August 31, 2018

BIR RULING NO. 1141-18

Section 31, PD 957, as amended by PD 1216

Maria Luisa Park Association, Inc.
No. 5, Paseo Luis Miguel, Ma. Luisa Estate Park
Banilad, Cebu City 6000

Attention: *AAA*

Gentlemen :

This refers to your letter dated 28 September 2011 indorsed to this Office by Revenue Region No. 13, Cebu City, requesting exemption from payment of capital gains tax (CGT), documentary stamp tax (DST) and donor's tax on the seven (7) Deeds of Conveyance executed over several parcels of land in favor of Maria Luisa Park Association, Inc.

It is shown that Maria Luisa Park Association, Inc. (the "Association") is a non-stock, non-profit domestic corporation organized as homeowners' association, with principal address at Paseo Luis Miguel, Maria Luisa Estate Park, Banilad, Cebu City; that the Association is duly registered with the Securities and Exchange Commission (SEC) under Company Registration No. 75272 dated August 25, 1977; and that on various occasions, the developers of the Maria Luisa Estate Park executed Deeds of Conveyance in favor of the Association over several parcels of land, consisting of open spaces, easements, wells, tanks, drainage, parks and playground, open basketball courts and clubhouse as attested to by Revenue Officer Jasmin L. Espinosa per Memorandum dated November 29, 2011. In particular, the parcels of land conveyed to the Association are as follows:

Name of Developer/Landowner	TCT No.	Area
MRO Development Corporation		
	Untitled (Lot 12448-A-6-A)	7 sq. m.
	TCT No. 163652	65 sq. m.
	TCT No. 78169	600 sq. m.

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	TCT No. 78168	200 sq. m.
	TCT No. 126127	44 sq. m.
	TCT No. 1846	69 sq. m.
	TCT No. 162850	160 sq. m.
	TCT No. 1835	438 sq. m.
	TCT No. 1831	16,610 sq. m.
	TCT No. 85263	6,794 sq. m.
	TCT No. T-87497	477 sq. m.
	TCT No. T-85507	104 sq. m.
	TCT No. T-87492	324 sq. m.
	TCT No. 86112	76 sq. m.
	TCT No. 136345	11,459 sq. m.
	TCT No. 108289	4,990 sq. m.
	TCT No. T-118324	80 sq. m.
	TCT No. T-118326	62 sq. m.
	TCT No. T-178332	470 sq. m.
	TCT No. 178334	1,270 sq. m.
	TCT No. T-110178	2,953 sq. m.
	TCT No. 138897	249 sq. m.
	TCT No. 148925	3,483 sq. m.
	TCT No. 148926	2,281 sq. m.
	TCT No. 148927	113 sq. m.
	TCT No. 123079	787 sq. m.
	TCT No. 140844PT	55 sq. m.
	TCT No. 123080	728 sq. m.
	TCT No. 123082	506 sq. m.
	TCT No. 182769	78 sq. m.
	TCT No. 177134-PT	58 sq. m.
	TCT No. 133289	42 sq. m.
	TCT No. 133315	11,344 sq. m.
	TCT No. 133316	797 sq. m.
	TCT No. 133317	400 sq. m.
	TCT No. T-110204	8,381 sq. m.
	TCT No. 136658	9,538 sq. m.
	TCT No. 7965	3,780 sq. m.
	TCT No. 6956	2,548 sq. m.
	TCT No. 114611	3,308 sq. m.
	TCT No. 151041	1,791 sq. m.
	TCT No. 151773	2,448 sq. m.
	TCT No. 169352	2,286 sq. m.
	TCT No. 114632	13,456 sq. m.
	TCT No. 114633	1,216 sq. m.

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	TCT No. 159860	3,397 sq. m.
	TCT No. 146769	320 sq. m.
	TCT No. 146770	735 sq. m.
	TCT No. 146771	735 sq. m.
	TCT No. 146772	13,280 sq. m.
	TCT No. 117609	630 sq. m.
	TCT No. 147246	172 sq. m.
	TCT No. 147682	7,208 sq. m.
	TCT No. T-182901	251 sq. m.
	TCT No. T-182985	76 sq. m.
	TCT No. 140031	690 sq. m.
	TCT No. 117603	997 sq. m.
	TCT No. T-179557	7 sq. m.
	TCT No. T-152772	2,385 sq. m.
	TCT No. 151206	205 sq. m.
	TCT No. 151207	1,070 sq. m.
	TCT No. 151208	6,871 sq. m.
	TCT No. 151342	10,675 sq. m.
	TCT No. 151344	727 sq. m.
	TCT No. 151193	31 sq. m.
	TCT No. 151194	325 sq. m.
	TCT No. 151211	80 sq. m.
	TCT No. 151345	795 sq. m.
	TCT No. 171605	2,766 sq. m.
	TCT No. 180662	34 sq. m.
	TCT No. 180419	6,069 sq. m.
	TCT No. 171623	28,910 sq. m.
	TCT No. 171625	575 sq. m.
	TCT No. 171626	684 sq. m.
	TCT No. 171629	1,456 sq. m.
	TCT No. 171634	385 sq. m.
	TCT No. 10973	2,263 sq. m.
	TCT No. 11034	924 sq. m.
	TCT No. 11004	604 sq. m.
	TCT No. 11014	1,142 sq. m.
	TCT No. 10971	1,763 sq. m.
	TCT No. 6951	8,800 sq. m.
	TCT No. 6953	524 sq. m.
	TCT No. 163134	56 sq. m.
	TCT No. 136659	7,490 sq. m.
	TCT No. 136660	65 sq. m.
	TCT No. 136661	85 sq. m.

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	TCT No. 136662	28 sq. m.
	TCT No. 7967	199 sq. m.
	TCT No. 7754-PT	2,104 sq. m.
	TCT No. 169413	2,032 sq. m.
	TCT No. 169565	1,000 sq. m.
	TCT No. 169566	1,413 sq. m.
RENNER DEVELOPMENT CORPORATION		
	TCT No. 71421PT	35,804 sq. m.
	TCT No. 71381	5,366 sq. m.
	TCT No. 71380	8,430 sq. m.
	TCT No. 75553	316 sq. m.
BBB		
	TCT No. 79561	4,894 sq. m.
	TCT No. 181615	19 sq. m.
CCC, DDD and EEE		
	TCT No. 171456	20 sq. m.
HEIRS OF SPOUSES FFF AND GGG		
	TCT No. 1113	12,352 sq. m.
	TCT No. 79070	23,326 sq. m.
	TCT No. 82021	10 sq. m.
	TCT No. 82031	158 sq. m.
MAJERO, INCORPORATED		
	TCT No. 92368	957 sq. m.
	TCT No. 92369	591 sq. m.
	TCT No. 92370	8,563 sq. m.
	TCT No. 92371	9,628 sq. m.
EMRO INTERNATIONAL, INC.		
	TCT No. 123875	82 sq. m.

In reply, please be informed that Section 31 of Presidential Decree (PD) No. 957, as amended by PD No. 1216, otherwise known as "THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE" provides:

> *"Sec. 31. Roads, Alleys, Sidewalks and Open Spaces. The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:*
>
> *(a) 9% of gross area for high density or social housing (66 to 100 family lot per*

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gross hectare).

(b) 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).

(c) 3.5% of gross area low-density or open market housing (20 family lots and below per gross hectare).

These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. *No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes."* (Underscoring supplied)

Based on the above-quoted citation, roads, alleys, sidewalks and playgrounds have to be donated by the owner/developer to the concerned city or municipality, and it is mandatory for the local government to accept the donation. Furthermore, parks and playgrounds may be donated by the owner/developer in favor of the Homeowners Association provided that such donation is made with the consent of the concerned city or municipality. It is noteworthy to mention that in the case of *The City of Angeles vs. Court of Appeals, G.R No. 97882, August 28, 1996*, the Supreme Court had the occasion to emphasize the mandatory tenor of Section 31 of PD 957, as amended by PD 1216, relative to the need to make the donation in favor of the city or municipality, in this wise:

"It is clear from the aforequoted amendment that it is no longer optional on the part of the subdivision owner/developer to donate the open space for parks and playgrounds; rather there is now a legal obligation to donate the same. Although there is a proviso that the donation of the parks and playgrounds may be made to the homeowners association of the project with the consent of the city of municipality concerned, nonetheless, the owner/developer is still obligated under the law to donate. Such option does not change the mandatory character of the provision. The donation has to be made regardless of which donee is picked by the owner/developer. The consent requirement before the same can be donated to the homeowners' association emphasizes this point." (Underscoring supplied)

In the instant case, the open spaces, easements, wells, tanks, drainage, open basketball courts and clubhouse were donated by the developers/landowners in favor of the Association instead of the City Government of Cebu. Such donation is void for being contrary to law. Furthermore, the conveyance of the parks and playgrounds in favor of the Association was made without the consent of the City Government of Cebu, in violation

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of the requirement under PD 957, as amended. Accordingly, since the subject donation is void, there is no legal basis to exempt said transaction from CGT, DST and donor's tax.

Please be guided accordingly.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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