355 So.2d 781 (Fla. 1978). There, the legislature passed a special act authorizing an offset to lease payments equal to the amount of ad valorem taxes due on the leasehold interests of governmentally-owned property in the preceding year. This Court had required taxation of those same leasehold improvements in *Williams*. This

Court struck down the Act, holding that the “purpose and effect of this special act is to create an indirect exemption from taxation on property not authorized by the state constitution.” *Id.* at 783.

The Attorney General has applied *Lykes Bros.* and *Archer* in an opinion concluding that “a municipality may not enter into agreements promising not to impose ad valorem taxes or granting tax exemption in the absence of specific legislative authority.” Op. Att’y Gen. Fla. 90-23 (1990). The Attorney General later opined that the Santa Rosa Island Authority “had no authority to offset lease fees payable to the authority from commercial lienholders equal to ad valorem taxes . . . as such action would amount to an exemption from taxes where the exemption has no constitutional basis.” Op. Att’y Gen. Fla. 2008-43 (2008).

Just as neither the legislature nor the courts may expand the exemptions permitted under the Constitution, the parties to a contractual agreement cannot avoid the clear and explicit language of Article VII, Section 3(a). “The City does not have the authority to contractually prevent the County or State from collecting taxes, nor can it determine whether or not a property is being utilized for a ‘public use.’” *Grove Key Marina*, 166 So.3d at 886 n.3.

The nomenclature of the document authorizing a private, for profit corporation to utilize municipally-owned property for proprietary, profitmaking purposes cannot avoid the clear command of the Constitution. There no longer would be any private use of government property that would result in taxation. Any potential obligation for payment of ad valorem taxes could be eliminated through prudent legal advice and contract drafting.

This Court has repeatedly held that the fundamental object of interpreting the constitution is to avoid construing it in such a manner to make it possible for the will of the people to be frustrated or denied. *See City of Gainesville*, 918 So.2d at 256 (collecting cases).

As this Court held:

The fundamental object to be sought in construing a constitutional provision is to *ascertain the intent of the framers* and the provision must be construed or interpreted in such manner as to *fulfill the intent of the people*, never to defeat it. Such a provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied.

... Moreover, in construing multiple constitutional provisions addressing a similar subject, the provisions “must be read in *pari materia* to ensure a consistent and logical meaning that gives effect to each provision.”

Id., quoting *Zingale*, 885 So.2d at 282-83 (italics in original).

To conform to the clear command of the Constitution, the private, for-profit and proprietary use of municipally-owned property must be the dispositive factor in determining the taxable status; not the form of the agreement negotiated between the parties. In such circumstances, the governmental-governmental test applied by this Court for the past 50 years would be applicable. Whether a governmental purpose is accomplished depends on the use of the property as opposed to the form of the contractual agreement.⁵

⁵ In the field of ad valorem taxation, and similar to many other types of tax cases, the form of the agreement between the parties does not control or change the substance of the transaction. *Leon Cnty. Educ. Facilities Auth. v. Hartsfield*, 698 So.2d 526, 529 (Fla. 1997). “In the field of taxation, administrators of the laws and the courts are concerned with substance and realities, and formal written documents are not rigidly binding.” *Helvering v. F&R Lazarus & Co.*, 308 U.S. 252, 255 (1939). The Agreement with Integrity Golf substantively constitutes a lease. The Agreement required the payment of rent in exchange for the right to operate the golf course, driving range, clubhouse, restaurant, bar, and pro shop and generate profits therefrom. The term of the Agreement was for seven years, with consecutive five-year renewals thereof. All costs and expenses relating to the operation, maintenance, and use of the golf course facilities were the responsibility of Integrity Golf.

The district courts have not been required to decide whether the use of a management agreement as opposed to a lease in connection with private use of municipally-owned property changes the legal analysis of entitlement to an ad valorem tax exemption. Even in the instant case, the district court held that it did not need to decide whether the golf course facilities were taxable under the more restrictive governmental-governmental test. *Brown*, 336 So.3d at 1230. The majority opinion, however, found those cases discussing that test as instructive “as they establish that Florida courts are hesitant to allow municipal-owned property to gain tax-exempt status when a private actor operates the property and retains the profits from its use of the property.” *Id.*

The Fifth District Court held that a hotel owned by the Greater Orlando Aviation Authority but located on land owned by the City of Orlando and operated by the Hyatt Corporation pursuant to the terms of a management agreement was taxable. *Greater Orlando Aviation Auth. v. Crotty*, 775 So.2d 978, 981 (Fla. 5th DCA 2001). The district court specifically held that it did not need to reach the question of whether the management agreement was in reality a lease because the hotel’s purpose “was to make a profit and not to provide

for the citizens of Orlando. The city might just as well opened a pizzeria.” *Id.* Accordingly, the district court held that the hotel was taxable by looking at the ultimate use of the property instead of whether the use was pursuant to a lease or management agreement. *See also Maccabee Inv., Inc. v. Markham*, 311 So.2d 718, 726 n.6 (Fla. 4th DCA 1975) (whether use of municipally-owned property was pursuant to a lease or management agreement was a “distinction without a difference” for purposes of ad valorem taxation), *quashed on other grounds*, 343 So.2d 16 (Fla. 1977).

The First District Court affirmed a trial court ruling allowing ad valorem tax exemption for a golf course (excluding the restaurant, bar, and pro shop) owned by a special district and operated by a management company as a not for profit venture. *Zingale v. Crossings at Fleming Island Cmty. Dev. Dist.*, 960 So.2d 20 (Fla. 1st DCA 2007), *quashed on other grounds*, 991 So.2d 793 (Fla. 2008). “Significantly, the evidence shows that the property is open to the public and is not operated for profit, notwithstanding that it is operated by a management company.” *Id.* at 26. The district court

did not further elaborate in its opinion on the significance of the management agreement or the nonprofit use of the property.⁶

The City argues that this Court in *Treasure Coast Marina* approved of the First District Court's discussion of the import of the management agreement. (IB-15, 21) The City relies upon a footnote in *Treasure Coast Marina* that, "although we reviewed and quashed *Zingale* on the question of standing of one of the parties to raise a particular defense, there was standing with regard to the issue of application of the tax exemption. We did not address or disturb the correct analysis in that case. See generally *Echeverri*, 991 So.2d 793." *Treasure Coast Marina*, 219 So.3d at 803 n. 4. (IB-16, n. 21)

The correct analysis to which this Court was referring, however, was the conclusion that *City of Gainesville* had not altered the test for determining municipal or public purpose. *Treasure Coast Marina*, 219 So.3d at 798-9. The First District Court's decision predominantly addressed whether *City of Gainesville* had set forth some new, narrower test for municipal exemption and whether the

⁶ The nonprofit use would factually distinguish the instant case, where the use clearly was for profit.

property appraiser had standing to challenge as unconstitutional language declaring that a special district should be entitled to the same ad valorem exemption accorded to municipalities. *Id.* at 27-9. The decision on the standing issue was later quashed. *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So.2d 793 (Fla. 2008). In that case, this Court specifically declined to address whether the district court erred in affirming the trial court's decision that the golf course, swim and tennis centers, and playgrounds were exempt. *Id.* at 797.

Whether the use of the golf course facilities by Integrity Golf was pursuant to a lease or a management agreement or whether the City acted in good faith to preserve government resources or in bad faith to avoid taxation are not the dispositive questions. The City cannot contractually avoid ad valorem taxation of the golf course facilities by drafting the contractual agreement with Integrity Golf as a management agreement as opposed to a lease.⁷ Any effort to structure the Agreement to avoid payment of taxes, moreover,

⁷ In the early stages of negotiations between the City and Integrity Golf, the Agreement was referred to as a lease. (R-397) By the time the Agreement was presented to the City Council, it was characterized as a management agreement. (R-399)

effectively allows the City to charge a higher fee in lieu of the operator's payment of the tax obligation.

The City only is entitled to an exemption if the property is *used exclusively by it* for municipal or public purposes. The City essentially is requesting this Court to rewrite the constitution to delete "used exclusively by it" and ignore the historical importance in the change in the language between the 1885 and 1968 constitutions. Because Integrity Golf used and operated the golf course facilities for its own proprietary, profitmaking purposes, the constitution requires the facilities to be subject to ad valorem taxation.

CONCLUSION

Based on the aforementioned arguments and authorities, this Court respectfully is requested to answer the certified question in the negative and approve the district court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief has been e-filed with the Clerk via the Florida Court's E-filing Portal, and a copy has been served via the portal on the following on the **23rd** day of November 2022:

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(e), the undersigned counsel certifies that the font size and style used in the foregoing Answer Brief is 14-point Bookman Old Style, and that it contains 10,161 words in compliance with Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(B) and (E).

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