

EXCELSIOR ACADEMY
QUALIFIED 501(C)(3) BONDS
POST-ISSUANCE TAX COMPLIANCE POLICY AND WRITTEN PROCEDURES

Adopted: March 23, 2023

Last Updated: March 23, 2023

This policy and the procedures set forth herein are adopted by Excelsior Academy (“Borrower”), as conduit borrower, to ensure that interest on tax-exempt conduit bonds issued for the benefit of the Borrower (the “Bonds”) remains excluded from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”). The Borrower reserves the right to use its discretion as necessary and appropriate to make exceptions to these guidelines or adopt additional policies or procedures as facts and circumstances warrant.

I. Use of Bond Proceeds

A. Expenditure of Bond proceeds will be regularly reviewed by the Business Administrator of the Borrower, for consistency with the Bond documents, including any bond resolution, trust indenture, disbursement agreement or tax certificate (including any tax compliance agreement or similar document).

B. None of the proceeds of the Bonds will be used to reimburse the Borrower for costs paid prior to the date of issuance of the Bonds unless the Borrower shall have fully complied with Section 1.150-2 of the Treasury Regulations with respect to such reimbursed amounts, which section is summarized in Exhibit A hereto.

C. The amount of sale proceeds applied to finance issuance costs of any issue of Bonds shall not in any case exceed 2% of the sale proceeds of the Bonds.

D. Staff costs may be financed with Bond proceeds only to the extent that they are properly capitalized as a cost of a capital project under generally accepted accounting principles and federal tax law.

E. Requests for expenditures will be summarized in a “final allocation” of Bond proceeds to uses not later than 18 months after the in-service date of the Bond-financed property (and in any event not later than 5 years and 60 days after the issuance of the Bonds and not later than 60 days after earlier retirement of the issue) in a manner consistent with allocations made to determine compliance with the Code and Treasury Regulations and the applicable tax certificate.

F. Expenditure of proceeds of the Bonds will be measured against the Borrower’s expectation at issuance of the Bonds to (i) incur within 6 months a substantial binding obligation to a third party to expend at least 5% of the net sale proceeds of the Bonds on capital projects, (ii) allocate at least 85% of net sale proceeds to expenditures on the capital projects within 3 years, and (iii) proceed with due diligence to complete the capital projects and fully spend the net sale and investment proceeds. In the event that exceptions under the Code are not met, annual

calculations of rebate liability will be performed or caused to be performed by Lewis Young Robertson & Burningham.

G. If there are any Bond proceeds remaining other than in a reserve or debt service fund established pursuant to the bond resolution or trust indenture after completion of the projects, such proceeds shall be applied in a manner consistent with the applicable bond resolution, trust indenture, loan agreement and tax certificate or pursuant to advice from bond counsel.

II. Use of Bond-Financed Property

A. Records will be maintained by the Business Administrator of the Borrower, identifying the assets or portion of assets that are financed with Bond proceeds, including the average economic life of such Bond-financed property.

B. Upon issuance of Bonds, there shall be no expectation that the Bond-financed property will be sold or otherwise disposed of by the Borrower during the term of the Bonds.

C. Appropriate personnel will be trained regarding restrictions on the use of Bond proceeds and the facilities financed thereby, including unrelated business use (*i.e.*, use by the Borrower or another section 501(c)(3) organization that is not substantially related to the performance of that organization's tax-exempt purpose) and instructed to consult with the Business Administrator of the Borrower, regarding any (i) third-party contract concerning use of the facilities, including without limitation leases, use, management or service contracts, and research contracts and (ii) unrelated business use.

D. Agreements with third parties for lease, use, management, or any other service agreement or research contract with respect to, or non-governmental use in respect of, Bond-financed property must be approved prior to execution (or material modification) by the Business Administrator of the Borrower, who will be responsible for determining whether the proposed agreement results in private business use of the facilities (including in an unrelated trade or business), upon advice of bond counsel, as necessary. If applicable in making such determination, the Business Administrator of the Borrower, will determine, or consult with outside legal counsel to determine, whether the proposed agreement meets the compensation, term and other requirements of Revenue Procedure 2017-13, regarding service agreements (summarized in Exhibit B hereto), or the guidelines of Revenue Procedure 2007-47, regarding research sponsorship agreements (summarized in Exhibit C hereto).

E. the Business Administrator of the Borrower, will communicate at least annually with the appropriate personnel to identify and discuss any existing or planned private use (including unrelated business use) of Bond-financed facilities. Guidelines for measuring and allocating any such use are summarized in Exhibit D hereto.

F. No item of Bond-financed property will be sold or transferred by the Borrower without approval of the governing body of the Borrower who shall authorize and seek the advice of bond counsel to provide guidance as to "remedial action" that may be required under the

applicable Treasury Regulations if Bonds financing such property remain outstanding as of the date of sale or transfer of such property. Remedial action is summarized in Exhibit E hereto.

III. Investments

A. If the issue price of the Bonds cannot be determined on or before the date the Bonds are issued, the Borrower will continue monitoring sales of Bonds until 10% of each maturity of Bonds has been sold to the public at a single price or until all of the Bonds are sold to the public. If, in such circumstances, all of the Bonds are sold, but no single price was agreed with respect to at least 10% of a maturity of the Bonds, the Borrower will consult with bond counsel to determine a reasonable method to establish the issue price of that maturity.

B. Investment of Bond proceeds in compliance with the arbitrage and rebate requirements of the Code and applicable Treasury Regulations will be managed by the Business Administrator of the Borrower, in compliance with the applicable bond resolution or trust indenture and the tax certificate.

C. Guaranteed investment contracts (“GICs”) and defeasance escrow securities will be purchased according to the fair market value provisions of applicable Treasury Regulations, including bid requirements and fee limitations. Certificates of deposit will be purchased only according to the fair market value provisions of applicable Treasury Regulations. Bond counsel will be consulted before purchasing any other, non-marketable securities and before depositing gross proceeds in any other bank account not explicitly authorized by the Bond documents.

D. Upon final expenditure of the gross proceeds of Bonds, and in any event promptly following the fifth anniversary of the date of issuance of the Bonds or earlier retirement of the Bonds, the Business Administrator of the Borrower, will prepare or cause to be prepared a spending exception report or an arbitrage rebate computation (as applicable) for the issue of Bonds. Rebate payments, if due, will be made with Form 8038-T no later than 60 days after (i) each fifth anniversary of the date of issuance of the Bonds and (ii) the final retirement of the Bond issue.

IV. Record Management and Retention

A. Management and retention of records related to Bond issues will be supervised by the Business Administrator of the Borrower.

B. Records for Bonds will be retained for not less than the life of the Bonds, plus any refunding bonds, plus three years. Such records may be in the form of documents or electronic copies of documents, appropriately indexed to specific Bond issues and compliance functions.

C. Retainable records pertaining to Bond issuance, use and investment of Bond proceeds and use of Bond-financed property shall include the following, which shall be retained by the Business Administrator of the Borrower:

- The Bond closing transcript and any amendments to Bond documents.
- Documents relating to any expenditure financed by Bond proceeds. Such documents will include requests for Bond proceeds, construction contracts,

purchase orders, invoices, and payment records. Such documents will include documents relating to costs reimbursed with Bond proceeds.

- Records identifying the assets or portion of assets that are financed with Bond proceeds.
- All contracts and arrangements involving private use of the Bond-financed property, including third-party lease, use, management or service contracts, and research contracts.
- All reports relating to the allocation of Bond proceeds and private use of Bond-financed assets, including information on unrelated business use.
- Records of investments, GICs or other investment agreements, and records of investment activity sufficient to permit calculation of arbitrage rebate, or demonstration that no rebate is due; arbitrage reports; and copies of rebate calculations and records of payments, including Forms 8038-T.

V. Overall Responsibility

A. Overall administration and coordination of these guidelines and related staff training, as deemed necessary, are the responsibility of the Business Administrator of the Borrower.

B. the Business Administrator of the Borrower will coordinate an annual review process to investigate, monitor, assure and document compliance with these guidelines.

C. The Borrower understands that failure to comply with these policies and procedures could result in the retroactive loss of the exclusion of interest on Bonds from federal gross and Utah income and, thus, it would be advisable to consult with bond counsel in advance regarding deviations from the facts and expectations as set forth in the closing certifications relating to any issue of Bonds.

D. Any violations or potential violations of federal tax requirements shall promptly be reported to the governing body of the Borrower and, if necessary, the governing body shall direct the Business Administrator of the Borrower to engage qualified consultants and outside legal counsel to further investigate potential violations or undertake appropriate remedial actions. Any deviation or contemplated deviation from the facts and expectations set forth in the closing certifications relating to any issue of Bonds should be reported promptly to bond counsel or appropriate staff, who normally will consult bond counsel for advice regarding such deviation.

EXHIBIT A

REIMBURSEMENT BOND SUMMARY

Following is a general summary of the requirements relating to bonds that are issued to reimburse expenditures that were paid prior to the date of issuance of bonds (“Reimbursement Bonds”).

Reimbursement Bond proceeds cannot be used to reimburse expenditures paid more than 60 days prior to the adoption of the declaration of official intent/reimbursement resolution, which must contain:

- a general functional description of the property to which the reimbursement relates or an identification of the fund or account from which the expenditure is to be paid and a general functional description of the purposes of such fund or account; and
- the maximum principal amount of debt to be issued.

Reimbursement Bonds must be issued not later than 18 months after the later of (i) the date on which the original expenditure is paid, or (ii) the date on which the property is placed in service, but in any case not more than three years after the date on which the original expenditure is paid. If possible, actual reimbursement should be made within 30 days of the date of issuance of the Reimbursement Bonds.

Note that there are exceptions for “de minimis” amounts (not in excess of the lesser of \$100,000 or 5% of proceeds of the issue) and for “preliminary expenditures” (such as architectural, engineering, surveying, soil testing and similar costs, and costs of issuance), so long as such preliminary expenditures do not exceed 20% of the aggregate issue price.

EXHIBIT B

SUMMARY OF REVENUE PROCEDURE 2017-13

Management contracts and other agreements with service providers with respect to property financed with proceeds of tax-exempt bonds may result in private business use of that property for purposes of § 141 of the Internal Revenue Code of 1986. Whether such an agreement results in private business use is generally based on all of the facts and circumstances but generally results in private business use if the contract provides for compensation based, in whole or in part, on a share of net profits from the operation of the facility. An agreement that results in a lease or ownership of the property by the service provider for federal income tax purposes generally is not considered a management contract for this purpose and generally results in private business use.

Revenue Procedure 2017-13 provides conditions under which a management contract does not result in private business use of the financed property.¹ The following is a summary of the Rev. Proc. 2017-13 requirements and safe harbors and should be used with care. Rev. Proc. 2017-13 and other relevant authority should be reviewed in connection with each proposed management or other service-provider agreement.

I. General Definitions

“*Governmental person*” means a state or local governmental unit as defined in Treas. Reg. § 1.103-1 or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.

“*Managed property*” means the portion of a project with respect to which a service provider provides services.

“*Management contract*” means a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services for a managed property. A management contract does not include a contract or portion of a contract for the provision of services before a managed property is placed in service (for example, pre-operating services for construction design or construction management).

“*Project*” means one or more facilities or capital projects, including land, buildings, equipment, or other property, financed in whole or in part with proceeds of the bond issue.

“*Qualified user*” means, for projects financed with governmental bonds, any governmental person or, for projects financed with qualified 501(c)(3) bonds, any governmental person or any 501(c)(3) organization with respect to its activities which do not constitute an unrelated trade or business, determined by applying § 513(a).

“*Related party*” means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and in reference to any person that is not a governmental unit or 501(c)(3) organization, a related person (as defined in § 144(a)(3) of the Code).

“*Renewal option*” means a provision under which either party has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically

¹ An issuer/borrower may continue to rely on Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and amplified by Notice 2014-67, with respect to a management contract entered into before August 18, 2017 and that is not materially modified or extended on or after that date (except pursuant to certain renewal options).

renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

“*Service provider*” means any person other than a qualified user that provides services to, or for the benefit of, a qualified user under a management contract.

“*Unrelated parties*” means persons other than either: (1) a related party to the service provider or (2) a service provider’s employee.

Eligible Expense Reimbursement Arrangements

A management contract under which the only compensation consists of reimbursements of actual and direct expenses paid by the service provider to unrelated parties and reasonable related administrative overhead expenses of the service provider does not result in private business use.

Qualified Management Contracts

Management contracts that are not eligible expense reimbursement arrangements (as described above) do not result in private business use if the below requirements are met. Moreover, a service provider’s use that is functionally related and subordinate to its services provided under such a qualifying management contract (*e.g.*, use of storage areas to store equipment used to perform the services) does not result in private business use.

Term of the Contract

The term of the contract, including all renewal options, must not be greater than the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the managed property, determined as of the beginning of the term of the contract.

Control of Managed Property

The qualified user must exercise a significant degree of control over the use of the managed property. This requirement is met if the contract requires the qualified user to approve:

- the annual budget;
- capital expenditures (*e.g.*, by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts);
- each disposition of property (as with capital expenditures);
- rates charged for use (*e.g.*, by expressly approving the rates or a general description of the rate-setting methodology (such as a method that establishes hotel room rates using specified revenue goals based on comparable properties), or by requiring that the rates be reasonable and customary as specifically determined by, or negotiated with, an independent third party (such as a medical insurance company)); and
- the general nature and type of use of the managed property.

Risk of Loss of the Managed Property

The qualified user must bear the risk of loss upon damage or destruction of the managed property (*e.g.*, due to *force majeure*). A qualified user may, however, insure against risk of loss and impose a penalty on the service provider for failure to operate the property in accordance with certain standards.

No Inconsistent Tax Position

The service provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a service provider with respect to the managed property. For example, the service provider must agree not to claim any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the managed property.

No Substantial Limitation of Rights

The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights under the contract, based on all the facts and circumstances. A service provider will not be treated as having such a prohibited role or relationship if:

- no more than 20% of the voting power of the governing body of the qualified user is vested in the directors, officers, shareholders, partners, members, and employees of the service provider (or its related parties) in the aggregate;
- the governing body of the qualified user does not include the CEO or other person with equivalent management responsibilities of the service provider (or any of its related parties) or other chairperson or equivalent executive of the service provider's governing body (or that of any of its related parties); and
- the CEO or equivalent of the service provider (or any of its related parties) is not the CEO or equivalent of the qualified user or any of the qualified user's related parties.

Compensation and Expenses

Reasonable Compensation

Payments to the service provider under the contract must be reasonable compensation for services rendered during the term of the contract. Compensation includes payments to reimburse actual and direct expenses and related administrative overhead expenses.

No Net Profits or Net Losses

The contract must not (i) provide to the service provider a share of net profits from the operation of the managed property or (ii) in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property.

Compensation will not be treated as a share of net profits if *no element of the compensation*² takes into account, or is contingent upon, either net profits or both revenues and expenses (other than any reimbursements of actual and direct expenses paid to unrelated parties). Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the service provider's performance in meeting standards for quality of service, performance, or productivity and the amount and timing of payment otherwise meet this requirement.

An arrangement will not be treated as requiring the service provider to bear a share of net losses if:

² For this purpose, the elements of compensation are: the *eligibility* for payment, the *amount* of payment, and the *timing* of payment.

- the amount of the service provider’s compensation and the amount of expenses to be paid by the service provider (and not reimbursed), separately and collectively, do not take into account either net losses or both revenues and expenses, and
- the timing of the payment is not contingent upon net losses.

A service provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction

Payment Deferral

Deferral due to insufficient net cash flows from the operation of the managed property of the payment of compensation that does not otherwise provide a share of net profits or require the service provider to bear a share of net losses will not cause the deferred compensation to be treated as contingent upon net profits or net losses if the contract includes requirements that:

- the compensation is payable at least annually;
- the qualified user is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and
- the qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

Certain Compensation Arrangements

Without regard to whether the service provider pays expenses with respect to the operation of the managed property without reimbursement by the qualified user, compensation for services will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses if the compensation for services is: (a) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (b) incentive compensation as described above; or (c) a combination of these types of compensation.

“*Capitation fee*” means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to such persons varies substantially.³ A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of the managed property. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the service provider against risk such as risk of catastrophic loss.

“*Periodic fixed fee*” means a stated dollar amount for services rendered for a specified period of time.⁴ The stated dollar amount may automatically increase according to a specified, objective external standard that is not linked to the output or efficiency of the managed property. Capitation fees and per-unit fees are not periodic fixed fees.

³ For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period.

⁴ For example, a stated dollar amount per month is a periodic fixed fee.

“*Per-unit fee*” means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user.⁵ Separate billing arrangements between physicians and hospitals are treated as per-unit fee arrangements. A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the managed property.

The Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are examples of objective, external standards.

Contract Revisions

A contract that is materially modified with respect to any matter relevant to these requirements must be retested under these requirements as a new contract as of the date of the material modification.

⁵ For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee.

EXHIBIT C

SUMMARY OF REVENUE PROCEDURE 2007-47

If a research agreement is described in either section (1) or (2) below, the research agreement itself will not generally result in private business use.

(1) *Corporate-sponsored research.* A research agreement relating to property used for basic research (*i.e.*, any original investigation for the advancement of scientific knowledge not having a specific commercial objective) supported or sponsored by a sponsor is described in this section (1) if any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), and the price paid for that use must be determined at the time the license or other resulting technology is available for use. Although the recipient need not permit persons other than the sponsor to use any license or other resulting technology, the price paid by the sponsor must be no less than the price that would be paid by any non-sponsoring party for those same rights.

(2) *Industry or federally sponsored research agreements.* A research agreement relating to property used pursuant to an industry or federally sponsored research arrangement is described in this section (2) if the following requirements are met, taking into account the special rules set forth in section (3) in the case of federally sponsored research:

- A single sponsor agrees, or multiple sponsors agree, to fund governmentally performed basic research;
- The qualified user¹ determines the research to be performed and the manner in which it is to be performed (for example, selection of the personnel to perform the research);
- Title to any patent or other product incidentally resulting from the basic research lies exclusively with the qualified user; and
- The sponsor or sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

(3) *Federal Government rights under the Bayh-Dole Act.* In applying the operating guidelines on industry and federally sponsored research agreements under section (2) to federally sponsored research, the rights of the Federal Government and its agencies mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of section (2), provided that the requirements of sections second and third bullet points above are met, and the license granted to any party other than the qualified user to use the product of the research is no more than a nonexclusive, royalty-free license. Thus, to illustrate, the existence of march-in rights

¹ A “qualified user” of the financed property is a state or local governmental unit (or instrumentality thereof) or a 501(c)(3) organization if the financed property is not used in an unrelated trade or business under section 513(a) of the Internal Revenue Code.

or other special rights of the Federal Government or the sponsoring Federal agency mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of section (2), provided that the qualified user determines the subject and manner of the research in accordance with the second bullet point above, the qualified user retains exclusive title to any patent or other product of the research in accordance with the third bullet point above, and the nature of any license granted to the Federal Government or the sponsoring Federal agency (or to any third party nongovernmental person) to use the product of the research is no more than a nonexclusive, royalty-free license.

EXHIBIT D

SUMMARY OF PRIVATE USE MEASUREMENT AND ALLOCATION

Bonds will be considered “private activity bonds” if the issuer reasonably expects, as of the issue date of the bonds, that the issue of bonds either (i) meets the private business use test and the private security or payment test or (ii) meets the private loan financing test. Bonds will also be considered private activity bonds if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of these tests to be met. For qualified 501(c)(3) bonds, the expectations and actions of the conduit borrower must also be considered.

Governmental bonds generally meet the private business use test if more than 10% of the proceeds of an issue of Bonds are used, directly or indirectly, in any activity that constitutes a trade or business of any person that is not a state or local governmental unit, or more than 5% of such proceeds are used, directly or indirectly, for (i) any use that is not related to any governmental use of the proceeds or (ii) any disproportionate related business use of the proceeds.

Qualified 501(c)(3) bonds will meet the private business use test if more than 5% of the proceeds of an issue (or \$15,000,000, if less) of bonds are used, directly or indirectly, (i) in any activity that constitutes (a) an unrelated trade or business activity of an organization described in section 501(c)(3) of the Code and exempt from tax under section 501(a) (a “501(c)(3) Organization”), determined by applying section 513(a) of the Code (without regard to whether the activity produces unrelated business taxable income), or (b) a trade or business of any person that is not a 501(c)(3) Organization or a state or local governmental unit (a “Non-Exempt Person”), or (ii) to pay costs of issuing the Bonds.

The following is a general summary of how private business use is measured and allocated to proceeds for purposes of the private business use test.

I. Private Use Measurement

Use of financed property is treated as direct use of the bond proceeds, and the use of proceeds by all nongovernmental persons is aggregated for purposes of the private business use test.

To calculate private business use, the percentage or amount of bond proceeds that is attributable to each discrete facility or portion thereof must first be determined by treating each portion as a separate facility. The allocation generally is based on the relative cost of each portion, but where different portions of a facility have similar costs per square foot (or where it would result in a conservative allocation), relative square footage often is used as a proxy for allocating costs. For this purpose, bond proceeds that are invested in a reserve or replacement fund, or paid as fees for a qualified guarantee or a qualified hedge, are allocated ratably among the other purposes for which the proceeds are used. As noted above, however, issuance costs (including amounts retained by an underwriter as compensation) are included in the costs subject to the 5% limitation for qualified 501(c)(3) bonds.

The amount of private business use is generally determined according to the average percentage of private business use of that facility (or portion thereof) during the applicable measurement period. The measurement period generally begins on the later of the issue date of the bonds or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property (determined without regard to any optional redemption dates, but taking into account reasonably expected mandatory redemptions). A combined measurement period is used when bonds are refunded. The average percentage of private business use is the average of the percentages of private business use during the one-year periods within the measurement period, with appropriate adjustments for beginning and ending periods of less than one year. The amount of private business use resulting from ownership of a facility or portion thereof by a nongovernmental person (or, in the case of a qualified 501(c)(3) bond, a Non-Exempt Person) is the greatest percentage of private business use in any one-year period.

Where a facility (or discrete portion thereof) is entirely used for private business use, all of the proceeds allocable to that facility (or portion) are treated as allocable to private business use. The amount of private business use of common areas within a facility is based on a reasonable method that properly reflects the proportionate benefit to be derived by the users of the facility.

For a facility (or discrete portion thereof) in which non-private use and private business use occur simultaneously but on a different basis (for example, a lease or non-qualified management or service contract), the entire facility (or portion) is treated as having private business use.

If, however, there is private business use and actual exempt use on the same basis, the average amount of private business use may be determined on a reasonable basis that properly reflects the proportionate benefit to be derived by the various users of the facility (for example, reasonably expected fair market value of use). For example, in the case of a parking garage with unassigned spaces, the proportion of private use generally is based on the number of spaces used for private business use as a percentage of the total number of spaces.

For a facility (or discrete portion thereof) in which non-private use and private business use occur at different times (for example, different days), the average amount of private business use generally is based on the amount of time that the facility is used for private business use as a percentage of the total time for all actual use. In determining the total amount of actual use, periods during which the facility is not in use are disregarded.

Notwithstanding the foregoing, if private business use is reasonably expected as of the issue date of the bonds to have a significantly greater fair market value than the corresponding non-private use (because the times of use are more attractive, for example), the average amount of private business use must be determined according to the relative reasonably expected fair market values of use rather than another measure, such as average time of use, in order to properly reflect the proportionate benefit to be derived from the private business use.

II. Allocation of Financing Sources to Project Uses

Generally, if two or more sources of funding are allocated to capital expenditures for a single project with both exempt and private business use, those sources must be allocated to the different uses of the project. For this purpose, a “project” is one or more facilities or capital projects, including land, buildings, equipment, or other property, financed in whole or in part with bond proceeds.

General Allocation Rule. Under the general allocation rule, bond proceeds and other sources of funds are allocated ratably throughout the project in proportion to the relative amounts of proceeds and other funds spent on that project.

Undivided Portion Allocation Rule. The “undivided portion” allocation method may be applied to “eligible mixed-use projects.” An eligible mixed-use project is a project that is (i) financed with bond proceeds and qualified equity pursuant to the same plan of financing and (ii) wholly owned by one or more governmental persons (or 501(c)(3) Organizations, in the case of a project financed with qualified 501(c)(3) bonds). Under the undivided portion allocation method, qualified equity allocated to capital expenditures of the eligible mixed-use project is allocated first to the private business use of the project and then to the governmental or exempt use of the project. Conversely, bond proceeds allocated to capital expenditures of the eligible mixed-use project are allocated first to the governmental or exempt use of the project, and then to the private business use of the project. Thus, if the percentage of the eligible mixed-use project financed with qualified equity is less than the percentage of private business use of the project, all of the qualified equity is allocated to the private business use and bond proceeds are allocated to the balance of the private business use of the project. If proceeds of more than one issue finance the eligible mixed-use project, proceeds of each issue are allocated ratably to the uses to which proceeds are allocated in proportion to the relative amounts of the proceeds of such issues allocated to the project.

For purposes of these allocation rules, “qualified equity” means proceeds of bonds that are not tax-advantaged bonds and funds that are not derived from proceeds of a borrowing that are spent on the same eligible mixed-use project as the proceeds of the applicable bonds. Qualified equity finances a project pursuant to “the same plan of financing” as the applicable bonds if the qualified equity pays for capital expenditures of the project on a date that is no earlier than the date on which such expenditures would be eligible for reimbursement by proceeds of the bonds under the applicable reimbursement regulations and, except for a reasonable retainage, no later than the date on which the private business use measurement period for the bonds begins.

EXHIBIT E

REMEDIAL PROVISIONS APPLICABLE TO BONDS

The Borrower acknowledges that any deliberate action by the Borrower after Bond issuance that results in a satisfaction of the private business tests or the private loan test will result in private activity bond status unless one or more qualifying remedial actions are taken. Specifically, Treasury Regulations provide that actions are not treated as deliberate actions if (i) five conditional requirements are met, and (ii) one of three remedial actions is taken, with respect to the disposition proceeds and nonqualified bonds¹:

I. Conditional Requirements

A. *Reasonable Expectations* – The Borrower reasonably expected on the issue date that it would not meet the private business tests or the private loan test for the whole term of the bonds; and

B. *Reasonable Bond Maturity* – The term of the issue must not be unreasonably long; this requirement is met if the weighted average maturity of the bond issue is not greater than 120% of the expected economic life of the property financed; and

C. *Fair Market Value Consideration* – The terms of any agreement (relating to satisfaction of a private activity bond test) must be bona fide and at arm's-length, and the new user must pay a fair market value consideration for the use of the bond-financed property; and

D. *Disposition Proceeds Are Gross Proceeds* – The Borrower must treat any disposition proceeds as gross proceeds subject to arbitrage/rebate restrictions; and

E. *Proceeds Spent for Authorized Purpose* – Except as described with respect to redemption and defeasance options below, prior to deliberate actions, the affected proceeds must have been spent for the authorized purposes under the applicable bond documents.

II. Remedial Actions

A. *Redemption of Non-Qualified Bonds* – Under the general rule, all nonqualified bonds of the issue must be redeemed. Tax-exempt bond proceeds (i.e., refunding bond proceeds) cannot be used unless the tax-exempt bonds are qualified bonds, taking into account the purchaser's use of the facility. The bonds must be redeemed within 90 days of the date of the deliberate action or a defeasance escrow for the bonds must be established within such 90-day period. Special rules apply to transfers exclusively for cash and to defeasance escrows.

¹ "Nonqualified bonds" means the portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not satisfy the private business use test or the private loan financing test, as applicable. The amount of private business use is the highest percentage of business use in any one-year period, commencing with the deliberate action.

B. *Alternative Use of Disposition Proceeds* – If the deliberate action is a disposition of the bond-financed property, the remedial action requirement may be satisfied through an alternative use of the proceeds of the disposition. To meet this requirement, all disposition proceeds must be in cash, the Borrower must reasonably expect to expend the proceeds within two years, the new use must not meet the private business tests or the private loan test (and the Borrower cannot take any action subsequent to the date of the deliberate action to cause the tests to be met), and any unused proceeds must satisfy the redemption requirement in the preceding paragraph. Certain eligible leases may be treated as dispositions of the bond-financed property for purposes of this remedial action.

C. *Alternative Use of Facility* – This remedial action is satisfied if the bond-financed property itself (as distinguished from the proceeds of the issue) is used in an alternative manner (e.g., for a different purpose or by a different person); the nonqualified bonds are treated as reissued on the date of the deliberate action and independently meet all of the requirements for tax exemption under Sections 141 through 150 of the Code, except the arbitrage and rebate rules of Section 148, for the remaining term of the nonqualified bonds; the deliberate action does not involve a transfer of the property to a purchaser that finances the acquisition with the proceeds of another issue of tax-exempt bonds; and any disposition proceeds, other than those arising from an agreement to provide services, resulting from the deliberate action are used to pay debt service on the bonds on the next available payment date or escrowed within 90 days of receipt and yield restricted to pay debt service on the next available payment date.

The above is only a brief summary of remedial actions, and additional special rules may be applicable. As provided in the Borrower's Post-Issuance Tax Compliance Policy & Written Procedures, the Borrower shall seek advice of bond counsel as necessary to provide guidance as to "remedial action" that may be required under the applicable Treasury Regulations.

The Commissioner of the IRS may, by publication, provide for additional remedial actions. In addition, the IRS provides a program in which issuers/borrowers which cannot meet a listed remedial action can enter into a closing agreement with the IRS to avoid private activity bond status. The closing agreement program includes several conditions, including providing for the redemption of the bonds and paying the IRS an amount based on an assumption that the non-qualified bonds are taxable from the date of the subsequent act until they are redeemed.