

**GRIFFIN LAKES  
COMMUNITY DEVELOPMENT  
DISTRICT**

**AGENDA PACKAGE**

**AUGUST 13, 2020**

**TELEPHONIC MEETING**

**Call-In Number 800-747-5150**

**Access Code 4129245#**

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**Griffin Lakes Community Development District**  
**Inframark, Infrastructure Management Services**  
210 N. University Drive #702, Coral Springs, FL 33071  
Phone: 954-603-0033 Fax 954-345-1292

**Call-In Number 800-747-5150**  
**Access Code 4129245#**

August 6, 2020

Board of Supervisors  
Griffin Lakes Community Development District

Dear Board Members:

The regular meeting of the Board of Supervisors of the Griffin Lakes Community Development District will be held **Thursday, August 13, 2020** at Villas at Harbor Isles HOA Offices, 2317 Clipper Place, Fort Lauderdale, Florida. **Due to restrictions as a result of Covid-19, members of the public can attend by calling 800-747-5150, Access Code 4129245.** Following is the advance agenda for the meeting:

1. Call to Order and Roll Call
2. Public Comment
3. Public Hearing to Consider Adoption of the Budget for Fiscal Year 2021
  - A. Proposed, Tentative Budget Fiscal Year 2021
  - B. Resolution 2020-07 Annual Appropriations for Fiscal Year 2021
  - C. Resolution 2020-08 Levying and Imposing a Non-Ad Valorem Assessment
4. Bond Refinancing
  - A. Resolution 2020-09 Delegated Award Resolution
  - B. Third Supplemental Indenture
  - C. Resolution 2020-10 Policies and Procedures Resolution
  - D. Policies and Procedures
  - E. Closing Document – Certificate as to Public Meetings
  - F. Lien of Record
5. District Manager's Report
  - A. Proposed Meeting Dates Fiscal Year 2021
6. Attorney's Report
7. Supervisors' Requests
8. Approval of Financial Report and Check Register
9. Approval of the Minutes of the July 9, 2020 Meeting
10. Adjournment

The balance of the agenda is routine in nature. I look forward to speaking with you at the meeting; however, if you have any questions in the meantime, please contact me at 954-603-0033.

Sincerely,

Kenneth Cassel  
District Manager

# **Third Order of Business**

**3A.**

**GRIFFIN LAKES**  
Community Development District

***Annual Operating and Debt Service Budget***  
**Fiscal Year 2021**

Approved Tentative Budget  
Meeting on 8/13/2020

Prepared by:



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**Griffin Lakes**  
Community Development District

**Operating Budget**  
Fiscal Year 2021

**Summary of Revenues, Expenditures and Changes in Fund Balances**  
Fiscal Year 2021 Approved Tentative Budget

ACCOUNT DESCRIPTION	ACTUAL FY 2018	ACTUAL FY 2019	ADOPTED BUDGET FY 2020	ACTUAL THRU JUNE 2020	PROJECTED JULY - SEP 2020	TOTAL PROJECTED FY 2020	ANNUAL BUDGET FY 2021
<b>REVENUES</b>							
Interest - Investments	\$ 1,161	\$ 2,699	\$ 400	\$ 751	\$ 180	\$ 931	\$ 500
Interest - Tax Collector	190	381	-	241	-	241	150
Special Assmnts- Tax Collector	125,141	124,825	125,141	121,602	3,539	125,141	125,141
Special Assmnts- Discounts	(4,337)	(4,238)	(5,006)	(4,381)	-	(4,381)	(5,006)
<b>TOTAL REVENUES</b>	<b>122,155</b>	<b>123,667</b>	<b>120,535</b>	<b>118,213</b>	<b>3,719</b>	<b>121,932</b>	<b>120,785</b>
<b>EXPENDITURES</b>							
<i>Administrative</i>							
P/R-Board of Supervisors	7,000	9,800	8,000	7,800	2,400	10,200	8,000
FICA Taxes	536	750	612	597	184	781	612
ProfServ-Dissemination Agent	2,000	-	1,000	1,000	-	1,000	1,000
ProfServ-Engineering	-	-	3,000	-	3,000	3,000	3,000
ProfServ-Legal Services	7,115	5,878	8,000	5,718	2,282	8,000	8,000
ProfServ-Mgmt Consulting Serv	16,491	16,986	17,496	13,122	4,374	17,496	17,496
ProfServ-Property Appraiser	854	854	854	854	-	854	854
ProfServ-Special Assessment	4,243	4,370	4,501	4,501	-	4,501	4,501
ProfServ-Trustee Fees	4,337	4,445	4,338	3,578	872	4,450	4,450
Auditing Services	3,250	3,250	3,250	-	3,250	3,250	4,000
Website Compliance	-	-	-	-	3,065	3,065	1,553
Postage and Freight	108	127	175	119	56	175	175
Insurance - General Liability	9,738	9,200	10,733	9,200	-	9,200	10,120
Printing and Binding	9	458	674	172	502	674	674
Legal Advertising	514	446	500	521	225	746	500
Misc-Property Taxes	138	138	138	138	-	138	-
Misc-Assessmnt Collection Cost	2,416	2,412	2,503	2,344	159	2,503	2,503
Misc-Web Hosting	1,000	2,440	1,600	5,206	420	5,626	-
Misc-Web E-mail and Admin.	-	-	-	-	-	-	1,100
Office Supplies	-	-	30	-	45	45	90
Annual District Filing Fee	175	175	175	175	-	175	175
<b>Total Administrative</b>	<b>59,924</b>	<b>61,729</b>	<b>67,579</b>	<b>55,045</b>	<b>20,834</b>	<b>75,879</b>	<b>68,803</b>
<i>Field</i>							
Contracts-Lake and Wetland	3,540	3,540	3,540	2,655	885	3,540	3,540
Contracts-Fountain	-	-	900	-	900	900	900
Contracts-Landscape	6,344	14,713	6,344	4,758	1,586	6,344	6,344
Contracts-Mulch	9,340	18,770	7,740	10,212	4,670	14,882	14,882
Contracts-Irrigation	1,200	1,528	1,440	2,832	720	3,552	1,440
Contracts-Pest Control	6,000	6,000	6,000	4,500	1,500	6,000	6,000
Utility - Stormwater	-	-	-	-	-	-	138
R&M-Grounds	9,979	4,037	1,000	-	7,920	7,920	8,000
R&M-Lake	1,140	1,140	1,140	855	285	1,140	1,140
R&M-Plant Replacement	22,200	14,582	15,624	17,090	3,997	21,087	20,000
Misc-Contingency	12,087	3,255	9,228	1,225	6,500	7,725	10,000
<b>Total Field</b>	<b>71,830</b>	<b>67,565</b>	<b>52,956</b>	<b>44,127</b>	<b>28,963</b>	<b>73,090</b>	<b>72,384</b>
<b>TOTAL EXPENDITURES</b>	<b>131,754</b>	<b>129,294</b>	<b>120,535</b>	<b>99,172</b>	<b>49,797</b>	<b>148,969</b>	<b>141,187</b>



**Summary of Revenues, Expenditures and Changes in Fund Balances**  
Fiscal Year 2021 Approved Tentative Budget

ACCOUNT DESCRIPTION	ACTUAL FY 2018	ACTUAL FY 2019	ADOPTED BUDGET FY 2020	ACTUAL THRU JUNE 2020	PROJECTED JULY - SEP 2020	TOTAL PROJECTED FY 2020	ANNUAL BUDGET FY 2021
Excess (deficiency) of revenues							
Over (under) expenditures	(9,599)	(5,627)	-	19,041	(46,078)	(27,037)	(20,401)
<b>OTHER FINANCING SOURCES (USES)</b>							
Contribution to (Use of) Fund Balance	-	-	-	-	-	-	(20,401)
<b>TOTAL OTHER SOURCES (USES)</b>	-	-	-	-	-	-	<b>(20,401)</b>
Net change in fund balance	(9,599)	(5,627)	-	19,041	(46,078)	(27,037)	(20,401)
<b>FUND BALANCE, BEGINNING</b>	<b>133,675</b>	<b>124,076</b>	<b>118,449</b>	<b>118,449</b>	<b>-</b>	<b>118,449</b>	<b>91,412</b>
<b>FUND BALANCE, ENDING</b>	<b>\$ 124,076</b>	<b>\$ 118,449</b>	<b>\$ 118,449</b>	<b>\$ 137,490</b>	<b>\$ (46,078)</b>	<b>\$ 91,412</b>	<b>\$ 71,011</b>

**Budget Narrative  
Fiscal Year 2021****REVENUES****Special Assessments-Tax Collector**

The District will levy a Non-Ad Valorem assessment on all the assessable property within the District to pay for the operating expenditures during the Fiscal Year.

**Special Assessments-Discounts**

Per Section 197.162, Florida Statutes, discounts are allowed for early payment of assessments. The budgeted amount for the fiscal year is calculated at 4% of the anticipated Non-Ad Valorem assessments.

**EXPENDITURES****Administrative****P/R-Board of Supervisors**

Chapter 190 of the Florida Statutes allows for members of the Board of Supervisors to be compensated \$200 per meeting at which they are in attendance. The amount for the Fiscal Year is based upon all supervisors attending all the meetings.

**Professional Services-Dissemination Agent**

The District is required by the Securities and Exchange Commission to comply with Rule 15c2-12(b)-(5), which relates to additional reporting requirements for unrelated bond issues. The budgeted amount for the fiscal year is based on standard fees charged for this service.

**Professional Services-Engineering**

The District's engineer provides general engineering services to the District, i.e. attendance and preparation for monthly board meetings when requested, review of invoices, and other specifically requested assignments. Prepare annual report for bond indenture.

**Professional Services-Legal Services**

The District's Attorney, Billing, Cochran, Lyles, Mauro & Ramsey P.A. provides general legal services to the District, i.e., attendance and preparation for monthly Board meetings, review of contracts, review of agreements and resolutions, and other research as directed or requested by the Board of Supervisors and the District Manager.

**Professional Services-Management Consulting Services**

The District receives Management, Accounting and Administrative services as part of a Management Agreement with Inframark Infrastructure Management Services, Inc. Also included are costs for Information Technology charges to process all the District's financial activities, i.e. accounts payable, financial statements, budgets, etc., on a main frame computer owned by Inframark in accordance with the management contract and the charge for rentals. The budgeted amount for the fiscal year is based on the contracted fees outlined in Exhibit "A" of the Management Agreement.

**Professional Services-Property Appraiser**

The Property Appraiser provides the District with a listing of the legal description of each property parcel within the District boundaries, and the names and addresses of the owners of such property. The District reimburses the Property Appraiser for necessary administrative costs incurred to provide this service. Per the Florida Statutes, administrative costs shall include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage, and programming. The budget for property appraiser costs was based on a unit price per parcel. The County Property Appraiser charges the District for 427 parcels or \$854 per year.

**Professional Services-Special Assessment**

Administrative costs to put the District's assessments on the Tax Roll.

**Budget Narrative**  
**Fiscal Year 2021**

**EXPENDITURES**

**Administrative** (continued)

**Professional Services-Trustee Fees**

The District issued this Series of 2008 Special Assessment Bonds that are deposited with a Trustee to handle all trustee matters. The annual trustee fee is based on standard fees charged plus any out-of-pocket expenses.

**Auditing Services**

The District is required to conduct an annual audit of its financial records by an Independent Certified Public Accounting Firm. The budgeted amount for the fiscal year is based on historical fees.

**Website Compliance**

Annual fee to Campus Suite to maintain ADA Compliance requirements.

**Postage and Freight**

Actual postage and/or freight used for District mailings including agenda packages, vendor checks and other correspondence.

**Insurance-General Liability**

The District's General Liability & Public Officials Liability Insurance policy is with Public Risk Insurance Agency, Inc. They specialize in providing insurance coverage to governmental agencies. The budgeted amount allows for a projected increase in the premium.

**Printing and Binding**

Copies used in the preparation of agenda packages, required mailings, and other special projects.

**Legal Advertising**

The District is required to advertise various notices for monthly Board meetings and other public hearings in a newspaper of general circulation.

**Miscellaneous-Assessment Collection Costs**

The District reimburses the Broward County Tax Collector for her or his necessary administrative costs. Per the Florida Statutes, administrative costs shall include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage, and programming. The District also compensates the Tax Collector for the actual cost of collection or 2% on the amount of special assessments collected and remitted, whichever is greater. The budget for collection costs was based on a maximum of 2% of the anticipated assessment collections.

**Miscellaneous-Web E-mail and Administration.**

E-mail cost and Administration of e-mail.

**Office Supplies**

Supplies used in the preparation and binding of agenda packages, required mailings, and other special projects.

**Annual District Filing Fee**

The District is required to pay an annual fee of \$175 to the Department of Economic Opportunity.



**Budget Narrative**  
Fiscal Year 2021**EXPENDITURES****Field****Contracts-Lake and Wetland**

The District has a permit obligation to comply with certain conditions for the establishment and maintenance of upland/wetland conservation areas and for maintenance of storm water management areas. Advanced Aquatic Services, Inc. – monthly maintenance fee \$295.

**Contracts-Fountain**

This is for repair and maintenance of the lake fountains.

**Contracts-Landscape**

The District has a contract with Cutters Edge to provide turf maintenance landscape detail for the District. Monthly amount is \$528.65.

**Contracts-Mulch**

The District has a contract with Cutters Edge to provide mulching of the beds in April and November. Annual amount is \$9,340.

**Contracts-Irrigation**

The District has a contract with Cutters Edge to provide irrigation wet checks for the District. Monthly amount is \$120 plus the cost of repairs and parts.

**Utility Stormwater**

Broward County Tax Collector Dania storm water for non – ad valorem assessments for these account numbers: 504232-52-0580, 504232-52-0590, 504232-52-0600 and 504232-52-0610

**Contracts-Pest Control**

The District has a contract with Cutters Edge to provide pest control and turf/ornamental fertilization for the District. Monthly amount is \$500.

**R&M-Grounds**

This is for annual tree trimming by Cutters Edge.

**R&M-Lake**

This is for trash pick-up on the lakes. Advanced Aquatic, \$95/month.

**R&M-Plant Replacement**

This is for landscape enhancement projects.

**Miscellaneous-Contingency**

The District may incur field expenses that may arise to maintain the District property (lakes and landscaping).

**Exhibit "A"**  
Allocation of Fund Balances

**AVAILABLE FUNDS**

	<u>Amount</u>
Beginning Fund Balance - Fiscal Year 2021	\$ 91,412
Net Change in Fund Balance - Fiscal Year 2021	(20,401)
Reserves - Fiscal Year 2021 Additions	-
<b>Total Funds Available (Estimated) - 9/30/2021</b>	<b>71,011</b>

**ALLOCATION OF AVAILABLE FUNDS**

<b><i>Assigned Fund Balance</i></b>	
Operating Reserve - First Quarter Operating Capital	35,297 <sup>(1)</sup>
<b>Total Allocation of Available Funds</b>	<b>35,297</b>

<b>Total Unassigned (undesignated) Cash</b>	<b>\$ 35,714</b>
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**Notes**

(1) Represents approximately 3 months of operating expenditures

**Griffin Lakes**  
Community Development District

**Debt Service Budget**  
Fiscal Year 2021

**Summary of Revenues, Expenditures and Changes in Fund Balances**

Fiscal Year 2021 Approved Tentative Budget

ACCOUNT DESCRIPTION	ACTUAL FY 2018	ACTUAL FY 2019	ADOPTED BUDGET FY 2020	ACTUAL THRU JUNE 2020	PROJECTED JULY - SEP 2020	TOTAL PROJECTED FY 2020	ANNUAL BUDGET FY 2021
<b>REVENUES</b>							
Interest - Investments	\$ 792	\$ 1,046	\$ 200	\$ 2,002	\$ 180	\$ 2,182	\$ 500
Special Assmnts- Tax Collector	343,466	342,683	343,466	333,836	9,630	343,466	343,466
Special Assmnts- Discounts	(11,907)	(11,634)	(13,739)	(12,027)	-	-	(13,739)
<b>TOTAL REVENUES</b>	<b>332,351</b>	<b>332,095</b>	<b>329,927</b>	<b>323,811</b>	<b>9,810</b>	<b>345,648</b>	<b>330,227</b>
<b>EXPENDITURES</b>							
<i>Administrative</i>							
Misc-Assessmnt Collection Cost	6,632	6,620	6,869	6,436	193	6,629	6,869
<b>Total Administrative</b>	<b>6,632</b>	<b>6,620</b>	<b>6,869</b>	<b>6,436</b>	<b>193</b>	<b>6,629</b>	<b>6,869</b>
<i>Debt Service</i>							
Principal Debt Retirement	145,000	150,000	160,000	160,000	-	160,000	165,000
Interest Expense	181,067	173,893	166,709	166,709	-	166,709	158,555
<b>Total Debt Service</b>	<b>326,067</b>	<b>323,893</b>	<b>326,709</b>	<b>326,709</b>	<b>-</b>	<b>326,709</b>	<b>323,555</b>
<b>TOTAL EXPENDITURES</b>	<b>332,699</b>	<b>330,513</b>	<b>333,578</b>	<b>333,145</b>	<b>193</b>	<b>333,338</b>	<b>330,424</b>
Excess (deficiency) of revenues							
Over (under) expenditures	(348)	1,582	(3,651)	(9,334)	9,617	12,310	(197)
<b>OTHER FINANCING SOURCES (USES)</b>							
Contribution to (Use of) Fund Balance	-	-	(3,651)	-	-	-	(197)
<b>TOTAL OTHER SOURCES (USES)</b>	<b>-</b>	<b>-</b>	<b>(3,651)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(197)</b>
Net change in fund balance	(348)	1,582	(3,651)	(9,334)	9,617	12,310	(197)
<b>FUND BALANCE, BEGINNING</b>	<b>303,801</b>	<b>303,453</b>	<b>305,035</b>	<b>305,035</b>	<b>-</b>	<b>305,035</b>	<b>317,345</b>
<b>FUND BALANCE, ENDING</b>	<b>\$ 303,453</b>	<b>\$ 305,035</b>	<b>\$ 301,384</b>	<b>\$ 295,701</b>	<b>\$ 9,617</b>	<b>\$ 317,345</b>	<b>\$ 317,149</b>

<b>Amortization Schedule</b>				
<b>Series 2008 Special Assessment Refunding Bonds</b>				
<b>Date</b>	<b>Regular Principal</b>	<b>Coupon Interest</b>	<b>Interest Expense</b>	<b>Outstanding Principal</b>
11/1/2020		4.88%	\$79,602	\$2,980,000
5/1/2021	\$165,000	4.88%	\$78,953	\$2,815,000
11/1/2021		4.88%	\$75,486	\$2,815,000
5/1/2022	\$175,000	4.88%	\$74,905	\$2,640,000
11/1/2022		4.88%	\$71,121	\$2,640,000
5/1/2023	\$185,000	4.88%	\$70,611	\$2,455,000
11/1/2023		4.88%	\$66,507	\$2,455,000
5/1/2024	\$195,000	4.88%	\$66,217	\$2,260,000
11/1/2024		4.88%	\$61,643	\$2,260,000
5/1/2025	\$200,000	4.88%	\$61,287	\$2,060,000
11/1/2025		4.88%	\$56,655	\$2,060,000
5/1/2026	\$215,000	4.88%	\$56,380	\$1,845,000
11/1/2026		4.88%	\$51,292	\$1,845,000
5/1/2027	\$225,000	4.88%	\$51,105	\$1,620,000
11/1/2027		4.88%	\$45,680	\$1,620,000
5/1/2028	\$235,000	4.88%	\$45,616	\$1,385,000
11/1/2028		5.75%	\$39,819	\$1,385,000
5/1/2029	\$245,000	5.75%	\$39,819	\$1,140,000
11/1/2029		5.75%	\$32,775	\$1,140,000
5/1/2030	\$260,000	5.75%	\$32,775	\$880,000
11/1/2030		5.75%	\$25,300	\$880,000
5/1/2031	\$275,000	5.75%	\$25,300	\$605,000
11/1/2031		5.75%	\$17,394	\$605,000
5/1/2032	\$295,000	5.75%	\$17,394	\$310,000
11/1/2032		5.75%	\$8,913	\$310,000
5/1/2033	\$310,000	5.75%	\$8,913	\$0
totals	\$2,980,000		\$1,261,461	



**GRIFFIN LAKES**

Community Development District

Series 2008 Debt Service Fund

**Budget Narrative**  
Fiscal Year 2021**REVENUES****Special Assessments-Tax Collector**

The District will levy a Non-Ad Valorem assessment on all the assessable property within the District to pay for the debt service expenditures during the Fiscal Year.

**Special Assessments-Discounts**

Per Section 197.162, Florida Statutes, discounts are allowed for early payment of assessments. The budgeted amount for the fiscal year is calculated at 4% of the anticipated Non-Ad Valorem assessments.

**EXPENDITURES****Administrative****Miscellaneous-Assessment Collection Cost**

The District reimburses the Broward County Tax Collector for her or his necessary administrative costs. Per the Florida Statutes, administrative costs shall include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage, and programming. The District also compensates the Tax Collector for the actual cost of collection or 2% on the amount of special assessments collected and remitted, whichever is greater. The budget for collection costs was based on a maximum of 2% of the anticipated assessment collections.

**Principal Debt Retirement**

The District pays regular principal payments annually to pay down/retire the debt.

**Interest Expense**

The District pays interest expense on the debt twice during the year.

## **Griffin Lakes**

Community Development District

## **Supporting Budget Schedule**

Fiscal Year 2021

Comparison of Assessments Rates  
Fiscal Year 2021 vs Fiscal Year 2020

Units	2021 O&M Assessment	2020 O&M Assessment	% Increase/ (Decrease)	2021 DS Assessment	2020 DS Assessment	% Increase/ (Decrease)	2021 Total Assessment	2020 Total Assessment	% Increase/ (Decrease)
427	\$293.07	\$293.07	0.0%	\$804.37	\$804.37	0.0%	\$1,097.44	\$1,097.44	0.0%

Per Unit Assessment:									
	<u>2012-13</u>	<u>2013-14</u>	<u>2014-2015</u>	<u>2015-2016</u>	<u>2016-2017</u>	<u>2017-2018</u>	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>
O&M	\$250.63	\$293.07	\$293.07	\$293.07	\$293.07	\$293.07	\$293.07	\$293.07	\$293.07
DS	\$804.37	\$804.37	\$804.37	\$804.37	\$804.37	\$804.37	\$804.37	\$804.37	\$804.37
	\$ 1,055.00	\$ 1,097.44	\$ 1,097.44	\$ 1,097.44	\$ 1,097.44	\$ 1,097.44	\$ 1,097.44	\$ 1,097.44	\$ 1,097.44

**3B.**

**RESOLUTION 2020-07****A RESOLUTION OF THE GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT RELATING TO THE ANNUAL APPROPRIATIONS OF THE DISTRICT AND ADOPTING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020; AND ENDING SEPTEMBER 30, 2021, AND REFERENCING THE MAINTENANCE AND BENEFIT SPECIAL ASSESSMENTS TO BE LEVIED BY THE DISTRICT FOR SAID FISCAL YEAR**

WHEREAS, the District Manager has, prior to the fifteenth (15th) day in June, 2020, submitted to the Board of Supervisors (the "Board") a proposed budget for the next ensuing budget year along with an explanatory and complete financial plan for each fund of the District, pursuant to the provisions of Section 190.008(2)(a), Florida Statutes; and

WHEREAS, at least sixty (60) days prior to the adoption of the proposed annual budget and any proposed long-term financial plan or program of the District for future operations (the "Proposed Budget") the District did file a copy of the Proposed Budget with the general purpose local governing authorities having jurisdiction over the area included in the District pursuant to the provisions of Section 190.008(2)(b), Florida Statutes; and

WHEREAS, on June 11, 2020, the Board set August 13, 2020, as the date for a public hearing thereon and caused notice of such public hearing to be given by publication pursuant to Section 190.008(2)(a) Florida Statutes; and

WHEREAS, Section 190.008(2)(a), Florida Statutes requires that, prior to October 1 of each year, the District Board by passage of the Annual Appropriation Resolution shall adopt a budget for the ensuing fiscal year and appropriate such sums of money as the Board deems necessary to defray all expenditures of the District during the ensuing fiscal year; and

WHEREAS, the District Manager has prepared a Proposed Budget on a Cash Flow Budget basis, whereby the budget shall project the cash receipts and disbursements anticipated during a given time period, including reserves for contingencies for emergency or other unanticipated expenditures during the fiscal year; and

WHEREAS, Section 190.021, Florida Statutes provides that the Annual Appropriation Resolution shall also fix the Maintenance Special Assessments and Benefit Special Assessments upon each piece of property within the boundaries of the District benefited, specifically and peculiarly, by the maintenance and/or capital improvement programs of the District, such levy representing the amount of District assessments necessary to provide for payment during the ensuing budget year of all properly authorized expenditures to be incurred by the District, including principal and interest of special revenue, capital improvement and/or benefit assessment bonds, in order for the District to exercise its various general and special powers to implement its single and specialized infrastructure provision purpose; and

WHEREAS, the Board of Supervisors of the Griffin Lakes Community Development District finds and determines that the non-ad valorem special assessments it imposes and levies by this Resolution for maintenance on the parcels of property involved will constitute a mechanism by which the property owners lawfully and validly will reimburse the District for those certain special and peculiar benefits the District has determined are received by, and flow to, the parcels of property from the systems, facilities

and services being provided, and that the special and peculiar benefits are apportioned in a manner that is fair and reasonable in accordance with applicable assessment methodology and related case law; and

WHEREAS, the Chair of the Board of Supervisors may designate the District Manager or other person to certify the non-ad valorem assessment roll to the Tax Collector in and for Broward County political subdivision on compatible electronic medium tied to the property identification number no later than 15 September 2020 so that the Tax Collector may merge that roll with others into the collection roll from which the November tax notice is to be printed and mailed; and

WHEREAS, the proceeds from the collections of these imposed and levied non-ad valorem assessments shall be paid to the Griffin Lakes Community Development District; and

WHEREAS, the Tax Collector, under the direct supervision of the Florida Department of Revenue performs the state work in preparing, mailing out, collecting and enforcing against delinquency the non-ad valorem assessments of the District using the Uniform Collection Methodology for non-ad valorem assessments; and

WHEREAS, if the Property Appraiser and the Tax Collector have adopted a different technological procedure for certifying and merging the rolls, then that procedure must be worked out and negotiated with Board approval through the auspices of the District Manager before there are any deviations from the provisions of Section 197.3632, Fla. Stat., and Rule 12D-18, Florida Administrative Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF  
SUPERVISORS OF GRIFFIN LAKES COMMUNITY DEVELOPMENT  
DISTRICT;**

**Section 1.** The recitals above are true and correct and are incorporated herein as dispositive.

**Section 2. Budget**

- a. The Board of Supervisors has reviewed the District Manager's Proposed Budget, a copy of which is on file with the office of the District Treasurer and the office of the Records Administration Department, and is hereby attached to this resolution, and hereby approves certain amendments thereto, as shown in Section 3 below.
- b. The District Manager's Proposed Budget, as amended by the Board, is adopted hereby in accordance with the provisions of Section 190.008(2)(a), Florida Statutes and incorporated herein by reference as Exhibit A; provided, however, the comparative figures contained in the adopted budget may be revised subsequently as deemed necessary by the District Manager to reflect actual revenues and expenditures for the Fiscal Year 2020 and/or revised projections for Fiscal Year 2021.
- c. The adopted budget, as amended, shall be maintained in the office of the District Treasurer and the District Records Administration Department and identified as "The Budget for the Griffin Lakes Community Development District for the Fiscal Year Ending September 30, 2021 as Adopted by the Board of Supervisors on August 13, 2020.

**Section 3. Appropriations**

There be, and hereby is appropriated out of the revenues of the Griffin Lakes Community Development District, for the Fiscal Year beginning October 1, 2020, and ending September 30, 2021 the sum of \_\_\_\_\_ (\$\_\_\_\_\_) to be raised by the applicable imposition and levy by the Board of applicable non-ad valorem special assessments and otherwise, which sum is deemed by the Board of Supervisors to be necessary to defray all expenditures of the District during said budget year, to be divided and appropriated in the following fashion:

TOTAL GENERAL FUND	\$
DEBT SERVICE FUND	\$
CAPITAL PROJECTS FUND	\$
ENTERPRISE FUNDS	\$
 Total All Funds	 \$

#### **Section 4. Supplemental Appropriations**

The Board may authorize by resolution supplemental appropriations or revenue changes for any lawful purpose from funds on hand or estimated to be received within the fiscal year as follows:

- a. Board may authorize a transfer of the unexpended balance or portion thereof of any appropriation item.
- b. Board may authorize an appropriation from the unappropriated balance of any fund.
- c. Board may increase any revenue or income budget account to reflect receipt of any additional unbudgeted monies and make the corresponding change to appropriations or the unappropriated balance.

The District Manager and Treasurer shall have the power within a given fund to authorize the transfer of any unexpended balance of any appropriation item or any portion thereof, provided such transfers do not exceed Ten Thousand (\$10,000) Dollars or have the effect of causing more than 10% of the total appropriation of a given program or project to be transferred previously approved transfers included. Such transfer shall not have the effect of causing a more than \$10,000 or 10% increase, previously approved transfers included, to the original budget appropriation for the receiving program. Transfers within a program or project may be approved by the applicable department director and the District Manager or Treasurer. The District Manager or Treasurer must establish administrative procedures, which require information on the request forms proving that such transfer requests comply with this section.

#### **Section 5. Maintenance Special Assessment Levy: Fixed and Referenced and to be Levied by the Board**

- a. The Fiscal Year 2021 Maintenance Special Assessment Levy (the "assessment levy") for the assessment upon all the property within the boundaries of the District based upon the special and peculiar benefit received and further based upon reasonable and fair apportionment of the special benefit, shall be in accordance with the attached Exhibit A, which levy represents the amount of District assessments necessary to provide for payment during the aforementioned budget year of all properly authorized expenditures to be incurred by the District, including principal and interest of special revenue, capital improvement and/or benefit assessment bonds. Said assessment levy shall be distributed as follows:

General Fund O & M  
Debt Service Fund

\$ [See Assessment Levy Resolution 2020-08]  
\$ [See Assessment Levy Resolution 2020-08]

- b. The designee of the Chair of the Board of Supervisors of the Griffin Lakes Community Development District shall be the Manager or the Treasurer of the District designated to certify the non-ad valorem assessment roll to the Tax Collector in and for the Broward County political subdivision, in accordance with applicable provisions of State law (Chapters 170, 190 and 197, Fla. Stat.) and applicable rules (Rule 12D-18, Florida Administrative Code) which shall include not only the maintenance special assessment levy but also the total for the debt service levy, as required by and pursuant to law.

Introduced, considered favorably, and adopted this 13<sup>th</sup> day of August 2020.

Griffin Lakes Community Development District

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Chairman

Attest:

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Secretary



**3C.**

**RESOLUTION 2020-08**

**A RESOLUTION LEVYING AND IMPOSING A NON-AD VALOREM MAINTENANCE SPECIAL ASSESSMENT FOR THE GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT FOR FISCAL YEAR 2021**

Preamble

WHEREAS, certain improvements existing within the Griffin Lakes Community Development District and certain costs of operation, repairs and maintenance are being incurred; and

WHEREAS, the Board of Supervisors of the Griffin Lakes Community Development District find that the District's total General Fund operation assessments, taking into consideration other revenue sources during Fiscal Year 2021, will amount to \$\_\_\_\_\_; and

WHEREAS, the Board of Supervisors of the Griffin Lakes Community Development District finds the District's Debt Service Fund Assessment during Fiscal Year 2021 will amount to \$\_\_\_\_\_; and

WHEREAS, the Board of Supervisors of the Griffin Lakes Community Development District finds that the Debt Service Fund relates to systems and facilities which provide special benefits peculiar to certain property within the District based on the applicable assessment methodology; and

WHEREAS, the Board of Supervisors of the Griffin Lakes Community Development District finds that the non-ad valorem special assessments it levies and imposes by this resolution for maintenance on the parcels of property involved will reimburse the District for certain special and peculiar benefits received by the property flowing from the maintenance of the systems, facilities and services apportioned in a manner that is fair and reasonable, in accordance with the applicable assessment methodology; and

WHEREAS, the District Board understands that this resolution levies only the maintenance assessments for Fiscal Year 2021, and

WHEREAS, the Chair of the District, or the designee of the District Manager, shall certify a total non-ad valorem assessment roll in a timely manner to the Tax Collector in and for

Broward County for collection to include all assessments levied and approved by the District on the property including those for debt service as well as for special maintenance assessments.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF  
SUPERVISORS OF THE GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT OF BROWARD COUNTY,  
FLORIDA;

Section 1. The recitals above are true and correct and are hereby incorporated herein as dispositive.

Section 2. A special assessment for maintenance as authorized pursuant to Section 190.021(3) Florida Statutes, (hereinafter referred to as “assessment”) is hereby levied on the platted lots within the District.

Section 3. That the collection and enforcement of the aforesaid assessments on platted lots shall be by the Tax Collector serving as agent of the State of Florida in Broward County (Tax Collector) and shall be at the same time and in like manner as ad valorem taxes and subject to all ad valorem tax collection and enforcement procedures which attend the use of the official annual tax notice.

Section 4. The levy and imposition of the maintenance special assessments on platted lots included in the District will be combined with the debt service non-ad valorem assessments which were levied and certified as a total amount on the non-ad valorem assessment roll to the Broward County Tax Collector by the designee of the Chair of the Board on compatible medium no later than 15 September 2020, which shall then be collected by the Tax Collector on the tax notice along with other non-ad valorem assessments from other local governments and with all applicable property taxes to each platted parcel of property.

Section 5. The proceeds therefrom shall be paid to the Griffin Lakes Community Development District.

Section 6. The Chair of the Board of the Griffin Lakes Community Development District designates the District Manager to perform the certification duties.

Section 7. Be it further resolved, that a copy of this Resolution be transmitted to the proper public officials so that its purpose and effect may be carried out in accordance with law.

PASSED AND ADOPTED this 13<sup>th</sup> day of August 2020, by the Board of Supervisors of the Griffin Lakes Community Development District.

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Secretary

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Chairman

## **Fourth Order of Business**

**4A.**

## RESOLUTION NO. 2020-09

**A RESOLUTION OF GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING THE ISSUANCE OF ITS \$2,945,000 SPECIAL ASSESSMENT REFUNDING BOND, SERIES 2020, THE PROCEEDS OF WHICH WILL BE USED, TOGETHER WITH OTHER AVAILABLE FUNDS, TO REFUND AND REDEEM ITS OUTSTANDING SPECIAL ASSESSMENT REFUNDING BONDS, SERIES 2008, FUND THE SERIES 2020 DEBT SERVICE RESERVE ACCOUNT FOR THE SERIES 2020 BOND AND PAY COSTS OF ISSUANCE OF THE SERIES 2020 BOND; DESIGNATING THE SERIES 2020 BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION FOR PURPOSES OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING FOR THE REFUNDING AND REDEMPTION OF THE OUTSTANDING SERIES 2008 BONDS; APPROVING THE FORM OF A THIRD SUPPLEMENTAL TRUST INDENTURE IN CONNECTION WITH THE SERIES 2020 BOND AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; APPOINTING A TRUSTEE, PAYING AGENT AND BOND REGISTRAR FOR THE SERIES 2020 BOND; AUTHORIZING THE APPLICATION OF THE PROCEEDS OF THE SERIES 2020 BOND AND CERTAIN MONIES HELD BY THE TRUSTEE IN CONNECTION WITH THE SERIES 2008 BONDS; PROVIDING FOR REDEMPTION OF THE SERIES 2020 BOND; PROVIDING FOR THE NEGOTIATED PRIVATE PLACEMENT OF THE SERIES 2020 BOND; PROVIDING FOR MISCELLANEOUS MATTERS; PROVIDING FOR SEVERABILITY AND CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION; DEFINITIONS.** The Board of Supervisors (the “Board”) of Griffin Lakes Community Development District (the “Issuer” or the “District”) is authorized to adopt this Resolution under the authority granted by the provisions of Chapter 190, Florida Statutes, as amended, its Charter (Ordinance No. 2002-028 enacted by the governing body of the City of Dania Beach, Florida on May 28, 2002) and other applicable provisions of law (collectively, the “Act”). All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the hereinafter defined Master Indenture and Third Supplemental Indenture, as applicable.

### **SECTION 2. FINDINGS.**

A. The Issuer is a local unit of special purpose government duly organized, created,

established and existing under the provisions of the Act for the purpose, among other things, of financing and managing the acquisition, construction, maintenance, and operation of major public infrastructure improvements authorized by the Act for the benefit of the District Lands governed by the Issuer, as such premises are further described on Exhibit A to the Master Indenture and in the Ordinance.

B. The Issuer has the power and authority under the Act to issue special assessment revenue bonds and to use the proceeds thereof to finance and refinance the cost of acquiring and constructing assessable improvements (as defined in the Act) and, by virtue of Section 190.022, Florida Statutes, as amended, and other applicable law, to levy and collect Special Assessments as provided in Section 190.011, Florida Statutes, as amended, and other applicable law.

C. Pursuant to that certain Master Trust Indenture (the “Master Indenture”) dated as of December 1, 2002, between U.S. Bank National Association, as successor in interest to Wachovia Bank National Association, as trustee (the “Trustee”), as supplemented by that certain Second Supplemental Trust Indenture dated as of August 1, 2008 between the Issuer and the Trustee (the “Second Supplemental Indenture” and, together with the Master Indenture, the “2008 Indenture”), the Issuer has heretofore issued \$4,440,000 in aggregate initial principal amount of its Griffin Lakes Community Development District Special Assessment Refunding Bonds, Series 2008 (the “Series 2008 Bonds”) to provide funds to (i) refinance a portion of the Costs of the Project (as defined in the First Supplemental Indenture) by refunding and redeeming the Issuer’s then-outstanding Special Assessment Bonds, Series 2002A; (ii) fund the Series 2008 Debt Service Reserve Account established by the Second Supplemental Indenture; and (iii) pay costs of issuance of the Series 2008 Bonds.

D. The Outstanding Series 2008 Bonds (referred to herein as the “Refunded Bonds”) are secured by and payable from revenues derived by the Issuer from non-ad valorem special assessments levied and collected with respect to assessable property in the boundaries of the District specially benefitted by the Project (as defined in the Second Supplemental Indenture, the “Series 2008 Special Assessments”).

E. In order to realize present value debt service savings, the Issuer desires to accomplish the refunding and redemption of the Refunded Bonds, which are currently Outstanding in the aggregate principal amount of \$2,980,000 and mature on May 1, 2033. The Master Indenture, including Section 3.01 thereof, authorizes the issuance of Bonds thereunder for refunding purposes and the Issuer hereby determines that it is necessary and desirable to authorize the issuance of its \$2,945,000 Special Assessment Refunding Bond, Series 2020 (the “Series 2020 Bond”), the proceeds of which, together with other available funds held by the Trustee under the 2008 Indenture, will be used to refund and redeem the Refunded Bonds and for the other purposes set forth in Section 3 hereof.

F. The Series 2020 Bond shall be issued as a Series of Bonds issued for refunding purposes within the meaning of the Master Indenture, as supplemented by a Third Supplemental Trust Indenture to be dated as of August 1, 2020 and entered into by the Issuer and the Trustee (the “Third Supplemental Indenture” and, together with the Master Indenture, the “Indenture”). The Series 2020 Bond will be payable from and secured by the revenues derived by the Issuer from the



levy and collection of the Series 2008 Special Assessments, which are referred to in the Third Supplemental Indenture as the “Series 2020 Special Assessments.”

G. The Issuer also desires to appoint U.S. Bank National Association as Trustee, Paying Agent and Registrar with respect to the Series 2020 Bond.

H. MBS Capital Markets, LLC, as placement agent, has previously solicited interest from commercial banks to purchase the Series 2020 Bond. The Issuer has previously approved a term sheet provided by Truist Bank on behalf of STI Institutional & Government, Inc. (the “Purchaser”) to purchase the Series 2020 Bond (the “Term Sheet”). Due to the present volatility of the market for tax-exempt obligations such as the Series 2020 Bond and the complexity of the transactions relating to the Series 2020 Bond, it is in the best interests of the Issuer to sell the Series 2020 Bond to the Purchaser by a delegated, negotiated private placement, rather than at a specified advertised date. As required by Section 218.385, Florida Statutes, prior to the issuance and delivery of the Series 2020 Bond, an authorized officer of the Purchaser will deliver to the Issuer a disclosure statement and truth-in-bonding statement, substantially in the form attached hereto as an exhibit. In addition, prior to the issuance and delivery of the Series 2020 Bond, the Purchaser shall deliver to the Issuer an investor letter substantially in the form attached hereto as an exhibit.

I. The Issuer now desires to authorize the issuance of the Series 2020 Bond, consistent with the provisions of the Term Sheet, and the application of the proceeds of the Series 2020 Bond and other amounts held by the Trustee under the 2008 Indenture, and to approve various matters and instruments in connection therewith.

**SECTION 3. AUTHORIZATION OF THE REFUNDING AND REDEMPTION OF THE REFUNDED BONDS; AUTHORIZING THE SERIES 2020 BOND; AUTHORIZING APPLICATION OF CERTAIN AMOUNTS HELD UNDER THE 2008 INDENTURE; RELATED MATTERS.**

The Issuer hereby authorizes the refunding and redemption on the date of issuance of the Series 2020 Bond of the Refunded Bonds. The Issuer hereby authorizes the issuance of the Series 2020 Bond in the original principal amount of \$2,945,000 to be known as the “Griffin Lakes Community Development District Special Assessment Refunding Bond, Series 2020” for the purpose of providing funds which, together with other legally available funds of the Issuer held by the Trustee under the 2008 Indenture, will be used to (i) refund and redeem the Refunded Bonds; (ii) fund the Series 2020 Debt Service Reserve Account in the Debt Service Reserve Fund in an amount equal to the Series 2020 Debt Service Reserve Account Requirement; and (iii) pay costs of issuance of the Series 2020 Bond. The Issuer confirms that there are no unpaid “Deferred Obligations” (as defined in the Master Indenture) due and owing to any party.

The Series 2020 Bond shall be substantially in the form attached to the Third Supplemental Indenture and shall be executed in the manner provided in the Indenture. Interest on the Series 2020 Bond shall be payable on each November 1 and May 1, commencing on November 1, 2020. The Series 2020 Bond shall bear interest at a fixed rate per annum equal to 2.54%, subject to adjustment to a fixed interest rate per annum equal to 3.215% upon an Event of Taxability (as defined in the Third Supplemental Indenture), or 5.4% per annum if the Series 2020 Bond is bearing interest at the

Default Rate (as defined in the Third Supplemental Indenture), and shall mature on May 1, 2033 (the current final maturity date of the Refunded Bonds). As a condition to the issuance of the Series 2020 Bond, the applicable provisions of Section 3.01 of the Master Indenture shall be satisfied.

The Issuer does not expect to issue more than \$10,000,000 of tax-exempt obligations in calendar year 2020 and therefore designates the Series 2020 Bond as a qualified tax-exempt obligation within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

As more fully set forth in the Third Supplemental Indenture and the Series 2020 Bond, and subject to the terms and conditions thereof, the Series 2020 Bond shall be subject to optional redemption, mandatory sinking fund redemption and extraordinary mandatory redemption and shall be in Authorized Denominations and shall be numbered, all as shall be set forth in the Third Supplemental Indenture. The Series 2020 Bond will not be held in a book-entry only system of registration and will be issued as one fully certificated Bond.

The Refunded Bonds shall be redeemed on the date of issuance of the Series 2020 Bond. The delivery by the Trustee of a conditional notice of redemption of the Refunded Bonds to the owners of the Refunded Bonds pursuant to the 2008 Indenture, as previously authorized by the Issuer, is hereby ratified and confirmed. The Refunded Bonds shall be redeemed at a redemption price of par, plus accrued interest to the redemption date, and without premium.

Amounts on deposit in the Funds and Accounts established under the 2008 Indenture with respect to the Refunded Bonds shall be transferred and applied on the date of issuance of the Series 2020 Bond in the manner set forth in a certificate of a Responsible Officer delivered on such date (the "Responsible Officer's Certificate") and such transfer and application of funds is hereby authorized. Proceeds of the Series 2020 Bond will be applied as set forth in the Responsible Officer's Certificate, consistent with the matters authorized herein.

The Series 2020 Bond will be secured by the Series 2020 Trust Estate, consisting primarily of the Series 2020 Pledged Revenues, representing revenues derived by the Issuer from the levy and collection of the Series 2020 Special Assessments. The proper officers of the Issuer are hereby authorized to cause the assessment roll relating to the Series 2020 Special Assessments to be revised as necessary to reflect the issuance of the Series 2020 Bond following the issuance thereof. The Issuer hereby confirms that all previous proceedings of the Issuer relating to the Series 2020 Special Assessments are in full force and effect and such proceedings are hereby ratified and confirmed.

As contemplated by the Term Sheet, the Issuer hereby determines to maintain its principal operating account with Truist Bank while the Series 2020 Bond is Outstanding, as more fully set forth in the Third Supplemental Indenture.

#### **SECTION 4. RATIFICATION AND CONFIRMATION OF MASTER INDENTURE; AUTHORIZATION OF SERIES 2020 BOND; APPROVAL OF THIRD SUPPLEMENTAL INDENTURE.**

The form of the Third Supplemental Indenture attached hereto as Exhibit A to be entered into between the Issuer and the Trustee is hereby authorized and approved, in substantially the form submitted at this meeting. Subject to the provisions of Section 5 hereof, the Chairperson of the Board (the “Chairperson”) or, in the absence of the Chairperson, the Vice-Chairperson of the Board (the “Vice-Chairperson”), or in the absence of either, any other member of the Board, is hereby authorized to execute the Third Supplemental Indenture, and the Secretary or any Assistant Secretary of the Board is hereby authorized to attest the Third Supplemental Indenture. The officer of the Issuer executing the Third Supplemental Indenture is authorized to deliver the Third Supplemental Indenture with such changes therein as are necessary or desirable and as shall be approved by such officer, in consultation with the Issuer’s District Counsel and Bond Counsel, consistent with the Term Sheet, such approval to be conclusively evidenced by the execution thereof. The Issuer hereby appoints U.S. Bank National Association as the Trustee, Paying Agent and Registrar under the Third Supplemental Indenture and ratifies and confirms the appointment of U.S. Bank National Association as the Trustee, Paying Agent and Registrar under the Master Indenture.

**SECTION 5. SALE OF SERIES 2020 BOND.** Based on the findings set forth in Section 2.H hereof, the Issuer hereby approves the sale of the Series 2020 Bond to the Purchaser pursuant to a negotiated private placement. As a condition to the delivery of the Series 2020 Bond to the Purchaser, the Purchaser shall deliver to the Issuer an investor letter and Disclosure and Truth-in-Bonding Statement substantially in the forms attached hereto as Exhibit B and C, respectively. The Series 2020 Bond is authorized to be sold to the Purchaser at a purchase price equal to the original aggregate principal amount of the Series 2020 Bond. In consideration for its services in placing the Series 2020 Bond with the Purchaser, MBS shall be paid a placement fee as specified in the Responsible Officer’s Certificate.

**SECTION 6. MISCELLANEOUS.** The Chairperson, Vice-Chairperson, Secretary and any Assistant Secretary of the Board, the Issuer’s District Counsel, Bond Counsel, District Manager, and special assessment consultant and other authorized officers of the Issuer are authorized and directed to execute and deliver all documents, contracts, instruments and certificates and to take all actions and steps on behalf of the Issuer that are necessary or desirable in connection with the Indenture, the Series 2020 Bond, or otherwise in connection with any of the foregoing, and which are not inconsistent with the terms and provisions of this Resolution or the Indenture, and all such actions heretofore taken are hereby ratified and approved.

**SECTION 7. SEVERABILITY AND CONFLICTS.** Should any sentence, section, clause, part or provision of this Resolution be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Resolution as a whole, or any part thereof, other than the part declared invalid. All resolutions or parts thereof of the Issuer in conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 8. EFFECTIVE DATE** This Resolution shall be effective immediately upon its adoption.

**PASSED AND ADOPTED** at a meeting of the Board of Supervisors of Griffin Lakes Community Development District this 13th day of August, 2020.

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

[SEAL]

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Chairman

**ATTEST:**

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District Secretary

**EXHIBIT A**

**FORM OF THIRD SUPPLEMENTAL INDENTURE**

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

Board of Supervisors  
Griffin Lakes Community Development District

Re: \$2,945,000 Special Assessment Refunding Bond, Series 2020 (the “Series 2020 Bond”)

Ladies and Gentlemen:

This letter is being provided in connection with the purchase of the above-referenced Series 2020 Bond which was delivered to us by the Griffin Lakes Community Development District (the “District”) as of the date hereof.

1. We are engaged in the business of entering into loan transactions evidenced by obligations similar to the Series 2020 Bond.

2. We are a qualified institutional buyer as that term is defined in Rule 144A promulgated by the Securities and Exchange Commission under the 1933 Act, and we have sufficient knowledge and experience in financial and business matters, including the purchase and ownership of tax-exempt obligations, to be capable of evaluating the merits and risks of our purchase of the Series 2020 Bond.

3. We are able to bear the economic risk of our purchase of the Series 2020 Bond.

4. We acknowledge that the Series 2020 Bond does not represent a general obligation of the District, the City of Dania Beach, Florida, Broward County, Florida, the State of Florida or any political subdivision thereof and are not payable from taxes or any moneys provided by or to the District, other than those described in the Series 2020 Bond, and we further acknowledge that no covenant, stipulation, obligation or agreement contained in any documents related to the issuance of the Series 2020 Bond is or shall be deemed to be a covenant, agreement or obligation of any present or future board member, officer or employee of the District in his or her individual capacity.

5. We acknowledge that the Series 2020 Bond has not been and will not be registered under the 1933 Act or the securities or Blue Sky laws of any state and are not listed on any stock or securities exchange.

6. We understand that no offering, statement, prospectus, offering circular, official statement or other disclosure document containing material information with respect to the District and the Series 2020 Bond is being or has been prepared, and that, with due diligence, we have made our own inquiry and analysis with respect to the District, the Series 2020 Bond and the security therefor.

7. We have received all financial and other information regarding the Series 2020 Bond that we have requested and which we consider relevant or necessary to make an informed decision to purchase the Series 2020 Bond. We have made our own inquiry into the

creditworthiness of the Series 2020 Bond and the District, we have received all the information that we have requested from the District or any agents or representatives thereof, and we have been afforded a reasonable opportunity to ask questions about the terms and conditions of the offering of the Series 2020 Bond and the security therefor, and the District, and have received, to the best of our knowledge, complete and satisfactory answers to all such questions.

8. We will take no action to cause the Series 2020 Bond or the loan evidenced thereby to be characterized as a security for purposes of the Federal or State securities laws. We further acknowledge that no filing will be made with respect to the Series 2020 Bond with the Electronic Municipal Markets Access website of the Municipal Securities Rulemaking Board, unless otherwise required to be so filed by applicable law or regulations applicable thereto, no CUSIP number will be obtained with respect to the Series 2020 Bond, and no credit rating or credit enhancements will be obtained with respect to the Series 2020 Bond.

9. On the date of this certificate, the Purchaser is purchasing the Series 2020 Bond for the amount of \$2,945,000. The Purchaser is not acting as an Underwriter with respect to the Series 2020 Bond. The Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Series 2020 Bond (or any portion of the Series 2020 Bond or any interest in the Series 2020 Bond). We understand that the Series 2020 Bond may be transferred or assigned in whole, but not in part, as more fully set forth in the Series 2020 Bond. The Purchaser has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Series 2020 Bond and the Purchaser has not agreed with the District pursuant to a written agreement to sell the Series 2020 Bond to persons other than the Purchaser or a related party to the Purchaser. For purposes of the foregoing, the following terms have the meanings ascribed thereto:

- (a) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.
- (b) *Underwriter* means (i) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2020 Bond to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Series 2020 Bond to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Series 2020 Bond to the Public).

The undersigned understands that the foregoing information in this Section 9 will be relied upon by the District with respect to certain of the representations set forth in the Federal Tax Certificate and with respect to compliance with the federal income tax rules affecting the Series 2020 Bond, and by Greenspoon Marder LLP, as bond counsel, in connection with rendering its opinion that the interest on the Series 2020 Bond is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal



income tax advice that it may give to the District from time to time relating to the Series 2020 Bond.

Dated this 28<sup>th</sup> day of August, 2020.

STI INSTITUTIONAL & GOVERNMENT,  
INC.

By: \_\_\_\_\_  
Authorized Agent

## **EXHIBIT C**

### **FORM OF DISCLOSURE AND TRUTH-IN-BONDING STATEMENT**

Board of Supervisors  
Griffin Lakes Community Development District

Re: \$2,945,000 Special Assessment Refunding Bond, Series 2020 (the "Series 2020 Bond")

Ladies and Gentlemen:

In connection with the proposed issuance of the above-captioned Series 2020 Bond, STI Institutional & Government, Inc. (the "Purchaser") has agreed to purchase the Series 2020 Bond. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Third Supplemental Trust Indenture dated as of August 1, 2020 and entered into between the Griffin Lakes Community Development District (the "District") and U.S. Bank National Association, as trustee.

The purpose of this letter is to furnish pursuant to the provisions of Sections 218.385(2) and (6), Florida Statutes, as amended, certain information in respect to the arrangement contemplated for the placement and sale of the Series 2020 Bond as follows:

(a) An itemized list setting forth the nature and estimated amounts of expenses to be incurred by the Purchaser in connection with the issuance of the Series 2020 Bond is set forth below:

Purchaser's Counsel Fee (Holland & Knight LLP): \$10,000 (paid by District)

(b) No "finder" as that term is defined in Section 218.386, Florida Statutes, as amended, has entered into an understanding with the Purchaser, or to the knowledge of the Purchaser, with the District, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the District and the Purchaser or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series 2020 Bond.

(c) The underwriting spread to be paid by the District will be:  
\$0.00

(d) No other fee, bonus or other compensation is estimated to be paid by the Purchaser in connection with the issuance of the Series 2020 Bond to any person not regularly employed or retained by the Purchaser (including any "finder," as defined in Section 281.386(1)(a), Florida Statutes, as amended), except as specifically enumerated as expenses to be incurred and paid by the Purchaser as set forth in paragraph (a) above.

(e) Truth-in-Bonding Statement — The District is proposing to issue the Series 2020 Bond for the purpose of providing funds, together with other legally available funds of the District, to refund and redeem the Refunded Bond, fund the Series 2020 Debt Service Reserve Account and pay costs of issuance of the Series 2020 Bond. The Series 2020 Bond is expected to be repaid over a period of approximately 12.8 years, through maturity on May 1, 2033 (the "Maturity Date"). Assuming an initial interest rate of 2.54% per annum through the Maturity Date, the total interest paid over the life of the Series 2020 Bond will be \$524,710.03.

The source of repayment or security for the Series 2020 Bond is limited solely to the Series 2020 Pledged Revenues. The authorization of the debt or obligation evidenced by the Series 2020 Bond will result in approximately \$273,744.38 of Series 2020 Pledged Revenues not being available to the District to finance other projects of the District each year for the approximately 12.8 year period from the date of issuance of the Series 2020 Bond to the Maturity Date.

(f) The name and address of the Purchaser is set forth below:

STI Institutional & Government, Inc.  
515 E. Las Olas Blvd, 7<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

We understand that the District does not require any further disclosure from the Purchaser, pursuant to Section 218.385(6), Florida Statutes, as amended.

Dated as of this 28th day of August, 2020.

Yours very truly,

STI INSTITUTIONAL &  
GOVERNMENT, INC.

By: \_\_\_\_\_  
Authorized Agent

**4B.**

**Draft #1**

**THIRD SUPPLEMENTAL TRUST INDENTURE**

**BETWEEN**

**GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT  
AND  
U.S. BANK NATIONAL ASSOCIATION**

**As Trustee**

**Dated as of August 1, 2020**

**Authorizing and Securing  
\$2,945,000  
GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT  
SPECIAL ASSESSMENT REFUNDING BOND,  
SERIES 2020**

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THIS THIRD SUPPLEMENTAL TRUST INDENTURE (the “Third Supplemental Indenture”), dated as of August 1, 2020 between GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT (the “Issuer”), a local unit of special-purpose government organized and existing under the laws of the State of Florida, and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having corporate trust offices in Orlando, Florida (as successor in interest to WACHOVIA BANK, NATIONAL ASSOCIATION), said national banking association and any bank or trust company becoming successor trustee under this Third Supplemental Indenture being hereinafter referred to as the “Trustee” (all capitalized terms not otherwise defined herein having the meanings ascribed thereto in the herein after defined Master Indenture);

W I T N E S S E T H:

WHEREAS, the Issuer is a local unit of special purpose government duly organized and existing under the provisions of the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended (the “Act”), by Ordinance No. 2002-028 (the “Ordinance”) enacted on May 28, 2002 by the City Commission of Dania Beach, Florida (the “City”) for the purpose, among other things, of financing and managing the acquisition and construction, maintenance, and operation of the major public infrastructure within and without the boundaries of the premises to be governed by the Issuer; and

WHEREAS, the premises governed by the Issuer are described more fully in the Ordinance and in Exhibit A to the Master Indenture, referred to as the “District Lands” and consist of approximately 33.62 acres of land located entirely within the City; and

WHEREAS, pursuant to the Master Indenture, as supplemented by the Second Supplemental Indenture, the Issuer has heretofore issued \$4,440,000 in aggregate principal amount of its Griffin Lakes Community Development District Special Assessment Refunding Bonds, Series 2008 (the “Series 2008 Bonds”) to provide funds for (i) the current refunding and redemption of the then-Outstanding Series 2002A Bonds, which initially financed a portion of the Costs of the Project, as defined in the First Supplemental Indenture; (ii) the funding of the Series 2008 Debt Service Reserve Account established by the Second Supplemental Indenture; and (iii) the payment of the costs of issuance of the Series 2008 Bonds; and

WHEREAS, in order to realize present value debt service savings, the Issuer desires to accomplish the refunding and redemption of all of the Series 2008 Bonds currently Outstanding in the aggregate principal amount of \$2,980,000 (the “Refunded Bonds”); and

WHEREAS, the Master Indenture, including Section 3.01 thereof, authorizes the issuance of Bonds thereunder for refunding purposes; and

WHEREAS, the Issuer desires to issue its \$2,945,000 Special Assessment Refunding Bond, Series 2020 (the “Series 2020 Bond”) for the primary purpose of refunding and redeeming all of the Refunded Bonds;

WHEREAS, the Series 2020 Bond will be secured by a pledge of the Series 2020 Pledged Revenues as provided for herein;



WHEREAS, pursuant to the Resolution, the Issuer has authorized the issuance, sale and delivery of the Series 2020 Bond and authorized the execution and delivery of this Third Supplemental Indenture to secure the issuance of the Series 2020 Bond and to set forth the terms of the Series 2020 Bond, among other matters; and

WHEREAS, the Issuer does not expect to issue more than \$10,000,000 of tax-exempt obligations in calendar year 2020, and therefore has designated, in the Resolution, the Series 2020 Bond as a qualified tax-exempt obligation within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code");

NOW, THEREFORE, THIS THIRD SUPPLEMENTAL INDENTURE WITNESSETH, that to provide for the issuance of the Series 2020 Bond, the security and payment of the principal, Sinking Fund Installments or Redemption Price thereof (as the case may be) and interest thereon, the rights of the Bondholders and the performance and observance of all of the covenants contained herein and in said Series 2020 Bond, and for and in consideration of the mutual covenants herein contained and of the purchase and acceptance of the Series 2020 Bond by the Owner thereof, from time to time, and of the acceptance by the Trustee of the trusts hereby created, and intending to be legally bound hereby, the Issuer does hereby assign, transfer, set over and pledge to the Trustee, its successors in trust and its assigns forever, and grants a lien on all of the right, title and interest of the Issuer in and to the Series 2020 Pledged Revenues as security for the payment of the principal, Sinking Fund Installments or Redemption Price thereof (as the case may be) and interest on the Series 2020 Bond issued hereunder, all in the manner hereinafter provided, and the Issuer further hereby agrees with and covenants unto the Trustee as follows:

TO HAVE AND TO HOLD the same and any other revenues, property, contracts or contract rights, accounts receivable, chattel paper, instruments, general intangibles or other rights and the proceeds thereof, which may, by delivery, assignment or otherwise, be subject to the lien created by the Indenture with respect to the Series 2020 Bond.

IN TRUST NEVERTHELESS, for the equal and ratable benefit and security of the present and future Owner of the Series 2020 Bond issued under this Third Supplemental Indenture, without preference, priority or distinction as to lien or otherwise, all as provided in the Indenture.

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or make due provision for the payment of the principal, Sinking Fund Installments or Redemption Price of the Series 2020 Bond issued, secured and Outstanding hereunder and the interest due or to become due thereon, at the times and in the manner mentioned in such Series 2020 Bond and the Indenture, according to the true intent and meaning thereof and hereof, and the Issuer shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of the Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments the Indenture, and the rights thereby granted, shall cease and terminate, otherwise the Indenture to be and remain in full force and effect.

## **ARTICLE I DEFINITIONS**

In this Third Supplemental Indenture capitalized terms used without definition shall have the meanings ascribed thereto in the Master Indenture. In addition, the following terms shall have the meanings specified below, unless otherwise expressly provided or unless the context otherwise requires:

“Assessment Resolutions” shall mean Resolution No. 2002-19 and Resolution No. 2002-20 of the Issuer adopted on August 27, 2002 and Resolution No. 2002-25 of the Issuer adopted on September 30, 2002, respectively, as amended and supplemented from time to time.

“Authorized Denominations” shall mean an amount equal to the Outstanding principal amount of the Series 2020 Bond from time to time.

“Bond Register” shall mean the books kept by the Registrar at the designated corporate trust office of the Registrar for the registration, transfer and exchange of the Series 2020 Bond.

“Business Day” shall mean, notwithstanding anything to the contrary in the Master Indenture, any day other than a Saturday, Sunday or day on which banking institutions within the State of Florida are authorized or required by law to remain closed.

“Default Rate” shall mean the lesser of 5.4% per annum or the maximum rate permitted by law.

“Event of Taxability” shall mean the occurrence after the date of issuance of the Series 2020 Bond of a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on all or a portion of the Series 2020 Bond is or was includable in the gross income of the Owner (or any prior Owner) for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Issuer has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity at the Issuer’s own expense to contest the same, either directly or in the name of the applicable Owners(s), and until the conclusion of any appellate review, if sought. An Event of Taxability does not include and is not triggered by a change in law by Congress that causes the interest to be includable under any Owner’s gross income. For all purposes of this definition and hereof, the effective date of any Event of Taxability will be the first date as of which interest is deemed includable in the gross income of the Owner of the Series 2020 Bond.

“Federal Tax Certificate” shall mean that certain Federal Tax Certificate of the Issuer dated as of August 28, 2020 relating to the Series 2020 Bond.

“First Supplemental Indenture” shall mean the First Supplemental Trust Indenture dated as of December 1, 2002 between the Issuer and the Trustee, which supplemented the Master Indenture.

“Fitch” means Fitch Ratings, a corporation organized and existing under the laws of the state of its organization, its successors and their assigns, and, if such corporation is dissolved or

liquidated or shall no longer perform the functions of a securities rating agency, Fitch will be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer by notice to the Trustee.

“Indenture” shall mean collectively, the Master Indenture and this Third Supplemental Indenture.

“Interest Payment Date” shall mean May 1 and November 1 of each year, commencing November 1, 2020.

“Master Indenture” shall mean the Master Trust Indenture, dated as of December 1, 2002 by and between the Issuer and the Trustee, as supplemented with respect to matters pertaining solely to the Master Indenture or the Series 2020 Bond.

“Moody’s” shall mean Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, Moody’s will be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer by written notice to the Trustee.

“Paying Agent” shall mean U.S. Bank National Association, and its successors and assigns as Paying Agent hereunder.

“Prepayment” shall mean the payment by any owner of District Lands of the amount of Series 2020 Special Assessments encumbering its property, in whole or in part, prior to its scheduled due date. “Prepayments” shall include, without limitation, Series 2020 Prepayment Principal.

“Purchaser” shall mean STI Government & Institutional, Inc., as the purchaser and initial Owner of the Series 2020 Bond.

“Project” shall mean the planning, financing, acquisition, construction, equipping and installation of public infrastructure and acquisition of related interests in land pursuant to the Act for the special benefit of the District Lands as further described in Exhibit A to the First Supplemental Indenture.

“Refunded Bonds” shall mean the Issuer’s Special Assessment Refunding Bonds, Series 2008, currently Outstanding in the aggregate principal amount of \$2,980,000.

“Registrar” shall mean U.S. Bank National Association and its successors and assigns as Registrar hereunder.

“Resolution” shall mean, collectively, (i) Resolution Nos. 2002-22 and 2003-03 of the Issuer adopted on August 27, 2002 and October 29, 2002, respectively, pursuant to which the Issuer authorized the issuance of not exceeding \$10,000,000 in aggregate principal amount of its special assessment bonds to finance and refinance the Project for the special benefit of the District Lands or portions thereof and (ii) Resolution No. 2020-09 of the Issuer adopted on August 13,

2020, pursuant to which the Issuer authorized, among other things, the issuance of the Series 2020 Bond.

“S&P” shall mean S&P Global Ratings, a division of S&P Global Inc., its successors and its assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, S&P will be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer by written notice to the Trustee.

“Second Supplemental Indenture” shall mean the Second Supplemental Trust Indenture dated as of August 1, 2008 by and between the Issuer and the Trustee, supplementing the Master Indenture.

“Series 2020 Bond Redemption Account” shall mean the Series 2020 Bond Redemption Account established as a separate account within the Bond Redemption Fund pursuant to Section 4.01(h) of this Third Supplemental Indenture.

“Series 2020 Bond” shall mean the \$2,945,000 in principal amount of Griffin Lakes Community Development District Special Assessment Refunding Bond, Series 2020, to be issued as a fully registered Bond in accordance with the provisions of the Indenture, and secured and authorized by the Indenture.

“Series 2020 Costs of Issuance Account” shall mean the Account so designated, established as a separate account within the Acquisition and Construction Fund pursuant to Section 4.01(a) of this Third Supplemental Indenture.

“Series 2020 Debt Service Reserve Account” shall mean the Series 2020 Debt Service Reserve Account established as a separate account within the Debt Service Reserve Fund pursuant to Section 4.01(g) of this Third Supplemental Indenture.

“Series 2020 Debt Service Reserve Requirement” or “Debt Service Reserve Requirement” shall mean an amount equal to ten percent (10%) of the maximum annual Debt Service Requirements for the Series 2020 Bond determined as of the date of issuance of the Series 2020 Bond (\$26,754.25).

“Series 2020 General Subaccount” shall mean the subaccount so designated, established as a separate subaccount under the Series 2020 Bond Redemption Account pursuant to Section 4.01(h) of this Third Supplemental Indenture.

“Series 2020 Interest Account” shall mean the Account so designated, established as a separate account within the Debt Service Fund pursuant to Section 4.01(d) of this Third Supplemental Indenture.

“Series 2020 Investment Securities” shall mean and includes any of the following securities, if and to the extent that such securities are legal investments for funds of the Issuer;

- (i) Government Obligations;

(ii) commercial paper rated in the top two rating category by both Moody's and S&P at the time of purchase;

(iii) municipal securities issued by any state or commonwealth of the United States or political subdivision thereof or constituted authority thereof including, but not limited to, municipal corporations, school districts and other special districts, the interest on which is exempt from federal income taxation under Section 103 of the Code and rated A- or higher by Moody's, Fitch or S&P at the time of purchase;

(iv) both (A) shares of a diversified open-end management investment company (as defined in the Investment Company Act of 1940) or a regulated investment company (as defined in Section 851(a) of the Code) that is a money market fund that is rated in the highest rating category for such funds by Moody's and S&P, and (B) shares of money market mutual funds that invest only in Government Obligations and obligations of any of the following agencies: Government National Mortgage Association (including participation certificates issued by such association); Fannie Mae (including participation certificates issued by such entity); Federal Home Loan Banks; Federal Farm Credit Bank; Tennessee Valley Authority; Farmers Home Administration; Student Loan Marketing Association; Federal Home Loan Mortgage Corporation and repurchase agreements secured by such obligations, which funds are rated in the highest categories for such funds by both Moody's and S&P at the time of purchase;

(v) bonds, notes and other debt obligations of any corporation organized under the laws of the United States, any state or organized territory of the United States or the District of Columbia, if such obligations are, at the time of purchase, rated "A-" or better by at least two (2) of the following rating agencies: Moody's, S&P or Fitch or "AA-" or better by either S&P or Fitch or "Aa-" or better by Moody's;

(vi) the Local Government Surplus Funds Trust Fund as described in Florida Statutes, Section 218.405 or the corresponding provisions of subsequent laws provided that such fund, at the time of purchase, is rated at least "AA" by S&P (without regard to gradation) or at least "Aa" by Moody's (without regard to gradation); and

(vii) Money market deposit accounts, time deposits, and certificates of deposits issued by commercial banks, savings and loan associations or mutual savings banks whose short-term obligations are rated, at the time of purchase, in one of the two highest rating categories, without regard to gradation, by Moody's and S & P.

The Trustee may conclusively rely that any investment directed by the Issuer is a representation by the Issuer upon which the Trustee may conclusively rely that such investment is permitted hereunder and is a legal investment for funds of the Issuer.

"Series 2020 Pledged Revenues" or "Series 2020 Trust Estate" shall mean (a) all revenues received by the Issuer from Series 2020 Special Assessments levied and collected on the District Lands benefited by the Project, including, without limitation, amounts received from any foreclosure proceeding for the enforcement of collection of such Series 2020 Special Assessments or from the issuance and sale of tax certificates with respect to such Series 2020 Special Assessments, and (b) all moneys on deposit in the Funds and Accounts established under the

Indenture created and established with respect to or for the benefit of the Series 2020 Bond; provided, however, that Series 2020 Pledged Revenues shall not include (A) any moneys transferred to the Rebate Fund, or investment earnings thereon, and (B) “special assessments” levied and collected by the Issuer under Section 190.022 of the Act for maintenance purposes or “maintenance assessments” levied and collected by the Issuer under Section 190.021(3) of the Act and any revenues of the Issuer derived from rates, fees and charges of the Issuer other than in connection with Series 2020 Special Assessments (it being expressly understood that the lien and pledge of the Indenture shall not apply to any of the moneys described in the foregoing clauses (A) and (B) of this proviso).

“Series 2020 Prepayment Principal” shall mean the portion of a Prepayment corresponding to the principal amount of Series 2020 Special Assessments being prepaid.

“Series 2020 Prepayment Subaccount” shall mean the subaccount so designated, established as a separate subaccount under the Series 2020 Bond Redemption Account pursuant to Section 4.01(h) of this Third Supplemental Indenture.

“Series 2020 Principal Account” shall mean the Account so designated, established as a separate account within the Debt Service Fund pursuant to Section 4.01(c) of this Third Supplemental Indenture.

“Series 2020 Revenue Account” shall mean the Account so designated, established as a separate account within the Revenue Fund pursuant to Section 4.01(b) of this Third Supplemental Indenture.

“Series 2020 Sinking Fund Account” shall mean the account so designated, established as a separate account within the Debt Service Fund pursuant to Section 4.01(f) of this Third Supplemental Indenture.

“Series 2020 Special Assessments” shall mean the Special Assessments levied as a result of the Project pursuant to the Assessment Resolutions, corresponding in amount to the debt service on the Series 2020 Bond (and referred to as the Series 2008 Special Assessments in the Second Supplemental Indenture and as the Series 2002A Special Assessments in the First Supplemental Indenture).

“Sinking Fund Installments” shall mean the moneys required to be deposited in the Series 2020 Sinking Fund Account for the purpose of redeeming and paying when due the Series 2020 Bond, the specific amounts and dates of such deposits to be set forth in the Series 2020 Bond.

“Tax-Exempt Rate” shall mean 2.54% per annum.

“Taxable Period” shall mean shall mean the period of time between (a) the date, if any, that interest on the Series 2020 Bond is deemed to be includable in the gross income of the Owner thereof for federal income tax purposes as a result of an Event of Taxability, and (b) the date of the Event of Taxability and after which the Series 2020 Bond bears interest at the Taxable Rate.

“Taxable Rate” shall mean 3.215% per annum.

The words “hereof,” “herein,” “hereto,” “hereby,” and “hereunder” (except in the form of Series 2020 Bond), refer to the entire Indenture.

Every “request”, “requisition”, “order”, “demand”, “application”, “notice”, “statement”, “certificate”, “consent”, or similar action hereunder by the Issuer shall, unless the form or execution thereof is otherwise specifically provided, be in writing signed by a Responsible Officer of the Issuer.

All words and terms importing the singular number shall, where the context requires, import the plural number and vice versa.

[END OF ARTICLE I]

## ARTICLE II THE SERIES 2020 BOND

### **SECTION 2.01. Amounts and Terms of Series 2020 Bond; Details of Series 2020 Bond.**

The Series 2020 Bond is issued pursuant to the Indenture as a Series of Tax Exempt Bonds and as a Term Bond issued for refunding purposes within the meaning of the Master Indenture. The maximum total principal amount of the Series 2020 Bond that shall be issued and Outstanding under the Indenture is expressly limited to Two Million Nine Hundred Forty-Five Thousand Dollars (\$2,945,000). The Series 2020 Bond shall be issued and Outstanding in Authorized Denominations from time to time and shall be numbered R-1. The Series 2020 Bond shall be in substantially the form attached hereto as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by the Indenture.

The Series 2020 Bond shall be issued only upon satisfaction of the applicable conditions set forth in Section 3.01 of the Master Indenture and the Trustee shall, at the Issuer's request, authenticate such Series 2020 Bond and deliver it as specified in such request. Payment to the Trustee of the Purchase Price (hereinafter defined) shall conclusively evidence that such conditions precedent have been met to the satisfaction of the Issuer and the Purchaser.

The proceeds of the Series 2020 Bond shall be applied, together with other legally available funds of the Issuer, to (a) refund and redeem the Refunded Bonds; (b) make a deposit to the Series 2020 Debt Service Reserve Account in an amount equal to the Series 2020 Debt Service Reserve Account Requirement; and (c) pay costs of issuance of the Series 2020 Bond.

The Series 2020 Bond shall be dated August 28, 2020. The Series 2020 Bond will mature on May 1 of the year shown below, in the amount and at the rate as set forth below, subject to the right of prior redemption in accordance with its terms:

<b><u>Year</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>
May 1, 2033	\$2,945,000	2.54% (subject to adjustment)

Except as otherwise provided herein, upon the occurrence of an Event of Taxability and for as long as the Series 2020 Bond remains outstanding, the Tax-Exempt Rate on the Series 2020 Bond shall be converted to the Taxable Rate and this adjustment shall survive payment on the Series 2020 Bond until such time as the federal statute of limitations under which the interest on the Series 2020 Bond could be declared taxable under the Code shall have expired. In addition, upon an Event of Taxability, the Issuer shall, immediately upon demand, pay to the Owner (or prior Owner(s), if applicable) (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Series 2020 Bond during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the Series 2020 Note borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owner as a result of the Event of Taxability.



The Owner shall advise the Trustee and the Issuer in writing within a reasonable time in good faith what amounts, if any, are owing as a result of an Event of Taxability as described herein and the Trustee may conclusively rely upon such information without the duty to verify such information. Notwithstanding anything to the contrary herein or in the Master Indenture, it shall not be an Event of Default under the Indenture or the Series 2020 Bond if an Event of Taxability shall occur, regardless of any action or inaction by the Issuer.

Upon the occurrence and continuance of an Event of Default, or, except as otherwise provided herein, a failure of the Issuer to comply with any covenant, condition or agreement on its part to be observed or performed under this Third Supplemental Indenture, the Series 2020 Bond shall bear interest at a rate per annum equal to the Default Rate.

Upon the conversion of the initial Tax-Exempt Rate to the Taxable Rate, the Issuer shall promptly cause to be recalculated and delivered to the Trustee and the registered Owner a revised schedule of Sinking Fund Installments for the Series 2020 Bond so as to re-amortize the remaining Outstanding Series 2020 Bond in substantially equal annual installments of principal and interest over the remaining term of the Outstanding Series 2020 Bond (subject to rounding to Authorized Denominations of principal).

Interest on the Outstanding Series 2020 Bond is payable commencing on November 1, 2020, and on each Interest Payment Date thereafter, by wire transfer or other electronic means to the person in whose name that Series 2020 Bond is registered at the close of business on the Regular Record Date for such Interest Payment Date. Notwithstanding the foregoing or any provision of the Master Indenture, presentment of the Series 2020 Bond for the payment of principal or Sinking Fund Installments thereon shall not be required.

The Trustee is hereby appointed as Trustee, Paying Agent and Registrar for the Series 2020 Bond.

The Series 2020 Bond will not be held in a book-entry only system of registration.

Notwithstanding anything to the contrary in the Indenture, the Series 2020 Bond may only be transferred or assigned in whole, but not in part, provided that the transferee or assignee is (1) an "accredited investor" within the meaning of the Securities Act of 1933, as amended and Regulation D thereunder; provided, however, that such term shall not include an accredited investor that is a natural person within the meaning of Rule 501(a)(4),(5) and (6) of Regulation D or (2) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933.

**SECTION 2.02. Establishment of Funds and Accounts; Disposition of Series 2020 Bond Proceeds and Other Amounts.** The Trustee is hereby directed to transfer on the date hereof (i) from the Series 2008 Debt Service Reserve Account established under the Second Supplemental Indenture all amounts on deposit therein, \$161,430.02 and (ii) from the Series 2008 Revenue Account established under the Second Supplemental Indenture, \$131,431.96 representing all amounts on deposit therein (the "2008 Revenue Account Monies"), for a total of \$292,861.98 (the "2008 Monies"), together with \$2,945,000.00 (representing the purchase price for the Series 2020

Bond, which is equal to the original principal amount thereof) (the “Purchase Price”), for a total of \$3,237,861.98 as follows:

(a) \$166,405.89 of the Purchase Price shall be deposited in the Series 2020 Costs of Issuance Account of the Acquisition and Construction Fund to be applied to pay costs of issuance of the Series 2020 Bond in accordance with the Master Indenture and the form of requisition attached hereto as Exhibit B;

(b) \$26,754.25 of the Purchase Price shall be deposited in the Series 2020 Debt Service Reserve Account, in satisfaction of the Series 2020 Debt Service Reserve Requirement;

(c) \$13,090.53 of the 2008 Revenue Account Monies shall be deposited to the Series 2020 Interest Account; and

(d) \$3,031,611.31, representing the balance of the 2008 Monies and the Purchase Price shall be deposited with the Trustee for credit to the Series 2008 General Redemption Subaccount of the Series 2008 Bond Redemption Account established under the Second Supplemental Indenture to accomplish the redemption in full of the Refunded Bonds on the date of issuance of the Series 2020 Bond.

Any amounts received by the Issuer as payment of the Series 2020 Special Assessments not accounted for in the foregoing (other than amounts received as Prepayments of Series 2020 Special Assessments which are addressed in the following sentence) shall also be delivered by the Issuer to the Trustee for deposit to the Series 2020 Revenue Account or, if already deposited to the Series 2008 Revenue Account, shall be transferred to the Series 2020 Revenue Account. Any amounts received by the Issuer as Prepayments of the Series 2020 Special Assessments shall also be delivered by the Issuer to the Trustee for deposit to the Series 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account and applied for the purposes of such subaccount; provided, that the Issuer has provided written notice to the Trustee that such amounts are Prepayments and the Trustee shall not be obligated to make such determination otherwise but may deposit all Series 2020 Special Assessments into the Series 2020 Revenue Account absent notification from the Issuer that such amounts are Prepayments of Series 2020 Special Assessments.

[END OF ARTICLE II]

**ARTICLE III**  
**REDEMPTION OF SERIES 2020 BOND**

**SECTION 3.01. Redemption Dates and Prices.** The Series 2020 Bond is subject to redemption prior to maturity as provided in the form thereof set forth in Exhibit A hereto. Interest on the Series 2020 Bond called for redemption shall be paid on the redemption date from the Series 2020 General Redemption Subaccount in the Series 2020 Bond Redemption Account or the Series 2020 Interest Account or from the Series 2020 Revenue Account to the extent monies in the Series 2020 General Redemption Subaccount or Series 2020 Interest Account are insufficient for such purpose. Money in the Series 2020 General Redemption Subaccount in the Series 2020 Bond Redemption Account shall be applied in accordance with Article VIII of the Master Indenture and the Series 2020 Bond to the optional redemption of the Series 2020 Bond.

**SECTION 3.02. Notice of Redemption.** When required to redeem the Series 2020 Bond under any provision of this Third Supplemental Indenture or directed to redeem the Series 2020 Bond by the Issuer, the Trustee shall give or cause to be given to the registered Owner of the Series 2020 Bond to be redeemed notice of the redemption as set forth in Section 8.02 of the Master Indenture; provided, however that notwithstanding anything to the contrary herein or in the Master Indenture, notice of redemption shall not be required to be provided to the Owner more than fifteen (15) days prior to the applicable redemption date and provided, further, the Issuer shall be required to provide notice to the Owner at least two (2) Business Days prior to the applicable redemption date.

[END OF ARTICLE III]

**ARTICLE IV**  
**ESTABLISHMENT OF CERTAIN FUNDS AND**  
**ACCOUNTS; PREPAYMENTS; INVESTMENT OF FUNDS**

**SECTION 4.01. Establishment of Certain Funds and Accounts.**

(a) The Trustee shall establish a separate account within the Acquisition and Construction Fund designated as the “Series 2020 Costs of Issuance Account.” Proceeds of the Series 2020 Bond shall be deposited into the Series 2020 Costs of Issuance Account in the amount set forth in Section 2.02(a) of this Third Supplemental Indenture, and such moneys in the Series 2020 Costs of Issuance Account shall be applied as set forth in Article V of the Master Indenture and pursuant to the form of requisition attached hereto as Exhibit B. Any amounts remaining on deposit in the Series 2020 Costs of Issuance Account on the date that is 180 days from the date of issuance and delivery of the Series 2020 Bond for which there is not a pending requisition shall be transferred by the Trustee to the credit of the Series 2020 Revenue Account.

(b) Pursuant to Section 6.03 of the Master Indenture, the Trustee shall establish a separate account within the Revenue Fund designated as the “Series 2020 Revenue Account.” Series 2020 Special Assessments (except for Prepayments which shall be deposited in the Series 2020 Prepayment Subaccount) shall be deposited by the Trustee into the Series 2020 Revenue Account which shall be applied as set forth in Article VI of the Master Indenture and Section 4.02 of this Third Supplemental Indenture; provided, however, amounts collected as delinquent principal of Series 2020 Special Assessments shall first be applied to restore the amount of any withdrawal from the Series 2020 Debt Service Reserve Account to pay the principal of Series 2020 Bond, and, the balance, if any, shall be deposited into the Series 2020 Sinking Fund Account or Series 2020 Principal Account, as applicable, and amounts collected as delinquent interest on Series 2020 Special Assessments shall first be applied to restore the amount of any withdrawal from the Series 2020 Debt Service Reserve Account to pay the interest on Series 2020 Bond and, the balance, if any, deposited into the Series 2020 Revenue Account.

(c) Pursuant to Section 6.04 of the Master Indenture, the Trustee shall establish a separate account within the Debt Service Fund designated as the “Series 2020 Principal Account.” Moneys shall be deposited into the Series 2020 Principal Account as provided in Article VI of the Master Indenture and Section 4.02 of this Third Supplemental Indenture, and applied for the purposes provided therein.

(d) Pursuant to Section 6.04 of the Master Indenture, the Trustee shall establish a separate account within the Debt Service Fund designated as the “Series 2020 Interest Account.” Moneys deposited into the Series 2020 Interest Account pursuant to the Master Indenture, Section 2.02(c) and Section 4.02 of this Third Supplemental Indenture, shall be applied for the purposes provided therein and as provided in Section 4.02 of this Third Supplemental Indenture.

(e) Pursuant to Section 6.11 of the Master Indenture, the Trustee shall establish a separate account within the Rebate Fund designated as the “Series 2020 Rebate Account.” Moneys deposited into the Series 2020 Rebate Account shall be applied as provided in the Master Indenture.

(f) Pursuant to Section 6.04 of the Master Indenture, the Trustee shall establish a separate account within the Debt Service Fund designated as the “Series 2020 Sinking Fund Account.” Moneys shall be deposited into the Series 2020 Sinking Fund Account as provided in Article VI of the Master Indenture and applied for the purposes provided therein and in Section 3.01 of this Third Supplemental Indenture and in the Series 2020 Bond.

(g) Pursuant to Section 6.05 of the Master Indenture, the Trustee shall establish a separate account within the Debt Service Reserve Fund designated as the “Series 2020 Debt Service Reserve Account.” Proceeds of the Series 2020 Bond shall be deposited into the Series 2020 Debt Service Reserve Account in the amount set forth in Section 2.02(b) of this Third Supplemental Indenture, and such moneys, together with any other moneys deposited into the Series 2020 Debt Service Reserve Account pursuant to the Master Indenture, shall be applied for the purposes provided therein. Amounts on deposit in the Series 2020 Debt Service Reserve Account shall be used only for the purpose of making payments into the Series 2020 Interest Account, the Series 2020 Sinking Fund Account and the Series 2020 Principal Account to pay Debt Service Requirements on the Series 2020 Bond, when due, to the extent the moneys on deposit therein and available therefor are insufficient and for no other purpose. Any amounts in the Series 2020 Debt Service Reserve Account shall, upon final maturity of the Series 2020 Bond, or may, at the time the final payment of the Series 2020 Bond is to be made as a result of the optional redemption of the Series 2020 Bond as permitted therein, be used to pay principal of and interest on the Series 2020 Bond.

(h) Pursuant to Section 6.06 of the Master Indenture, the Trustee shall establish a separate Series Bond Redemption Account designated as the “Series 2020 Bond Redemption Account” and within such Account, a “Series 2020 General Subaccount” and a “Series 2020 Prepayment Subaccount.” Except for Prepayments which shall be deposited directly into the Series 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account, and as otherwise provided in this Third Supplemental Indenture, the moneys to be deposited into the Series 2020 Bond Redemption Account as provided in Article VI of the Master Indenture shall be deposited to the Series 2020 General Subaccount of the Series 2020 Bond Redemption Account.

(i) Moneys in the Series 2020 General Subaccount of the Series 2020 Bond Redemption Account (including all earnings on investments held therein) shall be accumulated therein to be used in the following order of priority, to the extent that the need therefor arises:

FIRST, to make such deposits into the Series 2020 Rebate Fund, if any, as the Issuer may direct in accordance with the Federal Tax Certificate, such moneys thereupon to be used solely for the purposes specified in the Federal Tax Certificate. Any moneys so transferred from the Series 2020 General Subaccount of the Series 2020 Bond Redemption Account to the Series 2020 Rebate Fund shall thereupon be free from the lien and pledge of the Indenture;

SECOND, the remainder to be utilized by the Trustee, at the direction of a Responsible Officer, to call for redemption on each Interest Payment Date on which the Series 2020 Bond is subject to optional redemption as provided in the Series 2020 Bond such amount of the Series 2020 Bond as may be practicable; provided, however, that not

less than \$5,000 principal amount of Series 2020 Bond shall be called for redemption at one time.

(j) Moneys in the Series 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account (including all earnings on investments held in such 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account) shall be accumulated therein to be used to call for redemption on an Interest Payment Date pursuant to the Series 2020 Bond an amount of the Series 2020 Bond equal to the amount of money transferred to the Series 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account for the purpose of such extraordinary mandatory redemption on the dates and at the price provided in such Series 2020 Bond, provided, however, that not less than \$5,000 principal amount of Series 2020 Bond shall be called for redemption at one time.

**SECTION 4.02. Series 2020 Revenue Account.** The Trustee shall transfer from amounts on deposit in the Series 2020 Revenue Account to the Funds and Accounts designated below, the following amounts, at the following times and in the following order of priority:

FIRST, upon receipt but no later than the Business Day preceding November 1, 2020, and no later than the Business Day next preceding each May 1 and November 1 thereafter while the Series 2020 Bond remains Outstanding, to the Series 2020 Interest Account of the Debt Service Fund, an amount equal to the interest on the Series 2020 Bond becoming due on the next succeeding May 1 or November 1, less any amounts on deposit in the Series 2020 Interest Account not previously credited;

SECOND, no later than the Business Day next preceding each May 1, commencing May 1, 2021, to (i) the Series 2020 Sinking Fund Account of the Debt Service Fund, an amount equal to the principal amount representing Sinking Fund Installments due on such May 1, less any amount on deposit in the Series 2020 Sinking Fund Account not previously credited; and (ii) no later than the Business Day next preceding the maturity date of the Series 2020 Bond to the Series 2020 Principal Account of the Debt Service Fund, an amount from the Series 2020 Revenue Account equal to the principal amount of Series 2020 Bond Outstanding maturing on such date, if any, less any amounts on deposit in the Series 2020 Principal Account not previously credited;

THIRD, upon receipt but no later than the Business Day next preceding each Interest Payment Date while the Series 2020 Bond remains Outstanding, to the Series 2020 Debt Service Reserve Account, an amount equal to the amount, if any, which is necessary to make the amount on deposit therein equal to the Series 2020 Debt Service Reserve Requirement for the Series 2020 Bond; and

FOURTH, the balance of any moneys remaining after making the foregoing deposits shall remain therein, subject to the last paragraph of this Section 4.02.

Anything herein to the contrary notwithstanding, it shall not, in and of itself, constitute an Event of Default under the Indenture if the full amount of the foregoing deposits are not made due to an insufficiency of funds therefor.

The Trustee shall also make the deposits of amounts collected in respect of delinquent Series 2020 Special Assessments as provided in Section 4.01(b) of this Third Supplemental Indenture. Prepayments shall be deposited directly into the Series 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account.

The Trustee shall, within ten (10) Business Days after the last Interest Payment Date in any calendar year, at the written direction of the Issuer, withdraw any moneys held for the credit of the Series 2020 Revenue Account which are not otherwise required to be deposited pursuant to this Section and apply such moneys, if directed to do so by the Issuer, to the credit of the Series 2020 Rebate Account in the amount, and to the extent necessary, so that the amount on deposit therein equals the accrued rebate obligation under Section 148(f) of the Code.

**SECTION 4.03. Power to Issue Series 2020 Bond and Create Lien.** The Issuer is duly authorized under the Act and all applicable laws of the State to issue the Series 2020 Bond, to execute and deliver the Indenture and to pledge the Series 2020 Pledged Revenues for the benefit of the Series 2020 Bond to the extent set forth herein. The Series 2020 Pledged Revenues are not and shall not be subject to any other lien senior to or on a parity with the lien created in favor of the Series 2020 Bond, except as otherwise permitted under the Master Indenture. The Series 2020 Bond and the provisions of the Indenture are and will be valid and legally enforceable obligations of the Issuer in accordance with their respective terms. The Issuer shall, at all times, to the extent permitted by law, defend, preserve and protect the pledge created by the Indenture and all the rights of the Owner of the Series 2020 Bond under the Indenture against all claims and demands of all persons whomsoever.

**SECTION 4.04. Investment of Funds.** The amounts on deposit in the Funds, Accounts and subaccounts created hereunder for the Series 2020 Bond shall only be invested in cash and Series 2020 Investment Securities, subject to the provisions hereof, notwithstanding anything to the contrary in the Master Indenture. The Issuer hereby directs the Trustee to invest the moneys held in the Series 2020 Debt Service Reserve Account as permitted by the Indenture and the laws of the State of Florida and absent such direction, which may be a standing direction, the Trustee may hold such funds uninvested. The Trustee shall have no liability for following such direction, or for not investing such moneys absent such direction.

Earnings on investments in the Series 2020 Revenue Account and Series 2020 Costs of Issuance Account shall be retained therein. Earnings on investments in the Series 2020 Debt Service Account and subaccounts therein shall be deposited, as realized, to the credit of the Series 2020 Revenue Account and used for the purpose of such Account. As long as there exists no default under the Indenture and the amount in the Series 2020 Debt Service Reserve Account is not reduced below the Series 2020 Debt Service Reserve Account Requirement, earnings on investments in the Series 2020 Debt Service Reserve Account shall be transferred to the Series 2020 Revenue Account. Otherwise, earnings on investments in the Series 2020 Debt Service Reserve Account shall be retained therein until applied as set forth in the Indenture.

[END OF ARTICLE IV]

## ARTICLE V COVENANTS AND AGREEMENTS OF THE ISSUER

**SECTION 5.01. Issuance of Additional Parity Bonds.** The Issuer shall not issue additional Bonds on a parity with the Series 2020 Bond payable from the Series 2020 Trust Estate, nor voluntarily create or cause to be created any other debt, lien, pledge, assignment, encumbrance or other charge, payable from the Series 2020 Trust Estate. Notwithstanding the prior sentence, the foregoing shall not preclude the imposition of capital special assessments on property subject to the Series 2020 Assessments which are necessary, as determined by the Issuer, for health, safety or welfare reasons or to remediate a natural disaster or operation and maintenance assessments.

**SECTION 5.02. Collection of Series 2020 Special Assessments.** The Issuer is currently collecting the Series 2020 Special Assessments through the uniform method of collection afforded by Chapter 197, Florida Statutes, but reserves the right to collect all or any part of such Series 2020 Special Assessments directly, itself, if such collection method is not available to the Issuer as a matter of law. In addition, and not in limitation of, the covenants contained elsewhere in this Third Supplemental Indenture and in the Master Indenture, the Issuer covenants to comply with the terms of the proceedings with respect to the Series 2020 Special Assessments.

### **SECTION 5.03. Additional Covenants; Waiver of Jury Trial.**

(a) The Issuer shall not amend any provision of the Resolution or the Indenture without the prior written consent of the Owner.

(b) The Issuer will deliver to the Owner its audited financial statements no later than two hundred seventy (270) days following the end of each Fiscal Year of the Issuer and a copy of its annual budget (or any amendments thereto) within 30 days after adoption thereof. The Issuer shall provide the Owner with such additional information as may be reasonably requested by the Owner in connection with the Series 2020 Bond.

(c) The Issuer agrees and consents that the Purchaser shall be permitted to use information related to the Series 2020 Bond in connection with marketing, press releases or other transactional announcements or updates provided to investors or trade publications, including, but not limited to, the placement of the logo or other identifying name on marketing materials or of “tombstone” advertisements in publications of its choice at its own expense.

(d) The Issuer agrees and covenants to maintain its principal operating account with Truist Bank while the Series 2020 Bond remains Outstanding.

(e) The Issuer acknowledges that the Purchaser has notified the Issuer that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 signed into law October 26, 2001), the Purchaser may be required to obtain, verify and record information that identifies the Issuer, which information includes the name and address of the Issuer and other information that will allow the Purchaser to identify the Issuer in accordance with the USA Patriot Act.

(f) The Indenture and the Series 2020 Bond shall be governed by applicable federal law and the internal laws of the State of Florida. The Issuer agrees that certain material events and occurrences relating to the Series 2020 Bond bear a reasonable relationship to the laws of Florida



and the validity, terms, performance and enforcement of the Series 2020 Bond shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to the Series 2020 Bond, the Issuer consents to the jurisdiction and venue of any court located in Broward County, Florida.

(g) Notwithstanding anything to the contrary in the Master Indenture, the Trustee shall not, on behalf of the Owner, exercise remedies upon an Event of Default or failure of the Issuer to comply with any covenant, condition or agreement on its part to be observed or performed under the Indenture, and the Owner shall be solely responsible for pursuing such remedies on its own behalf with written notice to the Trustee of its intent to do so.

(h) Notwithstanding anything to the contrary in the Master Indenture, but subject to the other express provisions of Sections 2.01 and 4.02 of this Third Supplemental Indenture relating to when and whether an Event of Default has occurred, failure by the Issuer to observe and perform any covenant, condition or agreement on its part to be observed or performed under the Indenture for a period of thirty (30) days after the earlier of (i) the date written notice specifying such failure and requesting that it be remedied, is given to the Issuer by the Owner or (ii) the date the Issuer was required to give notice of the event or condition to the Trustee and the Owner pursuant to subsection (h) below, unless the Owner shall agree in writing to an extension of such time prior to its expiration.

(i) The Issuer shall within five (5) days after it acquires knowledge thereof, notify the Trustee and the Owner (at the notice address of the Owner on file with the Trustee) in writing (i) of any change in any material fact or circumstance represented or warranted by the Issuer in the Indenture or in connection with the issuance of the Series 2020 Bond; (ii) upon the happening, occurrence, or existence of any Event of Default, and (iii) any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Trustee and Owner, with such written notice, a detailed statement by a responsible officer of the Issuer of all relevant facts and the action being taken or proposed to be taken by the Issuer with respect thereto. Regardless of the date of receipt of such notice by the Trustee, such date shall not in any way modify the date of occurrence of the actual Event of Default.

(j) THE ISSUER, THE TRUSTEE AND THE REGISTERED OWNER WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS INDENTURE, THE SERIES 2020 BOND AND/OR THE SERIES 2020 TRUST ESTATE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY THE ISSUER, THE TRUSTEE AND THE OWNER. THE ISSUER, THE TRUSTEE AND THE OWNER FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE MAKING OF THIS WAIVER BY INDEPENDENT COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. The Issuer, the Trustee and each Owner are each hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver.

(k) Notwithstanding anything to the contrary contained in the Indenture, the Issuer covenants that it shall comply with the requirements of the Code necessary to maintain the exclusion of interest on the Series 2020 Bond from gross income for purposes of federal income taxation, including the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code, and, in particular, that it shall not make or direct the making of any investment or other use of the proceeds of such Series 2020 Bond (or amounts deemed to be proceeds under the Code) in any manner which would cause the interest on such Series 2020 Bond to be or become subject to federal income taxation, nor shall it fail to do any act which is necessary to prevent such interest from becoming subject to federal income taxation. The Issuer further covenants that neither the Issuer nor any other person under its control or direction will make any investment or other use of the proceeds of the Series 2020 Bond (or amounts deemed to be proceeds under the Code) in any manner which would cause the Series 2020 Bond to be “private activity bonds” as that term is defined in Section 141 of the Code (or any successor provision thereto), or “arbitrage bonds” as that term is defined in Section 148 of the Code (or any successor provision thereto), and that it will comply with such sections of the Code throughout the term of the Series 2020 Bond.

**SECTION 5.04. No Advisory or Fiduciary Relationship.** In connection with all aspects of each transaction contemplated hereunder (including in connection with any amendment, waiver or other modification hereof or of any other documents related hereto), the Issuer acknowledges and agrees, that: (a) (i) it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, (ii) it is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and any other loan documents, (iii) the Purchaser is not acting as a municipal advisor or financial advisor to the Issuer, and (v) the Purchaser has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act to the Issuer with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Purchaser has provided other services or is currently providing other services to the Issuer on other matters); (b) (i) the Purchaser is and has been acting solely as a principal in an arm’s length commercial lending transaction and has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Issuer, or any other person and (ii) the Purchaser has no obligation to the Issuer, with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the Indenture; (c) notwithstanding anything herein to the contrary, it is the intention of the Issuer and the Purchaser that the Series 2020 Bond represents a commercial loan transaction not involving the issuance and sale of a municipal security, and that any bond, note or other debt instrument that may be delivered to the Purchaser is delivered solely to evidence the repayment obligations of the Issuer under the Series 2020 Bond and the Indenture; and (d) the Purchaser may be engaged in a broad range of transactions that involve interests that differ from those of the Issuer, and the Purchaser has no obligation to disclose any of such interests to the Issuer. To the fullest extent permitted by law, the Issuer hereby waives and releases any claims that it may have against the Purchaser with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby. If the Issuer would like a municipal advisor in this transaction that has legal fiduciary duties to the Issuer, the Issuer is free to engage a municipal advisor to serve in that capacity. The transactions contemplated in the Indenture and the Series 2020 Bond are delivered, pursuant to and in reliance upon the bank exemption and/or the institutional buyer exemption provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 et seq, to the extent that such rules apply to the transactions contemplated hereunder.

[END OF ARTICLE V]

**ARTICLE VI  
CONCERNING THE TRUSTEE**

**SECTION 6.01. Acceptance by Trustee.** The Trustee accepts the trusts declared and provided in this Third Supplemental Indenture and agrees to perform such trusts upon the terms and conditions set forth in the Master Indenture.

**SECTION 6.02. Limitation of Trustee's Responsibility.** The Trustee shall not be responsible in any manner for the due execution of this Third Supplemental Indenture by the Issuer or for the recitals contained herein, all of which are made solely by the Issuer.

**SECTION 6.03. Trustee's Duties.** Nothing contained herein shall limit the rights, benefits, privileges, protection and entitlements inuring to the Trustee under the Master Indenture, including, particularly, Article XI thereof.

[END OF ARTICLE VI]

## ARTICLE VII MISCELLANEOUS PROVISIONS

**SECTION 7.01. Supplement to Master Indenture; Interpretation of Supplemental Indenture.** The first paragraph of Section 15.06 of the Master Indenture is hereby supplemented to read as follows: “Any notice, demand, direction, consent, request or other communication or instrument authorized or required by this Master Indenture to be given to or filed with the Issuer or the Board or the Trustee shall be provided in writing (provided that any communication sent to the Trustee hereunder must be in the form of a document that is signed manually) and shall be deemed to have been sufficiently given or filed for all purpose of this Master Indenture if and when sent by overnight delivery, certified mail, return receipt requested or e-mail.”

As supplemented by this Third Supplemental Indenture, the Master Indenture is in all respects ratified and confirmed, and this Third Supplemental Indenture shall be read, taken and construed as a part of the Master Indenture so that all of the rights, remedies, terms, conditions, covenants and agreements of the Master Indenture, except insofar as modified herein, shall apply and remain in full force and effect with respect to this Third Supplemental Indenture and to the Series 2020 Bond issued hereunder. To the extent of any conflicts between the terms and provisions of the Master Indenture and this Third Supplemental Indenture the terms and provisions hereof shall control.

**SECTION 7.02. Amendments.** Any amendments to this Third Supplemental Indenture shall be made pursuant to the provisions for amendment contained in the Master Indenture, subject to Section 5.03(a) hereof.

**SECTION 7.03. Counterparts.** This Third Supplemental Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

**SECTION 7.04. Appendices and Exhibits.** Any and all schedules, appendices or exhibits referred to in and attached to this Third Supplemental Indenture are hereby incorporated herein and made a part of this Third Supplemental Indenture for all purposes.

**SECTION 7.05. Payment Dates.** In any case in which an Interest Payment Date or the maturity date of the Series 2020 Bond or the date fixed for the redemption of any Series 2020 Bond shall be other than a Business Day, then payment of interest, principal or Redemption Price need not be made on such date but may be made on the next succeeding Business Day, with the same force and effect as if made on the due date, and no interest on such payment shall accrue for the period after such due date if payment is made on such next succeeding Business Day.

**SECTION 7.06. No Rights Conferred on Others.** Nothing herein contained shall confer any right upon any Person other than the parties hereto and the Owner of the Series 2020 Bond.

**SECTION 7.07. Brokerage Statements.** The Issuer acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer the right to receive individual confirmations of security transactions at no additional cost, as they occur, the Issuer specifically waives receipt of such confirmations to the extent permitted by law.

The Trustee will furnish the Issuer periodic cash transaction statements that include detail for all investment transactions made by the Trustee hereunder.

**SECTION 7.08. Patriot Act Requirements of the Trustee.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Trustee will ask for documentation to verify such non-individual person's formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

[END OF ARTICLE VII]

IN WITNESS WHEREOF, Griffin Lakes Community Development District has caused this Third Supplemental Trust Indenture to be executed by the Chairperson of its Board of Supervisors and its corporate seal to be hereunto affixed and attested by the Secretary of its Board of Supervisors and U.S. Bank National Association has caused this Third Supplemental Trust Indenture to be executed by one of its Vice Presidents, all as of the day and year first above written.

[SEAL]

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

Attest:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Secretary of the  
Board of Supervisors

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Chairperson of the  
Board of Supervisors

[ADDITIONAL SIGNATURE FOLLOWING PAGE]

**U.S. BANK NATIONAL ASSOCIATION,** as  
Trustee, Paying Agent and Registrar

By: \_\_\_\_\_  
Leanne Duffy  
Vice President



STATE OF FLORIDA                    )  
   ) SS:  
 COUNTY OF BROWARD                )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of August, 2020, by Benny Barak, the Chairperson of the Board of Supervisors of the Griffin Lakes Community Development District who is personally known to me or who have produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

\_\_\_\_\_  
 Print name:\_\_\_\_\_  
 Notary Public, State of Florida  
 Commission #:\_\_\_\_\_  
 My Commission Expires:\_\_\_\_\_

STATE OF FLORIDA                    )  
   ) SS:  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of August, 2020, by Ken Cassel, the Secretary of the Board of Supervisors of the Griffin Lakes Community Development District who is personally known to me or who have produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

\_\_\_\_\_  
 Print name:\_\_\_\_\_  
 Notary Public, State of Florida  
 Commission #:\_\_\_\_\_  
 My Commission Expires:\_\_\_\_\_

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of August, 2020, by Leanne Duffy, a Vice President of U.S. Bank National Association, as Trustee, who is personally known to me or who have produced \_\_\_\_\_ as identification.

[NOTARIAL SEAL]

Print name: \_\_\_\_\_  
 Notary Public, State of Florida  
 Commission #: \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

**EXHIBIT A  
FORM OF SERIES 2020 BOND**

***THIS OBLIGATION MAY ONLY BE TRANSFERRED AS PROVIDED HEREIN***

**R-1****\$2,945,000**

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT  
SPECIAL ASSESSMENT REFUNDING BOND, SERIES 2020**

<u>Interest Rate</u> 2.54% (subject to adjustment)	<u>Maturity Date</u> May 1, 2033	<u>Dated Date</u> August 28, 2020
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Registered Owner:     **STI INSTITUTIONAL & GOVERNMENT, INC.**

Principal Amount:     **TWO MILLION NINE HUNDRED FORTY FIVE THOUSAND DOLLARS**

KNOW ALL PERSONS BY THESE PRESENTS that the Griffin Lakes Community Development District (the “Issuer”), a community development district duly created, established and existing pursuant to Chapter 190, Florida Statutes, for value received, hereby promises to pay (but only out of the sources hereinafter mentioned) to the registered Owner set forth above, or registered assigns, on the maturity date shown hereon, unless this Bond shall have been called for redemption in whole or in part and payment of the Redemption Price (as defined in the Indenture mentioned hereinafter) shall have been duly made or provided for, the principal amount shown above and to pay (but only out of the sources hereinafter mentioned) on the Maturity Date set forth above (or date of redemption, if earlier) and interest on the outstanding principal amount hereof from the most recent Interest Payment Date to which interest has been paid or provided for, or, if no interest has been paid, from the Dated Date shown above on November 1 and May 1 of each year (each, an “Interest Payment Date”), commencing on November 1, 2020, until payment of said principal sum has been made or provided for, at the rate per annum set forth above. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture (as hereinafter defined), be paid to the registered Owner hereof at the close of business on the regular record date for such interest, which shall be the fifteenth (15th) day of the calendar month next preceding such Interest Payment Date, or, if such day is not a Business Day on the Business Day immediately preceding such day. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner on such record date and may be paid to the person in whose name this Bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Paying Agent, notice whereof shall be given to the Owner of record as of the fifth (5th) day prior to such mailing, at its registered address, not less than ten (10) days prior to such Special Record Date, or may be paid, at any time in any other lawful manner, as more fully provided in the Indenture. Notwithstanding anything to the contrary in the Master Indenture (hereinafter defined),

presentment of this Bond for the payment of principal or Sinking Fund Installments hereon shall not be required. Payment of principal, Sinking Fund Installments and interest on this Bond shall be made by wire transfer to the registered Owner set forth above in accordance with standing instructions of such Owner to the Trustee. Interest on this Bond will be computed on the basis of a 360-day year of twelve 30-day months.

Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the hereinafter defined Indenture.

If there is an Event of Taxability, this Bond shall bear interest at the Taxable Rate during the Taxable Period, subject to the provisions of Section 2.01 of the Third Supplemental Indenture. Upon an Event of Default, or except as otherwise provided in the Third Supplemental Indenture, a failure of the Issuer to comply with any covenant, condition or agreement on its part to be observed or performed under the Third Supplemental Indenture this Bond shall bear interest at the Default Rate, subject to the provisions of Section 2.01 of the Third Supplemental Indenture.

This Bond represents all of a duly authorized issue of Bonds of the Issuer designated “Special Assessment Refunding Bond, Series 2020” (the “Series 2020 Bond”), issued in the aggregate principal amount of \$2,945,000 under a Master Trust Indenture dated as of December 1, 2002 (the “Master Indenture”) between the Issuer and U.S. Bank National Association, as successor in interest to Wachovia Bank, National Association, as trustee (the “Trustee”), as supplemented by a Third Supplemental Indenture dated as of August 1, 2020 (the “Third Supplemental Indenture”), between the Issuer and the Trustee (the Master Indenture as supplemented by the Third Supplemental Indenture is hereinafter referred to as the “Indenture”). The proceeds of the Series 2020 Bond, together with other available funds of the Issuer, will be applied for the purpose of: (i) refunding and redeeming the Issuer’s Outstanding Special Assessment Refunding Bonds, Series 2008; (ii) funding the Series 2020 Debt Service Reserve Account in an amount equal to the Series 2020 Debt Service Reserve Account Requirement; and (iii) paying certain costs associated with the issuance of the Series 2020 Bond.

NEITHER THIS BOND NOR THE INTEREST AND PREMIUM, IF ANY, PAYABLE HEREON SHALL CONSTITUTE A GENERAL OBLIGATION OR GENERAL INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF FLORIDA. THIS BOND AND THE SERIES OF WHICH IT IS A PART AND THE INTEREST AND PREMIUM, IF ANY, PAYABLE HEREON AND THEREON DO NOT CONSTITUTE EITHER A PLEDGE OF THE FULL FAITH AND CREDIT OF THE ISSUER OR A LIEN UPON ANY PROPERTY OF THE ISSUER OTHER THAN AS PROVIDED IN THE INDENTURE. NO OWNER OR ANY OTHER PERSON SHALL EVER HAVE THE RIGHT TO COMPEL THE EXERCISE OF ANY AD VALOREM TAXING POWER OF THE ISSUER OR ANY OTHER PUBLIC AUTHORITY OR GOVERNMENTAL BODY TO PAY DEBT SERVICE OR TO PAY ANY OTHER AMOUNTS REQUIRED TO BE PAID PURSUANT TO THE INDENTURE, OR THE SERIES 2020 BOND. RATHER, DEBT SERVICE REQUIREMENTS AND ANY OTHER AMOUNTS REQUIRED TO BE PAID PURSUANT TO THE INDENTURE OR THE SERIES 2020 BOND, SHALL BE PAYABLE SOLELY FROM, AND SHALL BE SECURED SOLELY BY, THE SERIES 2020 PLEDGED REVENUES AND THE FUNDS AND ACCOUNTS PLEDGED TO THE SERIES 2020 BOND, ALL AS PROVIDED HEREIN AND IN THE INDENTURE.

This Bond is issued under and pursuant to the Constitution and laws of the State of Florida, particularly Chapter 190, Florida Statutes, as amended, and other applicable provisions of law and pursuant to the Indenture, executed counterparts of which Indenture are on file at the corporate trust office of the Trustee. Reference is hereby made to the Indenture for the provisions, among others, with respect to the custody and application of the proceeds of Series 2020 Bond issued under the Indenture, the collection and disposition of revenues and the funds, accounts and subaccounts charged with and pledged to the payment of the principal, Sinking Fund Installments and Redemption Price of, and the interest on, the Series 2020 Bond, the nature and extent of the security thereby created, the covenants of the Issuer with respect to the levy and collection of Series 2020 Special Assessments, the terms and conditions under which the Series 2020 Bond is issued, the rights, duties, obligations and immunities of the Issuer and the Trustee under the Indenture and the rights of the Owner of the Series 2020 Bond, and, by the acceptance of this Bond, the Owner hereof assents to all of the provisions of the Indenture, the terms of which are incorporated herein. The Third Supplemental Indenture provides the Issuer may not issue additional Bonds ranking on a parity with the Series 2020 Bond.

This Bond is issuable only as a registered Bond without coupons in Authorized Denominations. Notwithstanding anything to the contrary in the Indenture, the Series 2020 Bond may only be transferred or assigned in whole, but not in part, provided that the transferee or assignee is (1) an "accredited investor" within the meaning of the Securities Act of 1933, as amended and Regulation D thereunder; provided, however, that such term shall not include an accredited investor that is a natural person within the meaning of Rule 501(a)(4),(5) and (6) of Regulation D or (2) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933.

Subject to the Indenture and the preceding paragraph, this Bond is transferable by the registered Owner hereof or his duly authorized attorney at the designated corporate trust office of the Trustee in Orlando, Florida, as registrar (the "Registrar"), upon surrender of this Bond, accompanied by a duly executed instrument of transfer in form and with guaranty of signature reasonably satisfactory to the Registrar, subject to such reasonable regulations as the Issuer or the Registrar may prescribe, and upon payment of any taxes or other governmental charges incident to such transfer. Upon any such transfer a new Series 2020 Bond, in the same aggregate principal amount as the Bond transferred, will be issued to the transferee. At the corporate trust office of the Bond Registrar in Orlando, Florida, in the manner and subject to the limitations and conditions provided in the Indenture and without cost, except for any tax or other governmental charge, the Series 2020 Bond may be exchanged for an equal aggregate principal amount of a Series 2020 Bond of the same maturity, in Authorized Denominations and bearing interest at the same rate.

One time during each calendar year while the Series 2020 Bond is Outstanding, the Series 2020 Bond may, at the option of the Issuer, be called for redemption, in part, in a principal amount not exceeding 10% of the principal amount of the Series 2020 Bond Outstanding as of January 1 during such calendar year, at a Redemption Price equal to 100% of the principal amount of the such portion thereof to be redeemed, without premium, plus accrued interest from the most recent Interest Payment Date to the redemption date.

This Bond is subject to mandatory redemption in part by the Issuer by lot prior to its scheduled maturity from moneys in the Series 2020 Sinking Fund Account established under the

Third Supplemental Indenture in satisfaction of applicable Sinking Fund Installments at the Redemption Price of 100% of the principal amount thereof, without premium, together with accrued interest to the date of redemption on May 1 of the years and in the principal amounts set forth below:

<u>Year</u>	<u>Sinking Fund Installment</u>
2021	\$195,000
2022	200,000
2023	205,000
2024	210,000
2025	215,000
2026	220,000
2027	225,000
2028	230,000
2029	235,000
2030	245,000
2031	250,000
2032	255,000
2033*	260,000

---

\*Final maturity

The Series 2020 Bond is subject to extraordinary mandatory redemption prior to maturity by the Issuer in whole, on any date, or in part, on any Interest Payment Date, at a Redemption Price equal to 100% of the principal amount of the Series 2020 Bond or portions thereof to be redeemed, plus interest from the most recent Interest Payment Date to the redemption date, from Series 2020 Prepayment Principal deposited into the Series 2020 Prepayment Subaccount of the Series 2020 Bond Redemption Account from Prepayments in accordance with the provisions of the Third Supplemental Indenture.

Upon any redemption of the Series 2020 Bond (other than a redemption in accordance with scheduled Sinking Fund Installments), the Trustee shall cause the Series 2020 Bond to be redeemed in such amounts and having such maturities so as to result in Sinking Fund Installments recalculated by the Issuer, in such manner as shall amortize all the Outstanding Series 2020 Bond in substantially equal annual installments of principal and interest (subject to rounding to Authorized Denominations of principal) over the remaining term of the Series 2020 Bond.

Notice of each redemption of the Series 2020 Bond is required to be given as provided in Section 3.02 of the Third Supplemental Indenture.

The Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Third Supplemental Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond shall have all the qualities and incidents, including negotiability, of investment securities within the meaning and for all the purposes of the Uniform Commercial Code of the State of Florida.

This Bond is issued with the intent that the laws of the State of Florida shall govern its construction.

The Issuer has designated the Series 2020 Bond as a qualified tax-exempt obligation within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

All acts, conditions and things required by the Constitution and laws of the State of Florida and the ordinances and resolutions of the Issuer to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture, have happened, exist and have been performed as so required. This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until it shall have been authenticated by the execution by the Trustee of the Certificate of Authentication endorsed hereon.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, Griffin Lakes Community Development Issuer has caused this Bond to bear the signature of the Chairman of its Board of Supervisors and the official seal of the Issuer to be impressed or imprinted hereon and attested by the signature of the Secretary to the Board of Supervisors.

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

Attest:

\_\_\_\_\_  
Secretary, Board of Supervisors

By:\_\_\_\_\_  
Chairperson, Board of Supervisors



## **CERTIFICATE OF AUTHENTICATION**

This Bond is all of the Series 2020 Bond designated herein, described in the within-mentioned Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

Date of Authentication:

August 28, 2020

By: \_\_\_\_\_  
Authorized Signatory

**CERTIFICATE OF VALIDATION**

This Bond is one of a series of Bonds which were validated by judgment of the Circuit Court of the Seventeenth Judicial Circuit of Florida, in and for Broward County, Florida, rendered on the 1st day of November, 2002.

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

Attest:

\_\_\_\_\_  
Secretary, Board of Supervisors

By: \_\_\_\_\_  
Chairperson, Board of Supervisors

## ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with rights of survivorship and not as tenants in common

UNIFORM TRANSFER MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

## Under Uniform Transfer to Minors

Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

## ASSIGNMENT AND TRANSFER

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

---

(please print or typewrite name and address of assignee)

---

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

---

Attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Signature Guarantee:

---

**NOTICE:** Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

---

**NOTICE:** The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

---

Please insert social security or other identifying number of Assignee.

**EXHIBIT B**  
**COST OF ISSUANCE REQUISITION NO. \_\_**

**GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT**  
**SPECIAL ASSESSMENT REFUNDING BOND, SERIES 2020**

The undersigned, a Responsible Officer of Griffin Lakes Community Development District (the "Issuer") hereby submits the following requisition for disbursement from the Series 2020 Costs of Issuance Account created under and pursuant to the terms of the Master Trust Indenture from the Issuer to U.S. Bank National Association, as successor trustee (the "Trustee"), dated as of December 1, 2002, as supplemented by a Third Supplemental Trust Indenture dated as of August 1, 2020 (collectively, the "Indenture") (all capitalized terms used herein shall have the meanings ascribed to such terms in this Indenture):

- (A) Requisition Number:
- (B) Name of Payee:
- (C) Amount Payable:
- (D) Purpose for which paid or incurred:

The undersigned hereby certifies that:

1. This requisition is for Costs of issuance of the Series 2020 Bond payable from the Series 2020 Costs of Issuance Account that have not previously been paid; and
2. Each disbursement set forth above is a proper charge against the Series 2020 Costs of Issuance Account.

Attached hereto are copies of the invoice(s) from the vendor of the services rendered with respect to which disbursement is hereby requested.

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Responsible Officer

Date: \_\_\_\_\_

**4C.**

**RESOLUTION NO. 2020-10**

**A RESOLUTION OF GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT APPROVING THE DISTRICT'S POST-ISSUANCE COMPLIANCE GUIDE FOR TAX-EXEMPT BONDS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Griffin Lakes Community Development District (the "District") expects to issue tax-exempt bonds (collectively, the "Bonds"); and

**WHEREAS**, the District desires to formally memorialize, in a single document, its policies and procedures relating to compliance with certain applicable requirements of the Internal Revenue Code of 1986, as amended, and certain of its covenants and undertakings in connection with its Bonds.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT AS FOLLOWS:**

**SECTION 1.** The Post-Issuance Compliance Guide for Tax-Exempt Bonds (the "Guide") in the form attached hereto as Exhibit A is hereby adopted and approved. The person then serving as District Manager of the District or a representative or representatives of the entity then serving as District Manager of the District designated by such entity shall act as the Tax Compliance Officer for purposes of the Guide. The Guide shall supersede any similar policies and procedures previously adopted by the District.

**SECTION 2.** This resolution shall be effective immediately upon adoption.

**PASSED AND ADOPTED** at a meeting of the Board of Supervisors of Griffin Lakes Community Development District this 13th day of August, 2020.

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

[SEAL]

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
District Secretary

## EXHIBIT A



**4D**

**GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT**

**POST-ISSUANCE COMPLIANCE GUIDE**

**FOR**

**TAX-EXEMPT BONDS**

**Adopted August 13, 2020**

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## PURPOSE

Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”) contains limitations on the extent to which proceeds of tax-exempt bonds can benefit persons other than a state or local governmental unit. In addition, Section 148 of the Code imposes limitations on the investment of proceeds of tax-exempt bonds and required rebate of excess earnings to the federal government. The procedures set forth herein are intended to maintain the tax-exempt status of the outstanding tax-exempt bonds of the Griffin Lakes Community Development District (the “District”) by establishing procedures for: (1) identifying uses that may constitute private use, (2) managing and tracking changes in use, (3) accomplishing remedial action when necessary, and (4) assuring compliance with the arbitrage requirements of the Code. The procedures set forth herein also address matters relating to the District’s compliance with bond covenants.

## RESPONSIBILITY

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of its outstanding tax-exempt bond issues, the person then serving as District Manager of the District or a representative or representatives of the entity then serving as District Manager of the District shall act as the Tax Compliance Officer who will have the primary responsibility to monitor the District’s compliance with federal tax requirements for the District’s Bonds. The Tax Compliance Officer may engage third parties to assist in accomplishing the duties of the Tax Compliance Officer hereunder. The tax requirements include both limitations on the private use of facilities financed by Bonds and arbitrage limitations on the investment of proceeds of Bonds under the Code. The general responsibilities of the Tax Compliance Officer with respect to bond compliance shall include, but not be limited to, communication of monitoring procedures for Bonds (as outlined herein) to applicable department heads of the District, if any, or other parties responsible for construction and/or operation of Bond-Financed Property if other than the District Manager (the “District Representatives”) confirming consistent application of these procedures, monitoring the completeness of documentation required by these procedures, and conferring with Bond Counsel as necessary. The Tax Compliance Officer will also monitor the District’s compliance with other covenants in its bond documents. Set forth below are the procedures that will be undertaken. The District will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements.

## PRIVATE ACTIVITY LIMITATIONS

### *Definitions*

1. **Governmental Bonds.** – Governmental Bonds are Bonds that are not Private Activity Bonds.
2. **Private Activity Bonds.** - A Bond is a private activity bond if the bond issue meets: (i) **both** the private business use test **and** the private payment or security test; **or** (ii) the private loan financing test. The tests are applied on a basis of reasonable expectations of the District on the date of each issue of Bonds and by taking into account deliberate actions of the District while such Bonds are outstanding. In many cases a deliberate action that causes Bonds to become private activity bonds can be cured by taking remedial actions.

3. **Private Business Use Test.** The private business use test is met if the amount of proceeds of Bonds that are used in a private business use is more than ten percent of total proceeds. A five percent limit is used in lieu of a ten percent limit if the private use is unrelated to a governmental use or related but disproportionate to a governmental use. Private Business Use means use, directly or indirectly, in a trade or business carried on by any person other than the issuer or another state or local governmental unit, including a use by a 501(c)(3) organization or the federal government. All private business uses over the life of the bonds are aggregated in determining whether the limitations are met.
4. **Private Payment or Security Test-** The private security or payment test is met if the payment of debt service on more than ten percent of the issue of Bonds is directly or indirectly (i) secured by any interest in property used for a private business use or payments in respect of such property or (ii) derived from payments in respect of property or borrowed money used for a private business use. A five percent limit is used in lieu of a ten percent limit if the private use is unrelated to a governmental use or related but disproportionate to a governmental use. Private payments are not taken into account to the extent properly allocated to ordinary and necessary expenses directly attributable to the operation and maintenance of the Bond-Financed Property (hereinafter defined) used by the private user.
5. **Private Loan Financing Test.** The Private Loan Financing Test is met if the issuer uses proceeds of Bonds to make loans to private persons exceeding the lesser of 5% of the proceeds or \$5 million.
6. **Management Contract** – A Management Contract is a management, service or incentive payment contract between a governmental unit and a non-governmental service provider under which the service provider provides services involving all, a portion of, or any function of a facility. A management contract with respect to financed property generally results in a private business use if the contract provides for compensation of services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility. Revenue Procedure 2017-13, as amended, provides safe harbors pursuant to which qualifying management contracts would not be treated as constituting private use of a financed facility.
7. **Bonds** – The term Bonds includes bonds, notes, and installment sale or financing lease arrangements issued on a tax-exempt basis.
8. **Eligible Mixed-Use Project** -- An eligible mixed-use project is a project wholly owned by one or more governmental persons (or 501(c)(3) organizations) or by a partnership with at least one governmental partner that is financed with governmental bonds (or qualified 501(c)(3) bonds) and with qualified equity pursuant to the same plan of financing.
9. **Qualified Equity** -- Qualified equity includes proceeds of taxable bonds other than tax-credit bonds, and funds not derived from a borrowing. The qualified equity is treated as financing the project under the same plan of financing if it pays for capital expenditures of the project on a date no earlier than the date on which such expenditures would be eligible for reimbursement under the reimbursement regulations and no later than the date the measurement period begins, generally the placed-in-service date.

### ***Bond-Financed Property***

The first step in undertaking a review of private use limitations is to identify all of the property that was financed by a particular issue of Bonds. In many cases a particular property or project may have been partially financed or refinanced with multiple issues and a change in the use of that property or project could affect all those issues. The Tax Compliance Officer will identify all outstanding Bonds of the District by reference to the audited financial statements for each fiscal year and any interim unaudited financial statements. The Tax Compliance Officer will establish and maintain books and records that reflect the actual expenditure of proceeds of particular Bonds on specific projects comprising Bond-Financed Property.

### ***Private Activity Review***

Reference should be made to the Private Activity Restrictions on Private Business Use and accompanying attachments, attached as Tab I, for further guidance on the Private Activity Limitations of Section 141 of the Code.

In order to demonstrate compliance with the Private Activity Limitations of the Code, the Tax Compliance Officer will make inquiry, including of each District Representative, on a periodic basis as to the ownership and use of such Bond-Financed Property. A form of Private Business Use Questionnaire that can be utilized for this inquiry is attached as Tab II. The Tax Compliance Officer will identify the potential occurrence of any of the events set forth below (a "Tax Event") with respect to any Bond-Financed Property:

**Change of ownership or use of the Bond-Financed Property** -- the ownership of any portion of the Bond-Financed Property is transferred to anyone, prior to the earlier of the end of the expected economic life of the property, or the latest maturity date of any of the Bonds financing (or refinancing) the Bond-Finance Property or any restriction on the ability of the general public to access the Bond-Financed Property occurs.

**Private business use of the Bond-Financed Property** -- any portion of the Bond-Financed Property will be used by anyone other than a State or local governmental unit, such as the District, or members of the general public who are not using the property in the conduct of a trade or business. Examples of uses that can give rise to private business use include use by a person as an owner, lessee, purchaser of the output of facilities under a "take" or "take or pay" contract, purchaser or licensee of research, a manager or independent contractor under certain management or professional service contracts or any other arrangement that conveys special legal entitlements (*e.g.*, arrangement that conveys priority rights to the use or capacity of the Bond-Financed Property) for beneficial use of the Bond-Finance Property.

**Leases of the Bond Financed Property** -- any portion of the Bond-Financed Property is to be leased, or otherwise subject to an agreement which gives possession of any portion of the Bond-Financed Property to anyone, other than a state or local governmental unit.

**Management agreement or service agreement** -- any portion of the Bond-Financed Property is to be used under a management contract or professional service contract, other than a contract for services that are solely incidental to the primary function of Bond-Financed Property, such as janitorial services or office equipment repair.

**Sale of Output from Bond-Financed Facility** – any output of the Bond-Financed Property is to be sold to or otherwise used by any person other than a state or local governmental unit or a member of the general public.

**Naming rights agreements for the Bond-Financed Property** -- any portion of the Bond-Financed Property will become subject to a naming rights or sponsorship agreement, other than a “brass plaque” dedication.

**Research using the Bond-Financed Property** -- any portion of the Bond-Financed Property will be used for the conduct of research under the sponsorship, or for the benefit of, any organization other than a state or local governmental unit.

**Private Loan of Bond Proceeds** -- any portion of the proceeds of any issue of Bonds (including any investment earnings thereon) is to be loaned by the District.

The existence of private uses may trigger a need to review whether there have also been payments received by the District either from a non-governmental party, such as lease payments, or payments with respect to Bond-Financed Property. It at any time there is a question or potential problem that arise with respect to private payments, it should be brought to the attention of the Tax Compliance Officer as soon as possible and Bond Counsel should be consulted on the application of the private payment test.

### **Responsible Persons**

The Tax Compliance Officer is responsible for monitoring and enforcing compliance with policies and procedures relating to private use of Bond-Financed Property. It is the responsibility of the Tax Compliance Officer to track the planned and actual use thereof while the related issue of Bonds is outstanding. The Tax Compliance Officer shall review all private uses and work with any applicable District Representatives and Bond Counsel to make certain that no private use is undertaken which might adversely affect the tax-exempt status of any Bonds. A further breakdown of the procedures to carry out these responsibilities is detailed below.

### **Expected Use of Proceeds**

At the time of issuance of each issue of Bonds, the Tax Compliance Officer will work with any District Representatives to determine and document planned uses of Bond-Financed Property relating to the applicable issue of Bonds. On completion of the projects included in Bond-Financed Property and final expenditure of proceeds of the related issue of Bonds, the applicable District Representative, if any, and Tax Compliance Officer will review and document sources of funding, including Qualified Equity, and any special the allocation of proceeds of such Bonds to particular costs and note the existence and amount of any private use on a schedule of private use.

A final allocation of proceeds of each issue of Bonds to expenditures will be made and retained with the records of the issue of Bonds not later than 18-months after the later of the expenditure of the proceeds of such Bonds or the placed in service date for the related Bond-Financed Property. In the case of a qualified mixed-use project, qualified equity is allocated first to private business use of the eligible mixed-use project and then to governmental use, and tax-exempt bond proceeds are allocated first to governmental use and then to private business use.



## **Ongoing Review**

The Tax Compliance Officer will disseminate to, and discuss the list of Tax Events with any applicable District Representatives and will attempt to identify a potential Tax Event before it occurs. The Tax Compliance Officer should work closely on a regular basis with any applicable District Representatives involved with the operations involving Bond-Financed Property to learn about potential and actual changes as they are contemplated. By understanding potential changes in use that may affect private use of Bond-Financed Property, the Tax Compliance Officer and District Representatives can evaluate, on an ongoing basis, whether such changes could affect the tax-exempt status of any issue of Bonds before the change occurs.

Once a potential Tax Event has been identified, the Tax Compliance Officer shall work with any applicable District Representatives and potential private user, if applicable, to determine the parameters for the new use. Some of the parameters to consider include whether the use will be available to other organizations or the public, rents or compensation for use, costs of use to the District and square footage to be used, management contracts, leases, service, etc. These use parameters will determine if the use constitutes a non-qualified use and/or new private use of the facilities. The Tax Compliance Officer or applicable District Representative shall update the schedule summarizing private use.

In the case of a management or service contract, the Tax Compliance Officer will direct Bond Counsel to review the contract to determine if a safe harbor applies that would avoid private use from occurring. These types of agreements should be submitted to the Tax Compliance Officer in the early stages of discussions prior to going to the District for approval. Early Bond Counsel review of the contracts may help avoid private use problems.

On or prior to the occurrence of any Tax Event, including, without limitation, the proposed sale of any Bond-Financed Property, the Tax Compliance Officer will consult with Bond Counsel to ascertain what effect, if any, a contemplated Tax Event may have on the tax-exemption of interest on the related Bonds. Bond Counsel also should be consulted regarding questions of measurement of private use and available safe harbors for management or service contracts. In certain circumstances, if the private use would cause a limitation on the overall issue to be exceeded, it may be necessary for the District to take a remedial action under Treasury Regulation Section 1.141-12, including an anticipatory remedial action, to preserve the tax-exempt status of interest on the related issue of Bonds. See Tab III regarding available remedial actions. Timely identification of a Tax Event is necessary to take a remedial action. In certain cases, remedial action may not be available and the District may need to consider a voluntary closing agreement with the IRS.

## **Annual Review**

The Tax Compliance Officer shall be responsible for reviewing the District's outstanding Bonds on a yearly basis. This review will involve analyzing the planned uses for the Bond-Financed Property, as documented on the summaries and schedules indicated above, and determining whether any changes in use are contemplated and or have occurred and whether any sales or transfers of Bond-Financed Property are contemplated. This review shall include information and/or documentation concerning users of the Bond-Financed Property for any proposed or actual changes identified within the past year (e.g. changes in square footage, increased public or private uses, changes in activities including additions/deletions of specific activities). Such information and/or documentation may include, but is not limited to, the factual details of the proposed or actual change in use, policies and procedures related to use, expenses related to use, improvements made, etc.

On an annual basis, the Tax Compliance Officer and any applicable District Representatives will review the actual use of each issue of Bonds to determine whether the actual use has changed from the plan and any applicable District Representatives will file an annual report to the Tax Compliance Officer. Where the actual use is different, the Tax Compliance Officer will document how it is different and the effects of the differences on the private use calculations. The Tax Compliance Officer shall review all new private uses and work with any applicable District Representatives and the District's Bond Counsel to make certain that no private use has been undertaken that might affect the qualified status of each issue of Bonds.

The Tax Compliance Officer will prepare an annual report summarizing current Bonds outstanding and the status of each based on the data collected and/or provided in the annual update reports. The Tax Compliance Officer will report to the Board of Supervisors of the District any potential problems that may arise that could threaten the tax-exempt status of Bonds and the steps being taken to resolve the potential problem. Discussions will be held with Bond Counsel as to the steps required to be taken.

### **Recordkeeping**

The Internal Revenue Service has advised issuers of tax-exempt bonds that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the Internal Revenue Service in the event of any future audit of the bonds. See IRS FAQs on Record Retention, attached as Tab IV. The Tax Compliance Officer shall maintain a file for each issue of Bonds. The file shall include a copy of the bond documents, detailed project schedule, cost schedule, amount of private use by project, and economic life of the project. The file shall contain a copy of all management or service contracts, leases, or agreements and documentation that any private use does not exceed permissible limits. The file shall contain annual reports from the Tax Compliance Officer or other applicable District Representative managing Bond-Financed Property summarizing all recalculations of private use percentage and private payment summaries. This file must be maintained for each issue of Bonds for the life of the issue plus three years.

### **ARBITRAGE COMPLIANCE**

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of Bonds at an unrestricted yield and the rebate of excess investment earnings to the federal government, as more fully described in the Tax Certificates for each of issue of Bonds and the Arbitrage Letter of Instructions, attached as Tab V.

### ***Arbitrage Review***

For each issue of Bonds, the Tax Compliance Officer will maintain the records and documents described below under "Recordkeeping." For each issue of Bonds, the Tax Compliance Officer will establish a timeline for review of arbitrage-related issues as more fully described below.

### **Temporary Period**

For all issues of Bonds, the Tax Compliance Officer will note the date of expiration of the three year temporary period for unrestricted investment of the proceeds of such Bonds. The three year temporary period runs from the date of issue of the original new money issue and is unaffected by note rollovers. Note, however, that the issuance of advance refunding bonds will terminate the three year temporary period of any issue that is advance refunded. For all Bonds which have unexpended proceeds held

beyond the temporary period, the Tax Compliance Officer will assure that the proceeds are yield restricted. The relevant yield will be the yield on the original Bonds until those obligations are paid with the proceeds of another issue of Bonds (a "Refunding Issue"), at which time the relevant yield will be the yield on the Refunding Issue. Yield restriction will be accomplished through either an actual investment below the relevant yield or the making of yield reduction payments, as described in Section 3(b) of the Arbitrage Letter of Instructions found in Tab V. The Tax Compliance Officer will work with its auditor or other arbitrage consultant to make timely yield reduction payments.

### **Rebate**

For each issue of Bonds the Tax Compliance Officer will note from the Tax Certificate delivered by the District in connection with the issuance of the Bonds whether a rebate exception is available for the issue. The rebate exceptions include the bona fide debt service fund exception and the spending exceptions described in Section 4(a)(ii) of the Arbitrage Letter of Instructions found in Tab V. If the issue of Bonds is expected to meet one of the three spending exceptions to rebate, the six-month exception, the 18-month exception or the 2-year construction exception, the Tax Compliance Officer will establish a timeline of six month intervals following the date of issue of the Bonds and note whether the spending requirements related to that exception are met at the end of each period.

If no rebate exception is expected to apply or if a spending requirement is not met, the Tax Compliance Officer will establish a timeline for rebate analysis for each issue of Bonds. For bond issues, the timeline will provide for a rebate analysis to be conducted every five years and when the bonds are discharged, as more fully described in Section 4 of the Arbitrage Letter of Instructions. For note issues the timeline will provide for a rebate analysis to be undertaken at the time of the retirement of the note issue. The Tax Compliance Officer will consult with its auditor or other arbitrage consultant and make timely filing of any rebate amount with the Internal Revenue Service, as more fully described in Section 4 of the Arbitrage Letter of Instructions.

### **Arbitrage Consultant**

The Tax Compliance Officer will maintain a contract with a third party arbitrage consultant for the purpose of providing arbitrage consulting services including but not limited to:

1. annual analysis of all Bonds.
2. arbitrage rebate calculations
3. yield restriction calculations.
4. technical support on an ad-hoc basis.

The arbitrage consultant will provide on an annual basis, an analysis of all Bonds for potential liability, rebate, yield restriction or other arbitrage related issues. The Tax Compliance Officer will review the arbitrage analysis and coordinate with the consultant to prepare the necessary filings and payments. The Tax Compliance Officer will timely file or cause to be filed with the Internal Revenue Service the appropriate IRS arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due for any Bonds.

## ***Recordkeeping***

In order to satisfy the arbitrage recordkeeping requirements, the Tax Compliance Officer shall create and maintain, or cause to be created and maintained, records of:

1. Purchases or sales of investments made with proceeds of Bonds (including amounts treated as “gross proceeds” as a result being part of a sinking fund or pledge fund) and receipts of earnings on those investments;
2. The final allocation of the proceeds of each issue of Bonds to expenditures, together with purchase contracts, construction contracts, invoices, and cancelled checks;
3. Information and records showing that investments made with unspent proceeds of each issue of Bonds after the expiration of the applicable temporary period were not invested in higher-yielding investments;
4. Information, if applicable, that will be sufficient to demonstrate to the Internal Revenue Service upon an audit of any issue of Bonds that such Bonds have complied with one or more available spending exceptions to the arbitrage rebate requirement with respect of such Bonds;
5. Information and calculations, when applicable, that will be sufficient to demonstrate to the Internal Revenue Service, upon an audit of any issue of Bonds, for which an exception to the arbitrage rebate requirement was not applicable, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of such Bonds was calculated and timely paid with Form 8038-T timely filed with the Internal Revenue Service;
6. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for Bonds were not invested in higher-yielding investments; and
7. The Tax Certificate delivered by the District as part of the record of proceedings for each issue of Bonds.

## **BOND COVENANT COMPLIANCE**

The Tax Compliance Officer will become familiar with the various covenants in the applicable financing documents relating to each issue of Bonds, including the applicable bond resolution, trust indenture, loan agreement and/or agreement with credit enhancers. The Tax Compliance Officer will prepare and regularly update a written summary of the bond covenants and review on an annual basis the status of the District’s compliance with such covenants. These covenants typically include matters such as the requirement to provide audited financial statements and/or annual budgets to bond trustees on an annual basis, the requirement to maintain specified insurance coverage, and monitoring compliance with rate covenants. The Tax Compliance Officer will consult with any applicable District Representatives to the extent necessary to obtain information to permit the District to comply with such covenants.

Attachments

Tab I	Private Activity Restrictions on Private Business Use
Tab II	Private Business Use Questionnaire
Tab III	Remedial Actions
Tab IV	IRS FAQs on Record Retention
Tab V	Arbitrage Letter of Instructions

## TAB I

### PRIVATE ACTIVITY RESTRICTIONS ON PRIVATE BUSINESS USE

#### GOVERNMENTAL BONDS

##### Introduction

The Internal Revenue Code of 1986, as amended (the “Code”) limits the amount of proceeds of tax-exempt governmental bonds (including short term obligations such as notes) that can be used for the benefit of private businesses. Section 141 of the Code treats as a taxable private activity bond a bond issued as part of an issue that meets the private business use test and the private security or payment test, or the private loan test. The private business use test is met if the amount of proceeds of bonds that are used in a private business use is more than ten percent of total proceeds. The private security or payment test is met if the payment of debt service on more than 10 percent of the issue is directly or indirectly (i) secured by any interest in property used for a private business use or payments in respect of such property or (ii) derived from payments in respect of property or borrowed money used for a private business use. A five percent limit is used in lieu of a ten percent limit if the private use is unrelated to a governmental use or related but disproportionate to a governmental use. For purposes of Section 141, the term private business includes nonprofit, 501(c)(3) organizations as well as the federal government.

##### Private business use generally

Private business use can arise from almost any use of tax-exempt bond-financed property by anyone other than a state or local governmental unit (“Governmental Unit”) or members of the general public who are not using the property in the conduct of a trade or business. Examples of uses which can give rise to private business use include use (a) by a person as (i) an owner, (ii) a lessee, (iii) a purchaser of the output of facilities under a “take and pay” or “take or pay” contract, (iv) a purchaser, sponsor or licensee of research and (v) a manager or independent contractor under certain management or professional service contracts, (b) pursuant to an arrangement that conveys (i) special legal entitlements (e.g., an arrangement that conveys priority rights to the use or capacity of the financed property) for beneficial use of the property financed with proceeds of tax exempt debt or (ii) other special economic benefits, (c) use by the United States government and its agencies and instrumentalities and (d) use by nonprofit corporations.

The purpose of this Summary is to assist employees of a Governmental Unit in recognizing uses, actions or other arrangements with respect to tax-exempt bond-financed property which may not comply with the requirements of the Internal Revenue Code of 1986, as amended, and which could jeopardize the tax exempt status of bonds issued to finance such property. It is not exhaustive and may not be relied upon as legal advice. Before any use, action or other arrangement described herein is commenced, such use, action or other arrangement should be reviewed by bond counsel to the Governmental Unit.

**Leases of the Financed Property.** Leases and certain other agreements which transfer possession of tax exempt financed property will result in a private business use if the party to whom the property is leased is not an Governmental Unit. Examples include leases of space for book stores and cafeterias.

**Priority Rights.** Arrangements that convey special legal entitlements (e.g., arrangements that convey priority rights to the use or capacity of the financed property) for control or beneficial use of property financed with proceeds of tax exempt debt are treated as private business uses. Examples of such arrangements are contracts with research companies to set aside space for the testing of new products or arrangements pursuant to which a person which is not an Governmental Unit is entitled to limit, or control charges for, access to all or a portion of tax-exempt bond financed property.

**Naming Rights and Sponsorship Payments.** Agreements which permit a private company or organization to make payments for the right to have its name or logo used in connection with property financed with tax exempt debt may result in private business use. The rules in this area continue to evolve but “qualified sponsorship payments” should not give rise to a private business use. A qualified sponsorship payment means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the sponsor’s name or logo in connection with the activities of the Governmental Unit. Such use or acknowledgement may not include advertising such person’s products or services. The qualified sponsorship payment would not include (a) any payment that is contingent upon attendance at events or (b) any payment that entitles the payor to the use or acknowledgement of the payor’s name or logo in regularly scheduled and printed material published by or on behalf of the Governmental Unit. This would allow donations in exchange for the usual “brass plaque” but call into question arrangements such as the right to name a facility of the Governmental Unit and control how that facility is referred to in publications and press releases.

**Research Arrangements.** Research conducted under the sponsorship or for the benefit of organizations other than Governmental Units, including research sponsored by any branch of the Federal government, can result in the private business use of any property financed with tax exempt debt which is used in the conduct of the research. The Internal Revenue Service has published guidance on the circumstances under which a research agreement does not result in private business use. The guidance for safe harbor research arrangements is set forth in Rev. Proc. 2007-47 (2007 IRB LEXIS 570; 2007-29 I.R.B. 108) attached hereto as Exhibit 1.

**Management and Service Contracts.** Both contracts for the management of property financed with tax exempt debt and certain contracts for the provision of services in connection with property financed with tax exempt debt can result in private business use. Contracts which may result in a private business use include management, service, or incentive payment contracts between the Governmental Unit and a service provider under which the service provider provides services involving all, a portion of, or any function of, a facility financed with tax exempt debt. For example, a contract for the provision of management services for an entire facility, and a contract for management services for a specific portion of a facility, such as a cafeteria are each treated as a management contract. However, contracts for services that are solely incidental to the primary function of the property financed with tax exempt debt, such as janitorial services or office equipment repair, are not regarded as management or service contracts for this purpose. The Internal Revenue Service has published safe harbor guidance on the circumstances under which a management or service agreement does not result in private business use. For contracts entered into before August 18, 2017, the guidance is set forth in Rev. Proc. 97-13 (1997-1 C.B. 632; 1997 IRB LEXIS 14; 1997-5 I.R.B. 18, as modified by Rev. Proc. 2001-39, 2001 IRB LEXIS 229; 2001-28 I.R.B. 38) and IRS Notice 2014-67, attached hereto as Exhibit 2. For contracts entered into on or after January 17, 2017, or at the election of the issuer, at any time, the guidance is set forth in Rev. Proc. 2017-13, attached hereto as Exhibit 3.

**Output Facilities.** Occasionally a Governmental Unit will acquire facilities such as co-generation facilities. The sale of output (as distinguished from consumption of the output by the Governmental Unit) from an output type facility can result in a private business use.

**Joint Ventures and Partnerships.** Joint venture arrangements between a Governmental Unit and persons other than a Governmental Unit may result in private business use. These arrangements need to be examined to see if they are viewed as partnerships for federal tax purposes. The Regulations permit the governmental share of a project used in joint ventures to be financed with governmental bonds by treating the partnership of governmental entities and private entities as an aggregate of the partners rather than as a separate taxable entity. The private business use by a private entity partner will be determined based on that partner's greatest percentage share of any of the specified partnership items, income, gain, loss, deduction or credit attributable to the partnership during the measurement period.

### **Exclusions from Private Business Use**

**Incidental Uses.** A very limited spectrum of incidental uses are not treated as private business uses if certain conditions are met. Those conditions are: (a) except for vending machines, pay telephones, kiosks and similar uses, the use must not involve the transfer to the private user of possession and control of space that is separated from the other areas of the facility by a physical barrier; (b) the use must not be functionally related to another use of the facility by the same private user; and (c) such incidental uses may not, in the aggregate involve more than 2.5 percent of the facility. Examples of incidental uses include pay telephones, vending machines and advertising displays.

**General Public Use.** Use of facilities intended for general public use is not considered "use" by nongovernmental persons in a trade or business if such persons use the facilities in their trade or business on the same basis as other members of the public. Use of the financed facilities by organizations such as school groups, church groups, and fraternal organizations and numerous commercial organizations for a short period of time on a rate scale basis will not be considered use by nongovernmental persons in a trade or business if the rights of such a user are only those of a transient occupant rather than the full legal possessory interests of a lessee. Any arrangement that conveys priority rights to the use or capacity of the financed property will be treated as a private business use.

**Short Term Uses.** Certain short term uses will not be treated as private use. Use by a nongovernmental person is not private use if either:

- (i) (A) the term of the use under the arrangement, including all renewal options is not longer than 200 days, and (B) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business; or
- (ii) (A) the term of the use under the arrangement, including all renewal options, is not longer than 100 days, and (B) the arrangement would be treated as general public use, except that it is not available for use on the same basis by natural persons not engaged in a trade or business because generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business; or
- (iii) (A) the term of the use under the arrangement, including all renewal options, is not longer than 50 days; and (B) the arrangement is a negotiated arm's-length arrangement, and compensation under the arrangement is at fair market value.



In addition, in each case the property must not be financed for the principal purpose of providing that property for use by that non-Governmental Unit.

**Qualified improvements.** Proceeds of tax exempt bonds that provide a governmentally owned improvement to a governmentally owned building (including its structural components and land functionally related and subordinate to the building) are not used for a private business use if

- (i) The building was placed in service more than 1 year before the construction or acquisition of the improvement is begun;
- (ii) The improvement is not an enlargement of the building or an improvement of interior space occupied exclusively for any private business use;
- (iii) No portion of the improved building or any payments in respect of the improved building secures payment of the tax exempt bonds; and
- (iv) No more than 15 percent of the improved building is used for a private business use.

### **Allocation of Proceeds and Equity to Expenditures and Private Uses**

#### **Identification of Bond-Financed Project**

The first step in a private business use analysis is to identify the project that is financed with the proceeds of the bonds. Generally the Regulations define a project as the facilities financed in whole or in part with the proceeds of a single bond issue. The scope of the project can be described in and limited by the financing documents.

#### **Allocation of Sources of Funds to Expenditures and Uses**

Subject to the exception described below, multiple sources of funds for the same project are allocated on a proportionate basis to all the expenditures for the project and all the uses of the project. This includes multiple issues of tax-exempt bonds that finance the same project at the same time. Later improvements made to a project that are financed with a separate later issue are treated as a separate project.

#### **Eligible Mixed Use Projects Exception**

In lieu of the proportionate or pro rata allocation method described above, a special allocation rule, the undivided portion allocation method, applies to “eligible mixed use projects”. An eligible mixed use project is a project that is financed with proceeds of governmental bond and qualified equity pursuant to the same plan of financing. Qualified equity includes proceeds of taxable bonds and other funds not derived from a borrowing, but not the proceeds of taxable tax credit bonds. The plan of financing is defined by reference to the timing of the expenditure of the qualified equity. It includes as qualified equity funds spent no earlier than the earliest date funds would be eligible for reimbursement and no later than the beginning of the measurement period, generally the project’s placed in service date. Thus as of the placed in service date, the issuer can determine the extent to which qualified equity was used to finance the project.

Under this special allocation rule private business use is first allocated to qualified equity up to the percentage of qualified equity in the overall plan of financing, with governmental use allocated to the tax-exempt bond proceeds. Only if the percentage of private business use exceeds the percentage of qualified equity will private use be allocated to tax-exempt bond proceeds. As described below, these allocations are done on an annual basis.

## **Partnerships**

The Regulations permit the governmental share of a project used in joint ventures to be financed with governmental bonds by treating the partnership of governmental entities and private entities as an aggregate of the partners rather than as a separate taxable entity. The private business use by a private entity partner will be determined based on that partner's greatest percentage share of any of the specified partnership items, income, gain, loss, deduction or credit attributable to the partnership during the measurement period. Taken together with the undivided portion allocation method, this treatment permits qualified equity to be allocated to the private entity partner's private business use.

## **Measurement of Private Business Use**

All private business uses of property financed by a bond issue are aggregated to determine if the limitations have been exceeded. Private business use of property is measured on an average basis over a measurement period that runs from the later of the issue date of the bonds or the date property is placed in service, through the earlier of the last date of the expected economic life of the property or the maturity date of the bonds or refunding bonds. The average percentage of private business use is the average of the percentages of private business during one-year periods within the measurement period. The percentage of private business use for any one-year period is the average private business use for that year, determined by comparing the amount of private business use during that year to the total amount of private business use and governmental use, taking into account any allocations of private business use to qualified equity.

EXHIBIT 1**RESEARCH CONTRACT GUIDELINES****Rev. Proc. 2007-47—Operating Guidelines for Research Agreements***(Also Part I, § § 103, 141, 145; 1.141-3, 1.145-2.)*

June 26, 2007

**SECTION 1. PURPOSE**

The purpose of this revenue procedure is to set forth conditions under which a research agreement does not result in private business use under § 141(b) of the Internal Revenue Code of 1986 (the Code). This revenue procedure also addresses whether a research agreement causes the modified private business use test in § 145(a)(2)(B) of the Code to be met for qualified 501(c)(3) bonds. This revenue procedure modifies and supersedes Rev. Proc. 97-14, 1997-1 C.B. 634.

**SECTION 2. BACKGROUND***.01 Private Business Use.*

(1) Under § 103(a) of the Code, gross income does not include interest on any State or local bond. Under § 103(b)(1), however, § 103(a) does not apply to a private activity bond, unless it is a qualified bond under § 141(e). Section 141(a)(1) defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1), an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A), private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 150(a)(2) provides that the term “governmental unit” does not include the United States or any agency or instrumentality thereof. Section 145(a) also applies the private business use test of § 141(b)(1) to qualified 501(c)(3) bonds, with certain modifications.

(2) Section 1.141-3(b)(1) of the Income Tax Regulations provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

Exhibit 1-1

**Error! Unknown document property name.**

(3) Section 1.141-3(b)(6)(i) provides generally that an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all the facts and circumstances.

(4) Section 1.141-3(b)(6)(ii) provides generally that a research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for Federal income tax purposes.

(5) Section 1.141-1(b) provides that the term “governmental person” means a State or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. Section 1.141-1(b) further provides that governmental person does not include the United States or any agency or instrumentality thereof. Section 1.141-1(b) further provides that “nongovernmental person” means a person other than a governmental person.

(6) Section 1.145-2 provides that §§ 1.141-0 through 1.141-15 apply to qualified 501(c)(3) bonds under § 145(a) of the Code with certain modifications and exceptions. (7) Section 1.145-2(b)(1) provides that, in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the Code, references to governmental persons include § 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a).

## *.02 Federal Government rights under the Bayh-Dole Act.*

(1) The Patent and Trademark Law Amendments Act of 1980, as amended, 35 U.S.C. § 200 et seq. (2006) (the “Bayh-Dole Act”), generally applies to any contract, grant, or cooperative agreement with any Federal agency for the performance of research funded by the Federal Government.

(2) The policies and objectives of the Bayh-Dole Act include promoting the utilization of inventions arising from federally supported research and development programs, encouraging maximum participation of small business firms in federally supported research and development efforts, promoting collaboration between commercial concerns and nonprofit organizations, ensuring that inventions made by nonprofit organizations and small business firms are used in a manner to promote free competition and enterprise, and promoting the commercialization and public availability of inventions made in the United States by United States industry and labor.

(3) Under the Bayh-Dole Act, the Federal Government and sponsoring Federal agencies receive certain rights to inventions that result from federally funded research activities performed by non-sponsoring parties pursuant to contracts, grants, or cooperative research agreements with the sponsoring Federal agencies. The rights granted to the Federal Government and its agencies under the Bayh-Dole Act generally include, among others, nonexclusive, nontransferable, irrevocable, paid-up licenses to use the products of federally sponsored research and certain so-called “march-in rights” over licensing under limited circumstances. Here, the term “march-in rights” refers to certain rights granted to the sponsoring Federal agencies under the Bayh-Dole

Exhibit 1-2

**Error! Unknown document property name.**

Act, 35 U.S.C. § 203 (2006), to take certain actions, including granting licenses to third parties to ensure public benefits from the dissemination and use of the results of federally sponsored research in circumstances in which the original contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the product of that research. The general purpose of these rights is to ensure the expenditure of Federal research funds in accordance with the policies and objectives of the Bayh-Dole Act.

### **SECTION 3. DEFINITIONS**

.01 *Basic research*, for purposes of § 141 of the Code, means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. For example, product testing supporting the trade or business of a specific nongovernmental person is not treated as basic research.

.02 *Qualified user* means any State or local governmental unit as defined in § 1.1031 or any instrumentality thereof. The term also includes a § 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the Code. The term does not include the United States or any agency or instrumentality thereof.

.03 *Sponsor* means any person, other than a qualified user, that supports or sponsors research under a contract.

### **SECTION 4. CHANGES**

This revenue procedure modifies and supersedes Rev. Proc. 97-14 by making changes that are described generally as follows:

.01 Section 6.03 of this revenue procedure modifies the operating guidelines on cooperative research agreements to include agreements regarding industry or federally sponsored research with either a single sponsor or multiple sponsors.

.02 Section 6.04 of this revenue procedure provides special rules for applying the revised operating guidelines under section 6.03 of this revenue procedure to federally sponsored research. These special rules provide that the rights of the Federal Government and its agencies mandated by the Bayh-Dole Act will not cause research agreements to fail to meet the requirements of section 6.03, upon satisfaction of the requirements of section 6.04 of this revenue procedure. Thus, under the stated conditions, such rights themselves will not result in private business use by the Federal Government or its agencies of property used in research performed under research agreements. These special rules do not address the use by third parties that actually receive more than non-exclusive, royalty-free licenses as the result of the exercise by a sponsoring Federal agency of its rights under the Bayh-Dole Act, such as its march-in rights.

## SECTION 5. SCOPE

This revenue procedure applies when, under a research agreement, a sponsor uses property financed with proceeds of an issue of State or local bonds subject to § 141 or §145(a)(2)(B) of the Code

## SECTION 6. OPERATING GUIDELINES FOR RESEARCH AGREEMENTS

*.01 In general.* If a research agreement is described in either section 6.02 or 6.03 of this revenue procedure, the research agreement itself does not result in private business use. In applying the operating guidelines under section 6.03 of this revenue procedure to federally sponsored research, the special rules under section 6.04 of this revenue procedure (regarding the effect of the rights of the Federal Government and its agencies under the Bayh-Dole Act) apply.

*.02 Corporate-sponsored research.* A research agreement relating to property used for basic research supported or sponsored by a sponsor is described in this section 6.02 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.

*.03 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 6.03 if the following requirements are met, taking into account the special rules set forth in section 6.04 of this revenue procedure in the case of federally sponsored research —

- (1) A single sponsor agrees, or multiple sponsors agree, to fund governmentally performed basic research;
- (2) The qualified user 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);
- (3) Title to any patent or other product incidentally resulting from the basic research lies exclusively with the qualified user; and
- (4) The sponsor or sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

*.04 Federal Government rights under the Bayh-Dole Act.* In applying the operating guidelines on industry and federally-sponsored research agreements under section 6.03 of this revenue procedure 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

Exhibit 1-4

requirements of section 6.03, provided that the requirements of sections 6.03(2), and (3) 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 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 6.03 of this revenue procedure, provided that the qualified user determines the subject and manner of the research in accordance with section 6.03(2), the qualified user retains exclusive title to any patent or other product of the research in accordance with section 6.03(3), 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.

## **SECTION 7. EFFECT ON OTHER DOCUMENTS**

Rev. Proc. 97-14 is modified and superseded.

## **SECTION 8. EFFECTIVE DATE**

This revenue procedure is effective for any research agreement entered into, materially modified, or extended on or after June 26, 2007. In addition, an issuer may apply this revenue procedure to any research agreement entered into prior to June 26, 2007.

## **SECTION 9. DRAFTING INFORMATION**

The principal authors of this revenue procedure are Vicky Tsilas and Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Johanna Som de Cerff at (202) 622-3980 (not a toll-free call).

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## EXHIBIT 2

### **MANAGEMENT CONTRACT GUIDELINES**

Rev. Proc. 97-13, 1997-1 C.B. 632--Management Contract Guidelines (Supersedes Rev. Proc. 93-19), as amended by Rev. Proc. 2001-39, 2001-2 C.B. 38 and Notice 2014-67

1997-1 C.B. 632; 1997 IRB LEXIS 14; 1997-5 I.R.B. 18; REV. PROV 97-13

Rev. Proc. 97-13

#### **SECTION 1. PURPOSE**

The purpose of this revenue procedure is to set forth conditions under which a management contract does not result in private business use under section 141(b) of the Internal Revenue Code of 1986. This revenue procedure also applies to determinations of whether a management contract causes the test in section 145(a)(2)(B) of the 1986 Code to be met for qualified 501(c)(3) bonds.

#### **SECTION 2. BACKGROUND**

##### **.01 Private Business Use.**

(1) Under section 103(a) of the 1986 Code, gross income does not include interest on any state or local bond. Under section 103(b)(1) of the 1986 Code, however, section 103(a) of the 1986 Code does not apply to a private activity bond, unless it is a qualified bond under section 141(e) of the 1986 Code. Section 141(a)(1) of the 1986 Code defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under section 141(b)(1) of the 1986 Code, an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under section 141(b)(6)(A) of the 1986 Code, private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 145(a) of the 1986 Code also applies the private business use test of section 141(b)(1) of the 1986 Code, with certain modifications.

(2) Corresponding provisions of the Internal Revenue Code of 1954 set forth the requirements for the exclusion from gross income of the interest on state or local bonds. For purposes of this revenue procedure, any reference to a 1986 Code provision includes a reference to the corresponding provision, if any, under the 1954 Code.

(3) Private business use can arise by ownership, actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or certain other arrangements. The Conference Report for the Tax Reform Act of 1986, provides as follows:

Exhibit 2-1

**Error! Unknown document property name.**

The conference agreement generally retains the present-law rules under which use by persons other than governmental units is determined for purposes of the trade or business use test. Thus, as under present law, the use of bond-financed property is treated as a use of bond proceeds. As under present law, a person may be a user of bond proceeds and bond-financed property as a result of (1) ownership or (2) actual or beneficial use of property pursuant to a lease, a management or incentive payment contract, or (3) any other arrangement such as a take-or-pay or other output-type contract.

2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-687-688, (1986) 1986-3 (Vol. 4) C.B. 687-688 (footnote omitted).

(4) A management contract that gives a nongovernmental service provider an ownership or leasehold interest in financed property is not the only situation in which a contract may result in private business use.

(5) Section 1.141-3(b)(4)(i) of the Income Tax Regulations provides, in general, that a management contract (within the meaning of section 1.141-3(b)(4)(ii)) with respect to financed property may result in private business use of that property, based on all the facts and circumstances.

(6) Section 1.141-3(b)(4)(i) provides that a management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operation of the facility.

(7) Section 1.141-3(b)(4)(iii), in general, provides that certain arrangements generally are not treated as management contracts that may give rise to private business use. These are--

(a) Contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing or similar services);

(b) The mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services, if those privileges are available to all qualified physicians in the area, consistent with the size and nature of its facilities;

(c) A contract to provide for the operation of a facility or system of facilities that consists predominantly of public utility property (as defined in section 168(i)(10) of the 1986 Code), if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and

(d) A contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

(8) Section 1.145-2(a) provides generally that sections 1.141-0 through 1.141-15 apply to section 145(a) of the 1986 Code.

(9) Section 1.145-2(b)(1) provides that in applying sections 1.141-0 through 1.141-15 to section 145(a) of the 1986 Code, references to governmental persons include section 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under section 513(a) of the 1986 Code.

.02 Existing Advance Ruling Guidelines. Rev. Proc. 93-19, 1993-1 C.B. 526, contains advance ruling guidelines for determining whether a management contract results in private business use under section 141(b) of the 1986 Code.

### SECTION 3. DEFINITIONS

.01 Adjusted gross revenues means gross revenues of all or a portion of a facility, less allowances for bad debts and contractual and similar allowances.

.02 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 covered persons varies substantially. 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. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

.03 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 involving all, a portion of, or any function of, a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract. See sections 1.141-3(b)(4)(ii) and 1.145-2.

.04 Penalties for terminating a contract include a limitation on the qualified user's right to compete with the service provider; a requirement that the qualified user purchase equipment, goods, or services from the service provider; and a requirement that the qualified user pay liquidated damages for cancellation of the contract. In contrast, a requirement effective on cancellation that the qualified user reimburse the service provider for ordinary and necessary expenses or a restriction on the qualified user against hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the qualified user, such as a loan or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's-length that could operate to prevent the qualified user from terminating the contract (for example, provisions under which the contract terminates if the management contract is terminated or that place substantial restrictions on the selection of a substitute service provider).

Exhibit 2-3

.05 Periodic fixed fee means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, 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 objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 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. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals generally are treated as per-unit fee arrangements.

.07 Qualified user means any state or local governmental unit as defined in section 1.103-1 or any instrumentality thereof. The term also includes a section 501(c)(3) organization if the financed property is not used in an unrelated trade or business under section 513(a) of the 1986 Code. The term does not include the United States or any agency or instrumentality thereof.

.08 Renewal option means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

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

#### SECTION 4. SCOPE

This revenue procedure applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to section 141 or section 145(a)(2)(B) of the 1986 Code.

#### SECTION 5. OPERATING GUIDELINES FOR MANAGEMENT CONTRACTS

.01 IN GENERAL. If the requirements of section 5 of this revenue procedure are satisfied, the management contract does not itself result in private business use. In addition, the use of financed property, pursuant to a management contract meeting the requirements of section 5 of this revenue procedure, is not private business use if that use is functionally related and subordinate to that management contract and that use is not, in substance, a separate contractual agreement (for example, a separate lease of a portion of the financed property). Thus, for example, exclusive use of storage areas by the manager for equipment that is necessary for it to perform activities required under a management contract that meets the requirements of section 5 of this revenue procedure, is not private business use.

Exhibit 2-4

**Error! Unknown document property name.**

## .02 GENERAL COMPENSATION REQUIREMENTS.

(1) IN GENERAL. The contract must provide for reasonable compensation for services rendered with no compensation based, in whole or in part, on a share of net profits from the operation of the facility. Reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties is not by itself treated as compensation.

(2) ARRANGEMENTS THAT GENERALLY ARE NOT TREATED AS NET PROFITS ARRANGEMENTS. For purposes of section 1.141-3(b)(4)(i) and this revenue procedure, compensation based on--

(a) A percentage of gross revenues (or adjusted gross revenues) of a facility or a percentage of expenses from a facility, but not both;

(b) A capitation fee; or

(c) A per-unit fee

is generally not considered to be based on a share of net profits.

(3) PRODUCTIVITY REWARD. For purposes of section 1.141-3(b)(4)(i) and this revenue procedure, a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues (or adjusted gross revenues), or reductions in total expenses (but not both increases in gross revenues (or adjusted gross revenues) and reductions in total expenses) in any annual period during the term of the contract, generally does not cause the compensation to be based on a share of net profits. A productivity reward for services in any annual period during the term of the contract generally also does not cause the compensation to be based on a share of net profits of the financed facility if:

- The eligibility for the productivity award is based on the quality of the services provided under the management contract (for example, the achievement of Medicare Shared Savings Program quality performance standards or meeting data reporting requirements), rather than increases in revenues or decreases in expenses of the facility; and

- The amount of the productivity award is a stated dollar amount, a periodic fixed fee, or a tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure.

(4) REVISION OF COMPENSATION ARRANGEMENTS. In general, if the compensation arrangements of a management contract are materially revised, the requirements for compensation arrangements under section 5 of this revenue procedure are retested as of the date of the material revision, and the management contract is treated as one that was newly entered into as of the date of the material revision.

.03 PERMISSIBLE ARRANGEMENTS. The management contract must be described in section 5.03(1), (2), (3), (4), (5), (6), or (7) of this revenue procedure.

(1) 95 PERCENT PERIODIC FIXED FEE ARRANGEMENTS. At least 95 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 15 years. For purposes of this section 5.03(1), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(2) 80 PERCENT PERIODIC FIXED FEE ARRANGEMENTS. At least 80 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80 percent of the reasonably expected useful life of the financed property and 10 years. For purposes of this section 5.03(2), a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(3) SPECIAL RULE FOR PUBLIC UTILITY PROPERTY. If all of the financed property subject to the contract is a facility or system of facilities consisting of predominantly public utility property (as defined in section 168(i)(10) of the 1986 Code), then “20 years” is substituted --

(a) For “15 years” in applying section 5.03(1) of this revenue procedure; and

(b) For “10 years” in applying section 5.03(2) of this revenue procedure.

(4) 50 PERCENT PERIODIC FIXED FEE ARRANGEMENTS. Either at least 50 percent of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 5 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the third year of the contract term.

(5) PER-UNIT FEE ARRANGEMENTS IN CERTAIN 3-YEAR CONTRACTS.

All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fixed fee. The term of the contract, including all renewal options, must not exceed 3 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(6) Percentage Of Revenue Or Expense Fee Arrangements In Certain 2-Year Contracts. All the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start-up period, however, compensation may be based on a percentage of either gross revenues, adjusted gross revenues, or

expenses of a facility. The term of the contract, including renewal options, must not exceed 2 years. The contract must be terminable by the qualified user on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This section 5.03(6) applies only to--

(a) Contracts under which the service provider primarily provides services to third parties (for example, radiology services to patients); and

(b) Management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (for example, a contract for general management services for the first year of operations).

#### .04 NO CIRCUMSTANCES SUBSTANTIALLY LIMITING EXERCISE OF RIGHTS.

(1) IN GENERAL. 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, including cancellation rights, under the contract, based on all the facts and circumstances.

(2) SAFE HARBOR. This requirement is satisfied if--

(a) Not more than 20 percent of the voting power of the governing body of the qualified user in the aggregate is vested in the service provider and its directors, officers, shareholders, and employees;

(b) Overlapping board members do not include the chief executive officers of the service provider or its governing body or the qualified user or its governing body; and

(c) The qualified user and the service provider under the contract are not related parties, as defined in section 1.150-1(b).

#### (7) ARRANGEMENTS IN CERTAIN 5-YEAR CONTRACTS.

All of the compensation for services is based on a stated amount; periodic fixed fee; a capitation fee; a per-unit fee; or a combination of the preceding. The compensation for services also may include a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). The term of the contract, including all renewal options, does not exceed five years. Such contract need not be terminable by the qualified user prior to the end of the term. For purposes of this section 5.03(7), a tiered productivity award as described in section 5.02(3) will be treated as a stated amount or a periodic fixed fee, as appropriate.

#### SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 93-19, 1993-1 C.B. 526, is made obsolete on the effective date of this revenue procedure.

Exhibit 2-7

**Error! Unknown document property name.**

## SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any management contract entered into prior to May 16, 1997.

## DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Loretta J. Finger on (202) 622-3980 (not a toll free call).



**Rev. Proc. 2001-39; 2001-28 IRB 1 (18 Jun 2001)****===== SUMMARY =====**

The Service in Rev. Proc. 2001-39 has modified the definitions of capitation fee and per-unit fee in Rev. Proc. 97-13, 1997-1 C.B. 632, to allow an automatic increase of those fees according to a specified, objective, external standard that isn't linked to the output or efficiency of a facility.

Rev. Proc. 2001-39 applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to section 141 or section 145(a)(2)(B). Rev. Proc. 2001-39 is effective for any management contract entered into, materially modified, or extended after July 8, 2001. Also, an issuer may apply the revenue procedure to any management contract entered into before July 9, 2001.

**===== FULL TEXT ===== Part III**

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations. (Also Part I, sections 103, 141, 145; 1.141-3, 1.145-2.)

**SECTION 1. PURPOSE**

This revenue procedure modifies the definitions of capitation fee and per-unit fee in Rev. Proc. 97-13, 1997-1 C.B. 632, to permit an automatic increase of those fees according to a specified, objective, external standard that is not linked to the output or efficiency of a facility (for example, the Consumer Price Index).

**SECTION 2. BACKGROUND**

.01 Rev. Proc. 97-13 sets forth conditions under which a management contract does not result in private business use under section 141(b) of the Internal Revenue Code. The revenue procedure also applies to determinations of whether a management contract causes the test in section 145(a)(2)(B) to be met.

.02 Section 3 of Rev. Proc. 97-13 defines various terms, including capitation fee, periodic fixed fee, and per-unit fee.

.03 Section 3.02 of Rev. Proc. 97-13 defines a capitation fee as 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 covered persons varies substantially. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

Exhibit 2-9

**Error! Unknown document property name.**

.04 Section 3.05 of Rev. Proc. 97-13 defines a periodic fixed fee as a stated dollar amount for services rendered for a specified period of time. The definition of periodic fixed fee provides that the stated dollar amount may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility.

.05 Section 3.06 of Rev. Proc. 97-13 defines a per-unit fee as 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.

.06 Neither the capitation fee definition nor the per-unit fee definition expressly contemplates an automatic increase based on a specified, objective, external standard not linked to the output or efficiency of the facility.

.07 This revenue procedure clarifies that a capitation fee and a per-unit fee may be determined using an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility (for example, the Consumer Price Index).

### SECTION 3. SCOPE

This revenue procedure applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to section 141 or section 145(a)(2)(B).

### SECTION 4. MODIFICATIONS

.01 Section 3.02 of Rev. Proc. 97-13 is modified to add the following text immediately before the last sentence:

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 a facility. For example, 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 objective, external standards. .02 Section 3.06 of Rev. Proc. 97-13 is modified to add the following text at the end:

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 a facility. For example, 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 objective, external standards.

### SECTION 5. INQUIRIES

For further information regarding this revenue procedure contact David White at (202) 622-3980 (not a toll-free call).

### SECTION 6. EFFECT ON OTHER DOCUMENTS

Exhibit 2-10

**Error! Unknown document property name.**

This revenue procedure modifies Rev. Proc. 97-13, 1997-1 C.B. 632.

#### SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after July 9, 2001. In addition, an issuer may apply this revenue procedure to any management contract entered into prior to July 9, 2001.

#### DRAFTING INFORMATION

The principal authors of this revenue procedure are Mary Truchly and Rebecca Harrigal, Office of Chief Counsel.

**EXHIBIT 3****MANAGEMENT CONTRACT GUIDELINES****Rev. Proc. 2017-13****SECTION 1. PURPOSE**

This revenue procedure provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) of the Internal Revenue Code or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. This revenue procedure modifies, amplifies, and supersedes Rev. Proc. 2016-44, 2016-36 IRB 316, to address certain types of compensation, the timing of payment of compensation, the treatment of land, and methods of approval of rates. Sections 2.11 through 2.14 of this revenue procedure generally describe the modifications and amplifications made to Rev. Proc. 2016-44 by this revenue procedure.

**SECTION 2. BACKGROUND**

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(a) provides that the term “private activity bond” means any bond issued as part of an issue (1) that meets the private business use test and private security or payment test, or (2) that meets the private loan financing test.

.02 Section 141(b)(1) provides generally that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6) defines “private business use” as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person must be treated as a trade or business.

.03 Section 1.141 -3(a)(1) of the Income Tax Regulations provides, in part, that the 10 percent private business use test of § 141 (b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Section 1.141-3(a)(2) provides that, in determining whether an issue meets the private business use test, it is necessary to look at both indirect and direct use of proceeds. Proceeds are treated as used in the trade or business of a nongovernmental person if a nongovernmental person, as a result of a single transaction or a series of related transactions, uses property acquired with the proceeds of an issue.

.04 Section 1.141 -3(b)(1) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user as a result of ownership; actual or beneficial use of property pursuant to a lease, a management contract, or an incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

.05 Section 1.141 -3(b)(3) provides generally that the lease of financed property to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Section 1.141 -3(b)(3) further provides that, in determining whether a management contract is properly characterized as a lease, it is necessary to consider all the facts and circumstances, including the following factors: (1) the degree of control over the property that is exercised by a nongovernmental person; and (2) whether a nongovernmental person bears the risk of loss of the financed property.

.06 Section 1.141 -3(b)(4)(i) provides generally that a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operations of the facility. Section 1.141-3(b)(4)(iv) provides generally that a management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes.

.07 Section 1.141 -3(b)(4)(ii) defines “management contract” as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion, or any function, of a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

.08 Section 1.141 -3(b)(4)(iii) provides that the following arrangements generally are not treated as management contracts that give rise to private business use: (A) contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services); (B) the mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services if those privileges are available to all qualified physicians in the area, consistent with the size and nature of the hospital’s facilities; (C) a contract to provide for the operation of a facility or system of facilities

that consists primarily of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and (D) a contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

.09 Section 141(e) provides, in part, that the term “qualified bond” includes a qualified 501(c)(3) bond if certain requirements stated therein are met. Section 145(a) provides generally that “qualified 501(c)(3) bond” means any private activity bond issued as part of an issue if (1) all property that is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and (2) such bond would not be a private activity bond if (A) 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses, determined by applying § 513(a), and (B) § 141(b)(1) and (2) were applied by substituting “5 percent” for “10 percent” each place it appears and by substituting “net proceeds” for “proceeds” each place it appears. Section 1.1452 provides that, with certain exceptions and modifications, §§ 1.141-0 through 1.141-15 apply to § 145(a).

.10 Rev. Proc. 2016-44 provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. Rev. Proc. 2016-44 modified and superseded Rev. Proc. 97-13, 1997-1 C.B. 632; Rev. Proc. 2001-39, 2001-2 C.B. 38; and section 3.02 of Notice 2014-67, 2014-46 I.R.B. 822.

.11 Section 5.02 of Rev. Proc. 2016-44 sets forth general financial requirements for management compensation arrangements eligible for the safe harbor. Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 provide that the contract must neither provide to the service provider a share of net profits nor impose on the service provider the burden of bearing any share of net losses from the operation of the managed property. Before the publication of Rev. Proc. 2016-44, previously applicable revenue procedures expressly treated certain types of compensation, including capitation fees, periodic fixed fees, and per-unit fees (as defined therein), as not providing a share of net profits. Questions have arisen regarding whether these common types of compensation continue to be treated in a similar manner under Rev. Proc. 2016-44. Related questions have arisen about whether a service provider’s payment of expenses of the operation of the managed property without reimbursement from the qualified user (as defined in section 4.04 of Rev. Proc. 2016-44) affects the treatment of these types of compensation. To provide continuity with the previous safe harbors, this revenue procedure clarifies that these types of compensation and certain incentive compensation will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses.

.12 Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 also provide that the timing of payment of compensation cannot be contingent upon net profits or net losses from the operation of the managed property. Questions have arisen about the effect of these restrictions on the

timing of payment of compensation. This revenue procedure clarifies that compensation subject to an annual payment requirement and reasonable consequences for late payment (such as interest charges or late payment fees) will not be treated as contingent upon net profits or net losses if the contract includes a requirement that the qualified user will pay the deferred compensation within five years of the original due date of the payment.

.13. Section 5.03 of Rev. Proc. 2016-44 provides that the term of the contract, including all renewal options (as defined in § 1.141-1(b)), must be no greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, under Rev. Proc. 2016-44, economic life is determined in the same manner as under §147(b), but without regard to §147(b)(3)(B)(ii), as of the beginning of the term of contract. Section 147(b)(3)(B)(i) provides that generally land is not taken into account, but §147(b)(3)(B)(ii) provides that if 25 percent or more of the net proceeds of any issue is to be used to finance the acquisition of land, such land shall be taken into account and treated as having an economic life of 30 years. Questions have arisen about excluding land when the cost of the land accounts for a significant portion of the managed property. This revenue procedure provides that economic life is determined in the same manner as under §147(b) as of the beginning of the term of the contract. Thus, land will be treated as having an economic life of 30 years if 25 percent or more of the net proceeds of the issue that finances the managed property is to be used to finance the costs of such land.

.14 Section 5.04 of Rev. Proc. 2016-44 provides that the qualified user must exercise a significant degree of control over the use of the managed property. Section 5.04 of Rev. Proc. 2016-44 further provides that this requirement is met if the contract requires the qualified user to approve, among other things, the rates charged for use of the managed property. Section 5.04 of Rev. Proc. 2016-44 also provides that a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the contract a requirement that service provider charge rates that are reasonable and customary as specifically determined by an independent third party. Questions have arisen about the requirement to approve the rates in various circumstances in which it may not be feasible to approve each specific rate charged, such as for a physician's professional services at a § 501(c)(3) hospital or hotel room rates at a governmentally-owned hotel. This revenue procedure clarifies that a qualified user may satisfy the approval of rates requirement by approving a reasonable general description of the method used to set the rates or by requiring that the service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party.

### SECTION 3. SCOPE

This revenue procedure applies to a management contract (as defined in section 4.03 of this revenue procedure) involving managed property (as defined in section 4.04 of this revenue procedure) financed with the proceeds of an issue of governmental bonds (as defined in §1.141-1(b)) or qualified 501(c)(3) bonds (as defined in §145).

## SECTION 4. DEFINITIONS

For purposes of this revenue procedure, the following definitions apply:

.01 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. 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. 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. For example, 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 objective, external standards. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risk such as risk of catastrophic loss.

.02 Eligible expense reimbursement arrangement means 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.

.03 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).

.04 Managed property means the portion of a project (as defined in § 1.141-6(a)(3)) with respect to which a service provider provides services.

.05 Periodic fixed fee means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. 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. For example, 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 objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

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

.07 Qualified user means, for projects (as defined in § 1.141-6(a)(3)) financed with governmental bonds, any governmental person (as defined in § 1.141-1 (b)) 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).

.08 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.

.09 Unrelated parties means persons other than either: (1) a related party (as defined in § 1.150-1(b)) to the service provider or (2) a service provider's employee.

## SECTION 5. SAFE HARBOR CONDITIONS UNDER WHICH MANAGEMENT CONTRACTS DO NOT RESULT IN PRIVATE BUSINESS USE

.01 In general. If a management contract meets all of the applicable conditions of sections 5.02 through section 5.07 of this revenue procedure, or is an eligible expense reimbursement arrangement, the management contract does not result in private business use under § 141(b) or 145(a)(2)(B). Further, under section 5.08 of this revenue procedure, use functionally related and subordinate to a management contract that meets these conditions does not result in private business use.

### .02 General financial requirements.

(1) In general. The 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 paid by the service provider and related administrative overhead expenses of the service provider.

(2) No net profits arrangements. The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the managed property's net profits or both the managed property's revenues and expenses (other than any reimbursements of direct and actual expenses paid by the service provider to unrelated third parties) for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. 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 one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.02(2).

(3) No bearing of net losses of the managed property.

(a) The contract must not, in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property. An arrangement will not be treated as requiring the service provider to bear a share of net losses if:

(i) The determination of the amount of the service provider's compensation and the amount of any expenses to be paid by the service provider (and not reimbursed), separately and collectively, do not take into account either the managed property's net losses or both the managed property's revenues and expenses for any fiscal period; and (ii) The timing of the payment of compensation is not contingent upon the managed property's net losses.

(b) For example, a service provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the managed property's 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.

(4) Treatment of certain types of compensation. 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 under sections 5.02(2) and 5.02(3) of this revenue procedure 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 described in the last sentence of section 5.02(2) of this revenue procedure; or (c) a combination of these types of compensation.

(5) Treatment of timing of payment of compensation. Deferral due to insufficient net cash flows from the operation of the managed property of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of this revenue procedure will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the contract includes requirements that:

(a) The compensation is payable at least annually;

(b) The qualified user is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and

(c) 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.

.03 Term of the contract and revisions. The term of the contract, including all renewal options (as defined in §1.141-1 (b)), must not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, economic life is determined in the same manner as under §147(b) as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to this section 5 is retested under this section 5 as a new contract as of the date of the material modification.

.04 Control over use of the managed property. The qualified user must exercise a significant degree of control over the use of the managed property. This control requirement is met if the contract requires the qualified user to approve the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is part of the managed property, rates charged for the use of the managed property, and the general nature and type of use of the managed property (for example, the type of services). For this purpose, for example, a qualified user may show approval of capital expenditures for a managed property by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts; and a qualified user may show approval of dispositions of property that is part of the managed property in a similar manner. Further, for example, a qualified user may show approval of rates charged for use of the managed property by expressly approving such rates or a general description of the methodology for setting such rates (such as a method that establishes hotel room rates using specified revenue goals based on comparable properties), or by requiring that the service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party (such as a medical insurance company).

.05 Risk of loss of the managed property. The qualified user must bear the risk of loss upon damage or destruction of the managed property (for example, due to force majeure). A qualified user does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the service provider a penalty for failure to operate the managed property in accordance with the standards set forth in the management contract.

.06 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 to the qualified user with respect to the managed property. For example, the service provider must agree not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the managed property.

.07 No circumstances substantially limiting exercise of rights.

(1) In general. 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.

(2) Safe harbor. A service provider will not be treated as having a role or relationship prohibited under section 5.07(1) of this revenue procedure if:

(a) No more than 20 percent 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, in the aggregate;

(b) The governing body of the qualified user does not include the chief executive officer of the service provider or the chairperson (or equivalent executive) of the service provider's governing body; and

(c) The chief executive officer of the service provider is not the chief executive officer of the qualified user or any of the qualified user's related parties (as defined in §1.150-1(b)).

(3) For purposes of section 5.07(2) of this revenue procedure, the phrase "service provider" includes the service provider's related parties (as defined in §1.150-1(b)) and the phrase "chief executive officer" includes a person with equivalent management responsibilities.

.08 Functionally related and subordinate use. A service provider's use of a project (as defined in §1.141-6(a)(3)) that is functionally related and subordinate to performance of its services under a management contract for managed property that meets the conditions of this section 5 does not result in private business use of that project. For example, use of storage areas to store equipment used to perform activities required under a management contract that meets the requirements of this section 5 does not result in private business use.

## SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-44 is modified, amplified, and superseded.

## SECTION 7. DATE OF APPLICABILITY

This revenue procedure applies to any management contract that is entered into on or after January 17, 2017, and an issuer may apply this revenue procedure to any management contract that was entered into before January 17, 2017. In addition, an issuer may apply the safe harbors in Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and amplified by Notice 2014-67, to a management contract that is entered into before August 18, 2017 and that is not materially modified or extended on or after August 18, 2017 (other than pursuant to a renewal option as defined in § 1.141-1 (b)).

## SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Johanna Som de Cerff and David White of the Office of Associate Chief Counsel (Financial Institutions & Products). For further

information regarding this revenue procedure, contact David White on (202) 317-6980 (not a toll free call).

## TAB II

**PRIVATE BUSINESS USE QUESTIONNAIRE  
GOVERNMENTAL BONDS**

TO: [NAME]

[TITLE]

FROM: .

DATE: [CURRENT DATE]

RE: Use of Tax-Exempt Bond-Financed Property

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In order to maintain the tax exempt status of bonds (including any short-term obligations such as notes) which have been issued to finance facilities or equipment for the benefit of \_\_\_\_\_ (the “Issuer”), the ownership and certain uses of the Bond-Financed Property must be monitored and recorded. In general, the ownership and use of the Bond-Financed Property must be monitored and recorded from the date of issue of the bonds until the earlier of the end of the expected life of the property, or the final maturity date of any bonds issued to finance the property. Because it is the Internal Revenue Service’s position that records be maintained until 3 years after the final maturity date of any bonds issued to finance (or refinance) the property, staff will be asked to update these records for changes in the use or ownership of the property.

Attached is a schedule with a brief description of property financed with proceeds of tax exempt bonds. Our records indicate the property is located at [NAME OF FACILITY]. Please review your records and respond to each of the questions for the Bond-Financed Property listed, including both the present use of the property and any past uses of it. Please do not skip questions. If you are uncertain how to respond to a particular question please provide a brief explanation in the space immediately following the question. If necessary one of my staff members will contact you for clarification. Please refer to Tab I-A, Private Activity Restrictions on Private Business Use, of the Post-Issuance Compliance Guide, for a brief description of types of private use.

We recognize that some of the requested information and records may not be available. However, your cooperation is necessary in order to collect as much of this information as possible.

## SCHEDULE

I-11

**USE OF TAX EXEMPT BOND BOND-FINANCED PROPERTY**

Description of property: [Description] (the “Bond-Financed Property”)

Location: [facility name]

Bond or Note Issue: [name of bonds or notes]

Survey Date: [current date]

**PLEASE REVIEW APPENDIX A FOR APPLICABLE RULES ON PRIVATE USE**

**I. Familiarity with Uses**

1.1 My familiarity with, and/or the records with respect to, the uses made of the Bond-Financed Property, dates back to \_\_\_\_\_ [insert date]

1.2 For information on uses of the Bond-Financed Property prior to the date set forth in Section 1.1, I suggest contacting \_\_\_\_\_.

**II. Ownership and Use of the Bond-Financed Property.**

2.1 When was the Bond-Financed Property placed in service? \_\_\_\_\_

2.2 Is the Bond-Financed Property still owned by the Issuer? Yes ☐ No ☐

2.3 If, no, on what day was the Bond-Financed Property disposed of? \_\_\_\_\_.  
What were the terms of the disposition?

2.4 Is the Bond-Financed Property still in use? Yes ☐ No ☐ If No, please explain when it stopped being used and what its current state is.

2.5 Is the Bond-Financed Property still being used for its original purpose? Yes ☐ No ☐ If No, please explain how it is being used.

**III. Leases of the Bond-Financed Property.**

3.1 Has any portion of the Bond-Financed Property been leased to or been the subject of a possessory interest, such as a license in, any person? YES ☐ NO ☐

3.2 If the answer to the preceding question is yes, describe the nature and the extent of all such interests, including the lease payments, and identify the persons or organizations to whom such interests have been given.

#### **IV. Priority Rights.**

4.1 Has any portion of the Bond-Financed Property been the subject of an arrangement with a person other than a Governmental Unit for priority use or for use of certain capacity of the Bond-Financed Property? YES ☐ NO ☐

4.2 If the answer to the preceding question is Yes, describe the nature and the extent of all such interests, including any payments, and identify the persons or organizations to whom such interests have been given.

4.3 Has any portion of the Bond-Financed Property been used in the testing of products under a contract with a person other than a Governmental Unit? YES ☐ NO ☐

4.4 If the answer to the preceding question is Yes, describe the nature and the extent of all such arrangements, and identify the persons or organizations with whom such arrangements have been entered into.

#### **V. Naming Rights or Sponsorship Agreements.**

5.1 Has any portion of the Bond-Financed Property been the subject of a contract or other arrangement with anyone pursuant to which the that person will make a payment to the Issuer in return for the right to have its name or logo used in connection with the Issuer or any portion thereof? YES ☐ NO ☐ If Yes, please provide details of the arrangement.

#### **VI. Research.**

6.1 Has any portion of the Bond-Financed Property been used in research sponsored by anyone other than a Governmental Unit? (Note that the federal government is not a Governmental Unit.) YES ☐ NO ☐

6.2 If Yes, please describe the nature and the extent of all such arrangements, and identify the persons or organizations with whom such arrangements have been entered into. Please attach a copy of any contract or arrangement relating to such research.

#### **VII. Management Agreements and Service Agreements.**

7.1 Has any portion of the Bond-Financed Property been used in connection with any type of service contract or management contract described below?

(a) A contract with a non-employee group, other than a Governmental Unit, to provide services to, or manage any function of, the Issuer? YES ☐ NO ☐ If Yes, identify the person or organization that is a party to the contract and provide a copy of such contract with this questionnaire response.



(b) A contract with an employee to provide services to, or manage any function of, the Issuer, where such contract contains an incentive compensation arrangement? YES ☐ NO ☐ If Yes, identify the person or organization that is a party to the contract and provide a copy of such contract with this questionnaire response.

(c) A contract with a person other than a Governmental Unit to provide services, such as food services to the Issuer? YES ☐ NO ☐ If Yes, identify the person or organization that is a party to the contract and provide a copy of such contract with this questionnaire response.

### **VIII. Output Facilities.**

8.1 Is any portion of the Bond-Financed Property an output type facility? YES ☐ NO ☐

8.2 If the answer to the preceding question is Yes, has any of the output from those facilities been sold or been used to service facilities used in the trade or business of persons other than Governmental Units? YES ☐ NO ☐

### **IX Joint Ventures.**

9.1 Has any portion of the Bond-Financed Property been used in any joint venture arrangement with any person other than a Governmental Unit? YES ☐ NO ☐ If Yes, please provide details of the arrangement.

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Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TAB III**  
**REMEDIAL ACTIONS**  
**GOVERNMENTAL BONDS**

**Introduction**

The Internal Revenue Code of 1986, as amended (the “Code”) limits the amount of proceeds of tax-exempt governmental bonds (including short-term obligations such as notes) that can be used for the benefit of private businesses. Section 141 of the Code treats as a taxable private activity bond a bond issued as part of an issue that meets the private business use test and the private security or payment test, or the private loan test. The private business use test is met if the amount of proceeds of bonds that are used in a private business use is more than ten percent of total proceeds. The private security or payment test is met if the payment of debt service on more than 10 percent of the issue is directly or indirectly (i) secured by any interest in property used for a private business use or payments in respect of such property or (ii) derived from payments in respect of property or borrowed money used for a private business use. A five percent limit is used in lieu of a ten percent limit if the private use is unrelated to a governmental use or related but disproportionate to a governmental use. For purposes of Section 141, the term private business includes use by nonprofit, 501(c)(3) organizations as well as the federal government.

**Deliberate Action**

The Regulations promulgated by the Internal Revenue Service (“IRS”) under Section 141 of the Code, specifically provide that bonds will be treated as private activity bonds if the issuer takes a deliberate action subsequent to the issue date that causes the tests for a private activity bond to be met. An issuer cannot rely merely on its expectations on the date of issuance to avoid jeopardizing the status of its bonds as governmental bonds. A deliberate action is any action taken by an issuer, but not including an action, such as a condemnation, that would be treated as an involuntary or compulsory conversion under Section 1033 of the Code, or an action that is taken in response to a regulatory directive made by the federal government. A deliberate action is deemed to occur when the issuer enters into a binding contract with a nongovernmental person for use of the financed property that is not subject to any material contingencies. In most cases, material conditions to closing a transaction will be treated as material contingencies so that the date of deliberate action will be the date disposition proceeds are received.

**Conditions to Remedial Action**

Under the Regulations, in order to take a remedial action to preserve the tax-exempt status of interest on bonds, the following conditions must be met:

- (1) *Reasonable expectations test.* The issuer must reasonably have expected on the issue date that neither the private business test nor the private loan test would be met. The period of time that has elapsed since the bonds were issued will be a factor in evaluating the reasonableness of expectations. Under certain conditions an expectation on the issue date to take a deliberate action that would cause one of the tests to be met (e.g., a sale of the project) will be disregarded if the issuer expected on the issue date that the financed property would be used for a qualified purpose for a substantial period before such action, the issuer is required to redeem all nonqualifying bonds (without regard to the amount of disposition proceeds) within 6 months of the action, the redemption meets all the remedial action conditions (described below) and there was no arrangement on the date of issue with a nongovernmental person or a non-501 (c)(3) organization with respect to the activity;
- (2) *Maturity not unreasonably long.* The term of the bond *issue* must not be longer than is reasonably necessary for the governmental purpose of the issue. This requirement is met under a safe harbor if the weighted average maturity of the bonds is not greater than 120 percent of the average reasonably expected economic life of the financed property as of the issue date.
- (3) *Fair market value consideration.* The terms of any change in use or loan arrangement are bona fide and arms-length and the new user pays fair market value for the use of the financed property. For this purpose fair market value may take into account restrictions on the use of the financed property that serve a bona fide governmental purpose.
- (4) *Disposition proceeds treated as gross proceeds for arbitrage purposes.* Any disposition proceeds must be treated as gross proceeds for arbitrage purposes. This will require that the issuer meet yield restriction or rebate requirements with respect to these funds. The issuer may treat the date of receipt of the proceeds as an issue date for purposes of eligibility for temporary periods and exemptions from rebate.
- (5) *Proceeds expended on a governmental purpose.* Except where a redemption or defeasance remedial action is taken, the proceeds must have been expended on a governmental purposes before the date of the deliberate action.

### **Effect of Remedial Action**

A remedial action is treated as curing a change in ownership or a private use or private loan of proceeds, thereby preserving the tax-exempt status of existing bonds. It does not cure a failure to meet the private payment or security interest limitation. In the case of advance refunding bonds, remedial action taken with respect to the refunding bonds proportionally reduces the amount of proceeds of the refunded bonds that is taken into account under the private business use or loan test. In other words, the remedial action taken with respect to the refunding bonds proportionally "cures" the refunded bonds.

## **Disposition Proceeds and Nonqualified Bonds**

Generally, in order to take one of the remedial actions it is necessary to know what the disposition proceeds are and how much of the disposition proceeds are allocated to particular issues. Disposition proceeds arise in a sale, exchange or other disposition of bond-financed property. Disposition proceeds do not arise, however, in an installment sale arrangement and the bond proceeds remain allocated to the transferred property in that case. This distinction becomes important when determining what remedial action is appropriate.

In the case of property financed from different sources of funding, the disposition proceeds are first allocated to the outstanding bonds (both taxable and tax-exempt) that financed the property in proportion to the principal amount of the outstanding bonds. Disposition proceeds may not be allocated to bonds that are no longer outstanding or to revenues if the disposition proceeds are not greater than the total principal amount of the outstanding bonds allocable to that property. Only amounts in excess of that total may be allocated to another source.

Under the Regulations, the amount of nonqualified bonds that arise from a deliberate action is a percentage of the outstanding bonds equal to the highest percentage of private business use in any one-year period commencing with the deliberate action. Allocations to nonqualified bonds must be made on a pro-rata basis except that for purposes of the redemption or defeasance remedial action the issuer may treat bonds with longer maturities as the nonqualified bonds. This treatment would be necessary, for example, where the bonds are required to be called in inverse order of maturity rather than pro rata.

## **Permitted Remedial Actions**

### *Redemptions or Defeasance*

The first remedial action is redemption or defeasance which is available in the case of a deliberate action taking the form of a sale, lease or nonqualified management contract or other action. This remedial action probably will be the most frequently used remedial action in sale transactions. Under this remedial action, other than in the case of an exclusively cash disposition, all nonqualified bonds must be redeemed within 90 days of the deliberate action. Proceeds of tax-exempt bonds may not be used to effect the redemption unless they are proceeds of qualified private activity bonds (e.g., exempt facility bonds) taking into account the purchaser's use. If the bonds are not currently redeemable, a defeasance escrow must be established for all nonqualified bonds within 90 days of the deliberate action and notice of defeasance must be furnished to the Commissioner of Internal Revenue within 90 days of the escrow establishment. Defeasance is only available as a remedial action, however, if the period between the issue date and the first call date is not more than 10½ years. Thus, for example, if a bond-financed building is leased to a private for-profit entity, all tax-exempt bonds that financed that building would have to be redeemed or defeased within 90 days of entering into that lease.

In the case of a disposition, a sale, exclusively for cash, if the disposition proceeds are less than the amount of the nonqualified bonds, only an amount equal to the disposition proceeds must be used to redeem or defease a pro rata portion of the nonqualified bonds.

#### Anticipatory Remedial Action

An amendment to the Regulations in October 2015 permits a redemption or defeasance remedial action to be taken in advance of a deliberate action that will cause the private activity limits to be exceeded. To meet this new remedial action rule, an issuer must declare its official intent to redeem or defease all the bonds that would become nonqualified bonds as a result of a subsequent deliberate action and redeem or defease such bonds prior to the action occurring. The declaration of intent must precede the redemption or defeasance, identify the financed property with respect to which the remedial action is being undertaken and describe the deliberate action that is expected to occur. The redemption or defeasance of the nonqualified bonds must not result in an extension of the weighted average maturity of the bonds, subject to a limited transition rule.

#### Alternative Use of Disposition Proceeds

In the case of a disposition exclusively for cash, the issuer may, in lieu of redeeming or defeasing bonds, expend the disposition proceeds on other qualifying facilities. The issuer must reasonably expect to expend the disposition proceeds within two years of the deliberate action and must treat the disposition proceeds as bond proceeds for purposes of Section 141. The issuer must not use such proceeds in a manner that would cause the private business tests or the private loan test to be met. Furthermore the issuer must not take any action subsequent to the date of deliberate action to cause either of these tests to be met. This requirement precludes the issuer from repeatedly taking advantage of the remedial action provisions with respect to the same bond issue. If the issuer does not use all of the disposition proceeds for an alternative use it must use the remaining proceeds to redeem or defease bonds as described above.

In the case of certain long-term leases, as opposed to dispositions for cash, Revenue Procedure 2018-26, released April 11, 2018, provides a methodology for using the Alternative Use of Disposition Proceeds remedial action instead of the Redemption or Defeasance remedial action. The lease must be an “eligible lease”, the payments under which are exclusively cash and the term of which (i) is at least equal to the lesser of 20 years or 75% of the weighted average expected economic life at the start of the lease or (ii) runs through the end of the measurement period, generally the final maturity of the bonds or the end of the economic life of the property. An amount equal to the “lease amount” must be expended on qualifying facilities as described above. The “lease amount” is the present value of all the lease payments under the lease using the bond yield as the discount rate.

If the disposition proceeds are to be used by a 501(c)(3) organization, the nonqualified bonds must, in addition, be treated as reissued and must, beginning on the date of the deliberate action, meet all the requirements for qualified 501(c)(3) bonds. For example, this requires that a TEFRA

hearing be held and approval obtained with respect to the new uses of proceeds before the date of the deliberate action.

### Alternative Use of Facility

The third remedial action, alternative use of a facility, permits the bonds to remain outstanding if the facility is now used for a qualifying purpose and the nonqualified bonds are treated as reissued as of the date of deliberate action as qualified bonds, e.g., qualified 501(c)(3) bonds or qualified exempt facility bonds. The nonqualified bonds must satisfy all the requirements for that particular type of issue from the date of deliberate action, including the volume cap limitation of Section 146 of the Code, if applicable. The Regulations specifically provide, however, that the used property limitation of Section 147 will not apply. In the case of exempt facility bonds, and other non-501(c)(3) qualified bonds, the interest will be treated *as* a preference item for alternative minimum tax ("AMT") purposes (see discussion below). This remedial action is not available if the deliberate action involves a disposition to a purchaser who finances the purchase with tax-exempt bonds.

The Regulations provide that any disposition proceeds, including proceeds from an installment sale, must be used to pay debt service on the bonds on the next available payment date or within 90 days of receipt, be deposited into a defeasance escrow, yield restricted and used to pay debt service on the bonds on the next available payment date. The Regulations do not address under this remedial action alternative how to deal with the change in status of interest from non-AMT to AMT. This is addressed, however, in *Rev. Proc. 97-15*, discussed below.

### **Rev. Proc. 97-15**

Rev. Proc. 97-15 provides a program under which an issuer may request a closing agreement as a remedial action to prevent interest on outstanding bonds from being included in gross income or to prevent interest from being treated as an item of tax preference for AMT purposes as a result of a subsequent action. Closing agreements under this program will not resolve any other issue, nor will they preclude an examination by the IRS of any matters not addressed in the closing agreement. These closing agreements are not available with respect to an issue of outstanding bonds that is under examination by the IRS.

### Closing Agreement as to Exclusion from Gross Income

A number of procedural and substantive conditions to obtaining a closing agreement are set forth in Rev. Proc. 97-15. In addition, in the case of a closing agreement that provides that interest will not be included in gross income, the issuer must agree to redeem the outstanding bonds at the next redemption date. The issuer also must pay a closing agreement amount equal to the sum of the present value amounts determined by multiplying the amount of interest accruing on the nonqualified bonds in each year by .29 and present valuing each such number from April 15 of the year after the interest accrues to the date on which the payment is sent to the IRS, using as

the discount rate the taxable applicable federal rate for a term equal to the period from the subsequent action to the redemption date. It is expected that the figure of .29 may be adjusted for years after 2018 to reflect the reduction in income tax rates.

*Alternative Minimum Tax Closing Agreement*

In the case of a closing agreement that provides that the interest will not be treated as an item of tax preference, among other conditions, the issuer must pay an amount equal to the sum of certain present value amounts. These amounts are determined by multiplying the principal amount of the nonqualified bonds that will be outstanding on January 1 in each calendar year beginning in the year of the subsequent action and ending the first calendar year in which the bonds will no longer be outstanding, by .0014 and present valuing each such number from April 15 of the year following each such calendar year to the date of payment to the IRS, using the applicable federal rate for the period specified in the closing agreement as the discount rate.

**VCAP**

The IRS has adopted procedures for its Voluntary Closing Agreement Program (“VCAP”) under which issuers of tax exempt bonds can voluntarily resolve violations of the Code or Regulations on behalf of their bondholders or themselves through closing agreements with the IRS. These procedures are set forth in Internal Revenue Manual 7.2.3.1. If a deliberate action has occurred that cannot be remedied with a remedial action, a VCAP should be considered.

**TAB IV****INTERNAL REVENUE SERVICE – TAX EXEMPT BONDS****TAX EXEMPT BOND FAQs REGARDING  
RECORD RETENTION REQUIREMENTS**

During the course of an examination, IRS Tax Exempt Bonds (TEB) agents will request all material records and information necessary to support a municipal bond issue's compliance with section 103 of the Internal Revenue Code. The following information is intended solely to answer frequently asked questions concerning how the broad record retention requirements under section 6001 of the Code apply to tax-exempt bond transactions. Although this document provides information with respect to many of the concerns raised by members of the municipal finance industry about record retention, it is not to be cited as an authoritative source on these requirements. TEB recommends that issuers and other parties to tax-exempt bond transactions review section 6001 of the Code and the corresponding Income Tax Regulations in consultation with their counsel.

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

The freely available Adobe Acrobat Reader software is required to view, print, and search the questions and answers listed below.

1. Why keep records with respect to tax-exempt bond transactions?
2. Who may maintain records?
3. What are the basic records that should be retained?
4. Are these the only records that need to be maintained?
5. In what format must the records be kept?
6. How long should records be kept?
7. How does this general rule apply to refundings?
8. What happens if records aren't maintained?
9. Can a failure to properly maintain records be corrected?
10. Are there exceptions to the general rule regarding record retention for certain types of records?



## **Why keep records with respect to tax-exempt bond transactions?**

Section 6001 of the Internal Revenue Code provides the general rule for the proper retention of records for federal tax purposes. Under this provision, every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6001-1(a) of the Income Tax Regulations amplifies this general rule by providing that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

The IRS regularly advises taxpayers to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the issuer, the conduit borrower and other participants retain sufficient records to support the continued exclusion being taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.

Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, 8038-G, 8038-GC, 8038-T, and 8038-R.

In addition to the general rules under section 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other Code sections and regulations. For example, section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

## **Who may maintain records?**

Read together, section 6001 of the Code and section 1.6001-1(a) of the Regulations apply to taxpayers and persons filing tax returns, including returns related to tax-exempt bond transactions (i.e., Forms 8038, 8038-G, 8038-GC, 8038-T, 8038-R, 8328, 8703). This encompasses several parties to the bond transaction including:

1. issuers as the party responsible for satisfying the filing requirements under section 149(e) of the Code;
2. conduit borrowers for deductions taken for payment of interest on outstanding bonds or depreciation of bond-financed facilities; and
3. bondholders, lenders, and lessors as recipients of exempt income from the interest paid on the bonds.

Since many of the same records may be examined to verify, for example, both the tax-exempt status of the bonds and the interest deductions of the conduit borrower, it is advisable for the bond documents to specify which party will bear the responsibility for maintaining the basic records relating to a bond transaction. Additional parties may also be responsible for maintaining records under contract with any of the parties named above. For example, a trustee may agree to maintain certain records pursuant to the trust indenture.

### **What are the basic records that should be retained?**

Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most tax-exempt bond transactions include:

Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);

Documentation evidencing expenditure of bond proceeds;

Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);

Documentation evidencing all sources of payment or security for the bonds; and

Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

### **Are these the only records that need to be maintained?**

No, the list above is very general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions. Moreover, certain records may be necessary to support information related to certain requirements applicable to specific types of qualified private activity bonds. With respect to single and multifamily housing bonds as well as small issue industrial development bonds, examples of such additional material records include:

Single Family Housing Bonds	Documents evidencing that at least 20% of proceeds were available for owner financing of targeted area residences.
	Documentation evidencing proper notification of each mortgagor of potential liability of the mortgage subsidy recapture tax.
Multi-Family Housing Bonds	Documentation evidencing that the facility is not used on a transient basis.
	Documentation evidencing compliance with the income set-aside requirements.
	Documentation evidencing timely correction, if any, of noncompliance with the income set-aside requirements.
Small Issue Industrial Development Bonds	Documentation evidencing compliance with the \$10,000,000 limitation on the aggregate face amount of the issue.
	Documentation evidencing that no test-period beneficiary has been allocated more than \$40,000,000 in bond proceeds.

### **In what format must the records be kept?**

All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material. While this is typically accomplished through the maintenance of hard copies, taxpayers may keep their records in an electronic format if certain requirements are satisfied.

Rev. Proc. 97-22, 1997-1 C.B. 652 provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media. Such a system may also include reasonable data compression or formatting technologies so long as the requirements of the revenue procedure are satisfied. The general requirements for an electronic storage system of taxpayer records are provided in section 4.01 of Rev. Proc. 97-22. A summary of these requirements is as follows:

4. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.
5. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.
6. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).
7. The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.
8. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.
9. The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.
10. The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

### **How long should records be kept?**

Section 1.6001-1(e) of the Regulations provides that records should be retained for so long as the contents thereof are material in the administration of any internal revenue law. With respect to a tax-exempt bond transaction, the information contained in certain records support the exclusion from gross income taken at the bondholder level for both past and future tax years. Therefore, as long as the bondholders are excluding from gross income the interest received on account of their ownership of the tax-exempt bonds, certain bond records will be material. Similarly, in a conduit financing, the information contained in the bond records is necessary to support the interest deduction taken by the conduit borrower for both past and future tax years for its payment of interest on the bonds.

To support these tax positions, material records should generally be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds. This rule is consistent with the specific record retention requirements under section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations.

Certain federal, state, or local record retention requirements may also apply.

### **How does this general rule apply to refundings?**

For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 3 years after the final redemption of both bond issues.

### **What happens if records aren't maintained?**

During the course of an examination, TEB agents will request material records and information in order to determine whether a tax-exempt bond transaction meets the requirements of the Code and regulations. If these records have not been maintained, then the issuer, conduit borrower or other party may have difficulty demonstrating compliance with all federal tax law requirements applicable to that transaction. A determination of noncompliance by the IRS with respect to a bond issue can have various outcomes, including a determination that the interest paid on the bonds should be treated as taxable, that additional arbitrage rebate may be owed, or that the conduit borrower is not entitled to certain deductions.

Additionally, a conduit borrower who fails to keep adequate records may also be subject to an accuracy-related penalty under section 6662 of the Code on the underpayment of tax attributable to any denied deductions. Section 6662 of the Code imposes a penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one of several factors, including negligence or disregard of rules or regulations. Section 1.6662-3(b)(1) of the Regulations provides that negligence includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. Under section 6662(a) of the Code, the penalty is equal to 20 percent of the portion of the underpayment of tax attributable to the negligence. Section 6664(c)(1) provides an exception to the imposition of accuracy-related penalties if the taxpayer shows that there was reasonable cause for the underpayment and that the taxpayer acted in good faith.

### **Can a failure to properly maintain records be corrected?**

Yes, a failure to properly maintain records can be corrected through the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP). This program provides an opportunity for state and local government issuers, conduit borrowers, and other parties to a tax-exempt bond transaction to voluntarily come forward to resolve specific matters through closing agreements with the IRS. For example, the TEB Office of Outreach, Planning & Review has resolved arbitrage rebate concerns in cases where issuers have approached the IRS and reported a failure to retain sufficient records to determine, precisely, the correct amount of arbitrage rebate due on a bond issue. Notice 2001-60, 2001-40 I.R.B. 304 provides more information about this program including the procedures for submitting a VCAP request.

**Are there exceptions to the general rule regarding record retention for certain types of records?**

No, but TEB encourages members of the municipal finance industry to submit comments and suggestions for developing record retention limitation programs for specific types of bond records, for specific classes of tax-exempt bond issues, or for specific segments of the bond industry. Comments can be submitted in writing to TEB and sent to the following address:

Internal Revenue Service (TE/GE)  
Attention: Clifford J. Gannett, Director, TEB  
T:GE:TEB, Rm. 583  
1111 Constitution Ave., NW  
Washington, DC 20224

You may also contact TEB by calling 202-283-2999 (not a toll-free call).

## TAB V

### ARBITRAGE LETTER OF INSTRUCTIONS

#### 1. **Definitions.**

Capitalized terms not otherwise defined herein will have meanings given to them in sections 103, 141, 148, 149 and 150 of the Code and the Treasury Regulations promulgated thereunder.

“Available Construction Proceeds” means, in general, an amount equal to the sum of (a) the issue price (within the meaning of sections 1273 and 1274 of the Code but without regard to accrued interest) of the Construction Issue, (b) investment earnings on a Reasonably Required Reserve or Replacement Fund allocable to the Construction Issue prior to the earlier of 2 years after the date of issue of the Obligations and the date that construction is substantially completed, and (c) the investment earnings on amounts described in (a) and (b), reduced by (i) the amount of the issue price deposited in a Reasonably Required Reserve or Replacement Fund and (ii) the amount of the issue price used to pay issuance costs. Available Construction Proceeds does not include (a) Sale Proceeds or Investment Proceeds derived from Payments under any Purpose Investment of the Construction Issue, (b) repayments of any Grants financed by the issue, (c) investment earnings on accrued interest, (d) amounts that are not Gross Proceeds as a result of the application of the Universal Cap under Treasury Regulations §1.148-6(b)(2) and (e), if the Issuer has elected in its Tax Certificate, earnings with respect to any portion of a Reasonably Required Reserve or Replacement Fund allocable to the Construction Issue. For purposes of determining compliance with the spending requirements as of the end of each of the first three spending periods, Available Construction Proceeds includes the amount of future earnings that the Issuer reasonably expected as of the date of issue of the Obligations.

“Bid Records” means: (i) a copy of the Guaranteed Investment Contract actually acquired or, in the case of Yield Restricted Defeasance Escrow Investments, a copy of the purchase agreement or confirmations for the investments; (ii) the receipt or other record of the amount actually paid by the Issuer for the investments, including a record of any administrative costs paid by the Issuer, and the certification of the provider as to administrative costs; (iii) either a written copy of each bid received or a written certification from the party receiving the bids which lists for each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results; (iv) the bid solicitation form and, if the terms of the Guaranteed Investment Contract or purchase agreement deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation; and (v) in the case of Yield Restricted Defeasance Escrow Investments, a schedule showing the cost of the most efficient portfolio of SLGS, determined at the time the bids were required to be submitted pursuant to the terms of the bid specifications.

“Bona Fide Debt Service Fund” means a bona fide debt service fund as defined in Treasury Regulations §1.148-1, *i.e.*, one or more funds (including portions of funds, to the extent

that amounts deposited therein are reasonably expected to be used to pay debt service on an issue of bonds) that are used primarily to achieve a proper matching of revenues and debt service within each Bond Year and that is depleted at least once a year except for a reasonable carryover amount (not to exceed the greater of (i) the earnings on the fund for the immediately preceding Bond Year or (ii) one-twelfth the principal and interest payments on the issue for the immediately preceding Bond Year).

“Bona Fide Solicitation” means a solicitation that meets all of the following requirements: (i) the bid specifications are in writing and are timely forwarded to potential providers; (ii) the bid specifications include all material terms of the bid, *i.e.*, all terms that may directly or indirectly affect the yield of the investment; (iii) the bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the Bond issue), and that the bid is not being submitted solely as a courtesy to the Issuer or any other person for purposes of satisfying the requirements that there be at least three bids from persons with no Material Financial Interest, at least one of whom is a reasonably competitive provider; (iv) all the terms of the bid specifications are commercially reasonable in that there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment; (v) in the case of a Guaranteed Investment Contract, the terms of the solicitation take into account the Issuer’s reasonably expected deposit and drawdown schedule for the amounts to be invested; (vi) all potential providers have an equal opportunity to bid and no potential provider is given the opportunity to review other bids before providing a bid; and (vii) at least three reasonably competitive providers are solicited for bids.

“Bond Year” means, in connection with the calculation of the Rebate Amount, each 1-year period (or shorter period from the date of issue) that ends at the close of business on the day in the calendar year that is selected by the Issuer. If no day is selected by the Issuer before the earlier of the final maturity date of the Obligations or the date that is 5 years after the issue date of the Obligations, each Bond Year ends at the close of business on the day preceding the anniversary of the date of issuance of the Obligations.

“Capital Expenditure” means any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of Placed in Service under Treasury Regulations §1.150-2(c)) under general federal income tax principles.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commingled Fund” means any fund or account containing both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account. An open-end regulated investment company under section 851 of the Code, however, is not a Commingled Fund.



“Computational Base” means (i) for a Guaranteed Investment Contract, the amount of Gross Proceeds the Issuer reasonably expects, as of the date the Guaranteed Investment Contract is acquired, to be deposited in the Guaranteed Investment Contract over the term of the Guaranteed Investment Contract; and (ii) for investments (other than Guaranteed Investment Contracts) to be deposited in a Yield Restricted Defeasance Escrow, the amount of Gross Proceeds initially invested in those investments.

“Computation Period” means the period between the computation dates described in Section 4(b) hereof. The first begins on the Issue Date of the Obligations and ends on the initial rebate Computation Date. Each succeeding Computation Period begins on the date immediately following the preceding rebate Computation Date and ends on the next rebate Computation Date.

“Construction Expenditures” mean construction expenditures as defined in Treasury Regulations §1.148-7(g), i.e., Capital Expenditures that are allocable to the cost of real property or “constructed personal property.” In general, Construction Expenditures do not include expenditures for acquisitions of interests in land or other existing real property. Expenditures are not considered to be for the acquisition of an interest in existing real property, other than land, if the contract between the seller and the Issuer requires the seller to build or install the property, but only to the extent that the property has not been built or installed at the time the parties enter into the contract. Constructed personal property means tangible personal property (or, if acquired pursuant to a single acquisition contract, properties) or “specially developed computer software” if: (a) a substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the Issuer entered into an acquisition contract; (b) based on the reasonable expectations of the Issuer, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the Issuer) could not have occurred within that 6-month period; and (c) if the Issuer itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by the Issuer. Specially developed computer software means any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to real property or other constructed personal property.

“Construction Issue” means, the portion (if any) of the Obligations determined to be a Construction Issue for purposes of the section 148(f)(4)(C) of the Code, Treasury Regulations §1.148-7(e) and Section 4 hereof. With respect to any issue refunded by the Obligations, or which is a part of a series of issues refunded by the Obligations, “Construction Issue” means the portion (if any) of the original obligations issued to finance an expenditure (the “original obligations”) determined in the Tax Certificate with respect to original obligations to be a “Construction Issue” for purposes of the section 148(f)(4)(C) of the Code and Treasury Regulations §1.148-7(e).

“Controlled Group” means a group of entities controlled directly or indirectly by the same entity or group of entities. The determination of direct control is made on the basis of all the relevant facts and circumstances. One entity or group of entities generally controls another entity or group of entities if (i) the controlling entity possesses either (A) the right or power both

to approve and to remove without cause a controlling portion of the governing body of the controlled entity, or (B) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity; and (ii) the rights or powers are discretionary and non-ministerial. If a controlling entity controls another entity under this test the controlling entity also controls all entities controlled, directly or indirectly, by the controlled entity or entities. However, an entity is not controlled by another entity if the putative controlled entity possesses substantial taxing, eminent domain, and police powers.

“De Minimis Amount” means: (i) in reference to original issue discount (as defined in section 1273(a)(1) of the Code) or premium on an obligation, an amount that does not exceed 2 percent multiplied by the stated redemption price at maturity; plus any original issue premium that is attributable exclusively to reasonable underwriter’s compensation; and (ii) in reference to market discount (as defined in section 1278(a)(2)(A) of the Code) or premium on an obligation, an amount that does not exceed 2 percent multiplied by the stated redemption price at maturity.

“Fair Market Value” shall have the meaning set forth in Section 3(d) hereof.

“501(c)(3) Organization” means an organization that is described in section 501(c)(3) of the Code and is exempt from tax under section 501(a) of the Code.

“Fixed Rate Investment” means any investment whose yield is fixed and determinable on the issue date of the investment.

“Future Value” means such term as defined in Treasury Regulations section 1.148-3(c) or successor regulations applicable to the Obligations calculated based on the yield of the Obligations.

“Guaranteed Investment Contract” means, in general, any Nonpurpose Investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate and includes any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract), debt service fund forward agreements and debt service reserve fund agreements (*e.g.*, agreements to deliver United States Treasury Obligations). The term “Guaranteed Investment Contract” does not include investments purchased for a yield restricted defeasance escrow, other than escrow float contracts and similar agreements which provide securities for the period of 90 days or less following the maturity of defeasance escrow securities.

“Governmental Unit” means a governmental unit within the meaning of section 150(a)(2) of the Code (*i.e.*, any state or division of a state with a substantial amount of sovereign powers) or instrumentality of a state or political subdivision thereof. The term Governmental Unit does not include the United States or any agency or instrumentality of the United States.

“Grant” means a grant as defined in Treasury Regulations §1.148-6(d)(4)(iii), *i.e.*, a transfer for a governmental purpose of money or property to a transferee that is not a Related Party to, or an agent of, the transferor. The transfer must not impose any obligation or condition (directly or indirectly) to repay any amount to the transferor. Obligations or conditions intended

solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a Grant.

“Gross Proceeds” means, except as otherwise indicated, gross proceeds as defined in Treasury Regulations §1.148-1, *i.e.*, any Proceeds and Replacement Proceeds of an issue.

“Investment Proceeds” means investment proceeds as defined in Treasury Regulations §1.148-1, *i.e.*, any amounts actually or constructively received from investing Proceeds of the Obligations.

“Investment Property” means any investment which is: (i) a “security” (as defined in section 165(g)(2)(A) or (B) of the Code), *i.e.*, a share of stock in a corporation or a right to subscribe for or to receive a share of stock in a corporation; (ii) an obligation other than a Tax-exempt Bond, unless such obligation is a “specified private activity bond” within the meaning of section 57(a)(5)(C) of the Code (*i.e.*, a Tax-exempt Bond other than an obligation the interest on which is subject to the alternative minimum tax imposed on individuals and corporations); (iii) any “annuity contract” (as defined in section 72 of the Code); (iv) any “investment-type property” (within the meaning of Treasury Regulations §1.148-1(b)), *i.e.*, any property (other than property described in (i), (ii), (iii) or (v)) that is held principally as a passive vehicle for the production of income, including for this purpose, production of income includes any benefit based on the time value of money; or (v) any residential rental property for family units not located within the jurisdiction of the Issuer unless such property is acquired to implement a court ordered or approved housing desegregation plan. A prepayment for property or services is “investment-type property” if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. However, a prepayment will not be treated as “investment-type property” if it is made for a substantial business purpose other than investment return and (i) the prepayment is on substantially the same terms as are made by a substantial percentage of persons who are similarly situated but who are not beneficiaries of tax exempt financing, (ii) the prepayment is made within 90 days of the reasonably expected date of delivery to the Issuer of all of the property or services for which the prepayment is made, (iii) the prepayment is made for maintenance, repair, or an extended warranty with respect to personal property (for example, automobiles or electronic equipment); or updates or maintenance or support services with respect to computer software; and the same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms or (iv) the prepayment is made to acquire a supply of natural gas or electricity within the meaning of Treasury Regulation §1.148-1(e)(2)(iii).

“Issuer” means Griffin Lakes Community Development District.

“Lowest Cost Bona Fide Bid” means, in the case of Yield Restricted Defeasance Escrow Investments, either the lowest cost bid for the portfolio or, if the Issuer compares bids on an investment by investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the Issuer from a provider at the time a Guaranteed Investment Contract (*e.g.*, an escrow float contract) is purchased for a Yield Restricted Defeasance Escrow under a bidding procedure that meets the requirements of clause

(iv) of the definition of Bona Fide Solicitation is taken into account in determining the lowest cost bid. The Lowest Cost Bona Fide Bid must not be greater than the cost of the most efficient portfolio comprised exclusively of SLGS determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications. This cost comparison is not required to be made if SLGS are not available for purchase on the day the bids are required to be submitted because sales of those securities have been suspended.

“Material Financial Interest” shall have the meaning set forth in Section 3(d)(v) hereof.

“Minor Portion” means, in general, a minor portion as defined in section 148(e) of the Code and Treasury Regulation §1.148-2(g), *i.e.*, the lesser of 5 percent of the Sale Proceeds of the Obligations or \$100,000.

“Net Sale Proceeds” means Sale Proceeds, less the portion of the Sale Proceeds invested in a Reasonably Required Reserve or Replacement Fund under section 148(d) of the Code and as part of the Minor Portion.

“New Money Portion” means the portion of an issue that is not a Refunding Issue.

“Nonconstruction Issue” means the Gross Proceeds of the Obligations other than the portion of Gross Proceeds of the Obligations meeting the requirements of section 148(f)(4)(C) of the Code, Treasury Regulations §1.148-7(e) and Section 4 hereof as a Construction Issue.

“Nonpurpose Investment” means an investment allocated to Gross Proceeds of the Obligations that is not acquired to carry out the governmental purpose of an issue, *i.e.*, all Investment Property acquired or otherwise allocated to Gross Proceeds of the Obligations.

“Obligations” means any tax-exempt bonds or notes of the Issuer.

“Opinion of Counsel” means, an opinion of nationally recognized bond counsel experienced in matters relating to the exclusion of interest on state and local governmental obligations from gross income for purposes of federal income taxation.

“Payment” means, in general, a payment as defined in Treasury Regulations §1.148-5(b), *i.e.*, amounts to be actually or constructively paid to acquire the investment. For purposes of calculating the Rebate Amount under Section 4 hereof “payment” means a payment as defined in Treasury Regulations §1.148-3(d), *i.e.*, (i) amounts actually or constructively paid to acquire a Nonpurpose Investment (or treated as paid to a Commingled Fund); (ii) for a Nonpurpose Investment that is first allocated to an issue on a date after it is actually acquired (*e.g.*, an investment that becomes allocable to Transferred Proceeds or to Replacement Proceeds) or that becomes subject to the rebate requirement on a date after it is actually acquired (*e.g.*, an investment allocated to a Reasonably Required Reserve or Replacement Fund for a construction issue at the end of the 2-year spending period), the value of that investment on that date; (iii) for a Nonpurpose Investment that was allocated to an issue at the end of the preceding computation period, the value of that investment at the beginning of the computation period; (iv) on the last day of each Bond Year during which there are amounts allocated to Gross Proceeds of the

Obligations that are subject to the rebate requirement, and on the final maturity date of the Obligations, a computation credit in the amount provided under Treasury Regulation §1.148-3(d)(1)(iv); and (v) Yield Reduction Payments on Nonpurpose Investments made pursuant to Treasury Regulations §1.148-5(c).

“Placed in Service” means placed in service as defined in Treasury Regulations §1.150-2(c), *i.e.*, with respect to a facility, the date on which, based on all the facts and circumstances the facility has reached a degree of completion that would permit its operation at substantially its design level, and the facility is, in fact, in operation at such level.

“Plain Par Bond” means a qualified tender obligation or an obligation (i) that is issued with not more than a De Minimis Amount of original issue discount or premium; (ii) that is issued for a price that does not include accrued interest other than pre-issuance accrued interest; (iii) that bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section 1275 of the Code, in each case with interest unconditionally payable at least annually; and (iv) that has a lowest stated redemption price that is not less than its outstanding stated principal amount.

“Plain Par Investment” means an investment that is an obligation (i) issued with not more than a De Minimis Amount of original issue discount or premium, or, if acquired on a date other than the issue date, acquired with not more than a De Minimis Amount of market discount or premium; (ii) issued for a price that does not include accrued interest other than pre-issuance accrued interest; (iii) that bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section 1275 of the Code, in each case with interest unconditionally payable at least annually; and (iv) that has a lowest stated redemption price that is not less than its outstanding stated principal amount.

“Preliminary Expenditures” mean preliminary expenditures as defined in Treasury Regulations §1.150-2(f)(2), *e.g.*, architectural, engineering, surveying, soil testing, costs of issuance and similar costs that were incurred prior to commencement of acquisition, construction or rehabilitation of a project, other than land acquisition, site preparation and similar costs incident to commencement of construction.

“Present Value” is computed under the economic accrual method. For purposes of computing the value of Obligations and yield on the Obligations, Present Value is computed taking into account all the unconditionally payable Payments of principal, interest, and fees for a Qualified Guarantee to be paid on or after that date and using the yield on that Obligation as the discount rate, except that for purposes of Treasury Regulations §1.148-(6)(b)(2) (relating to the Universal Cap) these values may be determined by consistently using the yield on the entire issue of which such Obligations are a part. The Present Value of an investment on a date is equal to the Present Value of all unconditionally payable Receipts to be received from and Payments to be paid for the investment after that date, using the yield on the investment as the discount rate.

“Prior Issue” means an issue of Obligations all or a portion of the principal, interest, or call premium on which is paid or provided for with proceeds of a Refunding Issue.

“Proceeds” means, in general, any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue. However, Proceeds do not include Qualified Administrative Costs that may be recovered under Treasury Regulation §1.148-5(e).

“Purpose Investment” means an investment that is acquired to carry out the governmental purpose of an issue.

“Qualified Administrative Costs” mean, with respect to Nonpurpose Investments reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. General overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount are not qualified administrative costs. In general, administrative costs with respect to Nonpurpose Investments are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-exempt Bonds. Qualified Administrative Costs of Nonpurpose Investments include all reasonable administrative costs, without limitation on indirect costs, incurred by a publicly offered regulated investment company (as defined in section 67(c)(2)(B) of the Code) or by a Commingled Fund in which the Issuer and any Related Parties do not own more than 10 percent of the beneficial interest in the fund. A broker’s commission or similar fee for a Guaranteed Investment Contract or a Yield Restricted Defeasance Escrow Investment which is paid on behalf of either the Issuer or the provider is a Qualified Administrative Cost to the extent that (a) the amount of the fee that the Issuer treats as a Qualified Administrative Cost does not exceed the lesser of (i) \$36,000 or (ii) 0.2% of the Computational Base or, if more, \$4,000, and (b) for any issue, the Issuer does not treat as Qualified Administrative Costs more than \$101,000 in broker’s commissions or similar fees with respect to all Guaranteed Investment Contracts or Yield Restricted Defeasance Escrow Investments purchased with Gross Proceeds of the issue. All amounts referenced in the preceding sentence reflect adjustments as of 2011, and all amounts for future calendar years shall be increased by a cost of living adjustment as provided in Treasury Regulation §1.148-5(e)(3)(B)(3). Qualified Administrative Costs of a Purpose Investment means costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Purpose Investment, and except with respect to a Program Investment, costs of issuing, carrying, or repaying the issue, and any underwriters’ discount.

“Qualified Guarantee” means a qualified guarantee as defined in Treasury Regulations §1.148-4(f).

“Qualified Hedge” means a qualified hedge as defined in Treasury Regulations §1.148-4(h)(2), *i.e.*, (i) a contract entered into primarily to reduce the Issuer’s risk of interest rate changes with respect to a borrowing; (ii) the contract contains no significant investment element; (iii) the contract is entered into between the Issuer and a provider that is not a Related Party; (iv) the hedge covers all of one or more groups of substantially identical Obligations; (v) changes in the value of the contract are based primarily on interest rate changes; (vi) the contract does not hedge an amount larger than the Issuer’s risk with respect to interest rate changes on the hedged Obligations; (vii) the payments to the Issuer under the contract correspond closely, in both time

and amount, to the specific interest payments being hedged; (viii) payments under the contract do not begin to accrue under the contract on a date earlier than the issue date of the hedged Obligations and do not accrue longer than the hedged interest payments on the hedged Obligations; (ix) payments to the hedge provider are reasonably expected to be made from the same source of funds that, absent the hedge, would be reasonably expected to be used to pay principal and interest on the hedged Obligations; and (x) the contract is identified by the Issuer on its books and records maintained for the hedged Obligations not later than three days after the date on which the parties enter into the contract or the issue date of the hedged Obligations.

“Reasonable Retainage” means an amount not in excess of 5 percent of Available Construction Proceeds as of the end of the fourth spending period (or in the case of the *18-month Exception* set forth Treasury Regulations §1.148-7(d) and Section hereof, 5 percent of the Net Sale Proceeds on the date 18 months after the issue date) that is retained for reasonable business purposes relating to the property financed with the proceeds of the issue.

“Reasonably Required Reserve or Replacement Fund” means, in general, a reasonably required reserve or replacement fund as described in Treasury Regulations §1.148-2(f)(2).

“Receipt” means, except as otherwise provided with respect to the rebate requirement, a receipt as defined in Treasury Regulations §1.148-3(d), *i.e.*, amounts to be actually or constructively received from the investment, such as earnings and return of principal.

“Refunding Escrow” means one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a Refunding Issue and any other amounts to provide for payment of principal or interest on one or more Prior Issues. For this purpose, funds are generally not so established solely because of (i) the deposit of Proceeds of an issue and Replacement Proceeds of the Prior Issue in an escrow more than 6 months apart, or (ii) the deposit of Proceeds of completely separate issues in an escrow.

“Refunding Issue” means, a refunding issue as defined in Treasury Regulations §1.150-1(d). In general, a Refunding Issue means an issue (or the portion of an issue treated as a separate Refunding Issue under Treasury Regulations §1.148-9(h)), the proceeds of which are used to pay principal, interest, or redemption price on another issue.

“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 section 144(a)(3) of the Code).

“Replacement Proceeds” means replacement proceeds as defined in Treasury Regulation §1.148-1(c).

“Sale Proceeds” means any amounts actually or constructively received from the sale of an issue, including amounts used to pay underwriter’s discount or compensation and accrued interest other than pre-issuance accrued interest.

“SLGS” means State and Local Government Series Securities purchased from the United States Department of Treasury, Bureau of Public Debt.

“Substantial Beneficiary” of the obligations means the issuer, any related party to the issuer and the State in which the Issuer is located.

“Tax-exempt Bond” means any obligation of a state or political subdivision thereof under section 103(c)(1) of the Code (including financing leases and any other arrangements, however labeled) the interest on which is excludable from gross income under section 103(a) of the Code. Tax-exempt Bond includes an interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest is interest that is excludable from gross income under section 103(a) of the Code.

“Tax Certificate” means, with respect to each issue of Obligations, the Issuer’s Tax Certificate delivered as part of the record of proceedings with respect to the issuance of the Obligations for the purpose of complying with Treasury Regulation §1.148(2)(b).

“Transferred Proceeds” means transferred proceeds as defined in Treasury Regulation §1.148-9.

“Universal Cap” means, on any date, either (i) the present value of the Obligations determined by taking into account all unconditionally payable payments of principal, interest and fees for a Qualified Guarantee to be paid on or after that date, using the yield on the Obligations as the discount rate, or (ii) in the case of any Obligations which are Plain Par Bonds, the outstanding stated principal amount of such Obligations, plus accrued unpaid interest.

## 2. Allocation and Accounting.

(a) *In General.* Except as otherwise provided in this Section 2, the Issuer may use any reasonable accounting method for purposes of accounting for Gross Proceeds, investments, and expenditures, provided the accounting method is consistently applied. An accounting method means both the overall method used to account for Gross Proceeds of an issue (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for investments, expenditures, allocations to and from different sources, and particular items of the foregoing). Consistently applied means applied uniformly within a fiscal period and between fiscal periods to account for Gross Proceeds of an issue and any amounts that are in a Commingled Fund. An accounting method will not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item.

(b) *Allocation of Gross Proceeds to the Obligations.* (i) *In General.* Gross Proceeds will be allocated to the Obligations as Proceeds until those amounts are properly allocated to an expenditure for a governmental purpose or are allocated to Transferred Proceeds of another issue, or cease to be allocated to the Obligations under the Universal Cap.



(i) *Universal Cap.* The Universal Cap provides an overall limitation on the amount of Gross Proceeds allocable to an issue. Except as provided in Section 2(b)(iii), unless the application of the Universal Cap would not result in a reduction or reallocation of Gross Proceeds of the Obligations on a date the Issuer will determine or cause to be determined the Universal Cap with respect to the Obligations (A) as of the first day of each Bond Year, beginning with the first Bond Year that commences after the second anniversary of the date hereof, and (B) as of each date that, but for application of the Universal Cap, Proceeds of a refunded issue would become Transferred Proceeds of the Obligations but need not determine the Universal Cap in the Bond Year in which that date occurs.

(ii) If the Issuer reasonably expects, as of the issue date of the Obligations that the Universal Cap will not reduce the amount of Gross Proceeds allocable to the Obligations during the term of the Obligations, the Universal Cap need not be calculated on any date on which: (A) no Replacement Proceeds are allocable to the Obligations, other than Replacement Proceeds in a Bona Fide Debt Service Fund or a Reasonably Required Reserve or Replacement Fund; (B) the Net Sale Proceeds of the Obligations qualified for one of the temporary periods provided in Treasury Regulations §1.148-2(e)(2), (e)(3), or (e)(4), and those Net Sales Proceeds are in fact allocated to expenditures prior to the expiration of the longest applicable temporary period; or the Net Sale Proceeds of the Obligations were deposited in a Refunding Escrow and expended as originally expected; (C) the Obligations do not refund an issue that, on any transfer date, has unspent proceeds allocable to it; (D) none of the Obligations are retired prior to the date on which those Obligations are treated as retired in computing the yield on the Obligations; and (E) no Proceeds of the Obligations are invested in “qualified student loans” or “qualified mortgage loans” (as defined in Treasury Regulations §1.150-1).

(iii) If the value of all Nonpurpose Investments allocated to the Gross Proceeds of the Obligations exceeds the Universal Cap on a date as of which the Universal Cap is determined such Nonpurpose Investments allocable to Gross Proceeds of the Obligations necessary to eliminate that excess will cease to be allocated to the Obligations, in the following order of priority: (A) Nonpurpose Investments allocable to Replacement Proceeds; (B) Nonpurpose Investments allocable to Transferred Proceeds; and (C) Nonpurpose Investments allocable to Sale Proceeds and Investment Proceeds.

For this purpose Nonpurpose Investments may be valued (i) in the case of a Plain Par Investment at its principal amount plus any accrued unpaid interest on that date; (ii) in the case of fixed rate investments, at its Present Value on that date; or (iii) in the case of any other investment, at its Fair Market Value.

(c) *Allocations to Expenditures.* (i) In General. Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods if consistently applied: a

specific tracing method; a Gross Proceeds spent first method; a first-in, first-out method; or a ratable allocation. An allocation of Gross Proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A current outlay of cash means an outlay reasonably expected to occur not later than 5 banking days after the date as of which the allocation of Gross Proceeds to the expenditure is made. A payment of Gross Proceeds to a Related Party of the Issuer is not an expenditure of those Gross Proceeds. Gross Proceeds paid to the Related Party are expended only when the Gross Proceeds are properly allocable to an expenditure by the Related Party.

(ii) *Expenditures for Working Capital Purposes.* Except as otherwise provided in Section 2(c)(iii), Proceeds of the Obligations and Replacement Proceeds of the Obligations that are allocated to the payment of expenditures or to the reimbursement of expenditures other than expenditures that are (A) Capital Expenditures; (B) Qualified Administrative Costs; (C) fees for Qualified Guarantees of the issue or payments for a Qualified Hedge; (D) interest on the Obligations for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the Projects are Placed in Service; (E) a Rebate Amount or Yield Reduction Payment paid to the United States; (F) costs that are directly related to Capital Expenditures financed by the issue that, in total, do not exceed 5 percent of the Sale Proceeds of the Obligations; (G) principal or interest on the Obligations paid from unexpected excess Sale Proceeds or Investment Proceeds; (H) principal or interest on the Obligations paid from investment earnings on a reserve or replacement fund that are deposited in a Bona Fide Debt Service Fund; (I) to pay for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage; (J) for payment of principal, interest, or redemption prices on a Prior Issue; and (K) for a crossover Refunding Issue, interest on that issue will be treated as spent to the extent that those working capital expenditures exceed available amounts (as defined in Treasury Regulations §1.148-6(d)(3)(iii)) as of that date.

(iii) *Commingled Investment Earnings.* Notwithstanding Subsection 2(c)(ii), investment earnings on Sale Proceeds of the Obligations (other than investment earnings held in a Refunding Escrow) may be allocated to expenditures other than expenditures described in Subsection 2(c)(ii), if the investment earnings are commingled for the purpose of accounting for expenditures with substantial tax or other substantial revenues from operations of the Issuer and they are reasonably expected to be allocated (using any reasonable, consistently applied accounting method) to expenditures for governmental purposes of the Issuer within a period not to exceed six months from the date of the commingling.

(d) *Allocations of Gross Proceeds to Investments.* Upon the purchase or sale of a Nonpurpose Investment, Gross Proceeds of an issue will not be allocated to a

Payment for that Nonpurpose Investment in an amount greater than, or to a Receipt from that Nonpurpose Investment in an amount less than, the Fair Market Value of the Nonpurpose Investment (adjusted to take into account Qualified Administrative Costs allocable to the investment) as of the purchase or sale date.

(e) *Allocation of Investments Held by a Commingled Fund.* (i) *In General.* All Payments and Receipts (including deemed Payments and Receipts) on investments held by a Commingled Fund must be allocated among the different “investors” in the fund not less frequently than as of the close of each fiscal period. This allocation must be based on a consistently applied reasonable, ratable allocation method. Reasonable ratable allocation methods include, methods that allocate these items in proportion to either (A) the average daily balances of the amounts in the Commingled Fund from different “investors” during a fiscal period; or (B) the average of the beginning and ending balances of the amounts in the Commingled Fund from different investors for a fiscal period that does not exceed one month. For purposes of this Subsection 2(e), the term “investor” means each different source of funds invested in a Commingled Fund. A Commingled Fund may use any consistent fiscal period that does not exceed three months.

(i) *Expenditures from a Commingled Fund.* If a ratable allocation method is used to allocate expenditures from the Commingled Fund, the same ratable allocation method must be used to allocate Payments and Receipts on investments in the Commingled Fund under this Subsection.

(ii) *Common Reserve Funds, Replacement Funds or Sinking Funds.* If a Commingled Fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues, investments held by that Commingled Fund must be allocated ratably (after any reallocations of Proceeds under Section 2(b)) among the issues served by the Commingled Fund according to (A) the relative values of the bonds of those issues (as determined under Treasury Regulations §1.148-4(e)); (B) the relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or (C) the relative original stated principal amounts of the outstanding issues. Such allocations must be made at least every three years and as of each date that an issue first becomes secured by the Commingled Fund. If relative original principal amounts are used to allocate, allocations must also be made on the retirement of any issue secured by the Commingled Fund.

3. *Yield and Valuation of Investments.* (a) *Mark-to-Market Requirement.* If Gross Proceeds of the Obligations are invested in a Commingled Fund in which the Issuer and any Related Party own more than 25 percent of the beneficial interests in the Commingled Fund, the Commingled Fund must treat all its investments as if sold at Fair Market Value either on the last day of the fiscal year or the last day of each fiscal period unless (i) the remaining weighted average maturity of all investments held by the Commingled Fund during the fiscal year does not exceed 18 months, and the investments held by the Commingled Fund during that fiscal year consist exclusively of Obligations, or (ii) the Commingled Fund operates exclusively as a reserve

fund, sinking fund, or replacement fund for two or more issues of the same issuer. The net gains or losses from any such deemed sales of investments must be allocated to all investors of the Commingled Fund during the period since the last allocation. For purposes of this Subsection the “fiscal year” of a Commingled Fund is the calendar year unless the Commingled Fund adopts another “fiscal year.”

(a) *In General.* Yield on an investment, the Present Value of an investment and the Fair Market Value of an investment allocated to the Obligations will be computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the yield on the Obligations. Except as otherwise provided in this Section 3, the yield on an investment allocated to the Obligations is the discount rate that, when used in computing the Present Value as of the date the investment is first allocated to the issue of all unconditionally payable Receipts from the investment, produces an amount equal to the Present Value of all unconditionally payable Payments for the investment. The Present Value of an investment on a date is equal to the Present Value of all unconditionally payable Receipts to be received from and Payments to be paid for the investment after that date, using the yield on the investment as the discount rate. The yield on a variable rate investment is determined in a manner comparable to the determination of the yield on a variable rate issue of Tax-exempt Bonds for purposes of section 148 of the Code. For purposes of the Investment Limitation described in the Tax Certificate, the yield on investments made with Sale Proceeds of the Obligations or investment earnings thereon that are subject to yield restriction will be computed separately from the yield on investments not subject to yield restriction.

(b) *Yield Reduction Payments to the United States.* The yield on any investments allocable to Sale Proceeds of the Obligations or investment earnings thereon that qualified for one of the temporary periods described in the Tax Certificate, other than Replacement Proceeds, may be calculated by taking into account any amount paid to the United States in accordance with this Section 3(b), including any Rebate Amount, as a Payment for that investment that reduces the yield on that investment. The yield on any investments allocable to Sale Proceeds may be calculated by taking into account any “Yield Reduction Payments,” as described in this Section 3(b) (including any Rebate Amount) as a Payment for that investment that reduces the yield on that investment. Yield Reduction Payments include payments paid to the United States at the same time and in the same manner as rebate amounts are required to be paid except:

(i) No Yield Reduction Payments are required to be paid until 60 days after the date on which the issue is no longer outstanding; and

(ii) For Yield Reduction Payments paid prior to the date on which the Obligations are retired, the Issuer need not pay more than 75 percent of the amount otherwise required to be paid as of the date to which the payment relates.

(c) *Valuation of Investments.* The value of an investment (including a Payment or Receipt on the investment) on a date will be determined using one of the

following valuation methods consistently for all purposes of section 148 of the Code to that investment on that date:

(i) A Plain Par Investment may be valued at its outstanding stated principal amount, plus any accrued unpaid interest on that date.

(ii) A Fixed Rate Investment may be valued at its Present Value on that date.

(iii) Any investment may be valued at its Fair Market Value on that date.

(d) *Fair Market Value.* (i) *In General.* The Fair Market Value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Fair Market Value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding. Except as otherwise provided in this Section, an investment that is not of a type traded on an established securities market, within the meaning of section 1273 of the Code, will not be considered acquired or disposed of for a price that is equal to its Fair Market Value.

(i) *Direct United States Treasury Obligations.* The Fair Market Value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(ii) *Certificate of Deposit.* The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal may be treated as its Fair Market Value on the purchase date if the yield on the certificate of deposit is not less than the yield on reasonably comparable direct Obligations of the United States and the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(iii) *Guaranteed Investment Contracts.* The purchase price of a Guaranteed Investment Contract is treated as its Fair Market Value on the purchase date if: (A) the Issuer makes a Bona Fide Solicitation for a specified Guaranteed Investment Contract; (B) the Issuer receives at least three bids from providers for the specified Guaranteed Investment Contract that the Issuer solicited under a Bona Fide Solicitation that have no Material Financial Interest in the issue, at least one of whom is a reasonably competitive provider, i.e., a provider that has an established industry reputation as a provider of Guaranteed Investment Contracts; (C) the Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees); (D) the obligor on the Guaranteed Investment Contract provides a written certification specifying all amounts that it is paying (or expects to pay) to third parties in connection with supplying the Guaranteed Investment Contract;

and (E) the Issuer retains the Bid Records with the bond documents until three years after the last outstanding Obligation is redeemed.

(iv) *Yield Restricted Defeasance Escrow Investment.* The purchase price of a Yield Restricted Defeasance Escrow Investment is treated as its Fair Market Value on the purchase date if: (A) the Issuer makes a Bona Fide Solicitation for the purchase of the investment; (B) the Issuer receives at least three bids from providers that the Issuer solicited under a Bona Fide Solicitation that have no Material Financial Interest in the issue, at least one of whom is a reasonably competitive provider, i.e., a provider that has an established industry reputation as a provider of the type of investment being purchased; (C) the winning bid is the Lowest Cost Bona Fide Bid (including any broker's fees); (D) the provider of the investments certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with supplying the investments; and (E) the Issuer retains the Bid Records with the bond documents until three years after the last Obligation is redeemed.

(v) *Material Financial Interest.* For purposes of paragraphs (iii) and (iv) the following persons or entities are deemed to have a Material Financial Interest in the issue: (A) the lead underwriter in a negotiated underwriting transaction until 15 days after the issue date; (B) any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers; and (C) a Related Party to a provider that has a Material Financial Interest in the issue.

(vi) *Bidding.* If the Issuer invests any Gross Proceeds of the Obligations in a Guaranteed Investment Contract or purchases with Gross Proceeds Yield Restricted Defeasance Escrow Investments, it will conduct, or will have conducted on its behalf, a Bona Fide Solicitation. The Issuer will require the agent to certify as to the bidding process as set forth in the form of Certificate of Bidding Agent to be furnished by Bond Counsel, in the case of a Guaranteed Investment Contract or in the case of Yield Restricted Defeasance Escrow Investments. If the bidding process is not conducted through an agent, the Issuer itself will provide a similar certificate. The Issuer will file such certification together with the Bid Records, with the documents relating to the Obligations. If the Issuer wishes to invest Gross Proceeds of the Obligations in Certificates of Deposit it will obtain from the provider a certification that the Certificate of Deposit has a fixed rate, a fixed payment schedule and a substantial penalty for early withdrawal, and the yield on the certificate of deposit is not less than (A) the yield on reasonably comparable direct Obligations of the United States and (B) the highest yield published by the provider and currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(e) *Administrative Costs.* Except for Qualified Administrative Costs, costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire investments will not increase Payments made for investments and will not reduce Receipts from Investments.

Qualified Administrative Costs will increase the Payments for, or decrease the Receipts from, investments.

(f) *Record Keeping.* The Issuer shall keep, or cause to be kept, accurate records of the status of compliance of the Obligations with respect to compliance with the expenditure requirements at the end of each 6-month period described in Section 4(a)(ii)(C) hereof. The Issuer will keep, or cause to be kept, accurate records of each investment it makes in Investment Property acquired, directly or indirectly, with Gross Proceeds of the Obligations (other than revenues in a Bona Fide Debt Service Fund) and each expenditure it makes with Gross Proceeds of the Obligations. Such records will include all of the information necessary to compute the yield on each investment in Investment Property to the Issuer, e.g., purchase price, nominal interest rate, dated date, maturity date, type of property, frequency of periodic payments, period of compounding, yield to maturity, amount actually or constructively received on disposition, disposition date and evidence of the Fair Market Value of such property on the purchase date and disposition date (or deemed purchase or disposition date) for each item of such Investment Property.

#### 4. Rebate Requirement.

(a) *Calculation of the Rebate Amount.* In general, the Rebate Amount, as of any date is the excess of the “future value.” as of that date, of all Receipts on Nonpurpose Investments allocated to the Obligations over the “future value.” as of that date, of all Payments on Nonpurpose Investments allocated to the Obligations. The “future value” of a Payment or Receipt at the end of any period is determined using the economic accrual method and equals the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the yield on the Obligations, using the same compounding interval and financial conventions used to compute the yield on the Obligations. Amounts earned on certain Gross Proceeds of the Obligations either may not be, or are not required to be, taken into account in determining the Rebate Amount. The earnings on Gross Proceeds excepted from the calculation of the Rebate Amount include the following:

(i) *Bona Fide Debt Service Fund.* Amounts earned on a Bona Fide Debt Service Fund for the Obligations and amounts earned on such amounts may not be taken into account if the gross earnings on the Bona Fide Debt Service Fund for the Bond Year is less than \$100,000.

(ii) *Spending Exceptions.* Earnings with respect to certain Gross Proceeds described in 4(a)(ii) of this Section are not required to be taken into account in determining the Rebate Amount if requirements of 4(a)(ii)(B), 4(a)(ii)(C) or 4(a)(ii)(D) of this Section are met with respect to such Gross Proceeds.

(A) *Special Rules.* For purposes of 4(a)(ii) of this Section the following special rules will apply.

(I) If any portion of the Obligations is treated as a separate Refunding Issue under Treasury Regulations §1.148-9(h), that portion is treated as a separate issue.

(II) The only spending exception applicable to a Refunding Issue is the *6-month Exception*.

(III) Solely for purposes of determining whether or not the expenditure requirement has been met under the *6-month Exception* for a Refunding Issue, proceeds of the refunded issue that become Transferred Proceeds of the Refunding Issue are, in general, not treated as “gross proceeds” of the Refunding Issue and need not be spent for the Refunding Issue to satisfy that spending exception. However, Transferred Proceeds of the Refunding Issue that were from excluded “gross proceeds” of the refunded issue under the special definition of “gross proceeds” described in 4(a)(ii)(A)(IX) of this Section, and Transferred Proceeds from any prior taxable issue, are treated as “gross proceeds” of the Refunding Issue under the *6-month Exception* unless those Transferred Proceeds are used in a manner that causes those amounts to be excluded from gross proceeds under the special definition described in 4(a)(ii)(A)(IX) of this Section. Transferred Proceeds excluded from Gross Proceeds for purposes of determining whether or not the expenditure requirement has been met are subject to rebate as proceeds of the Refunding Issue unless an exception to rebate applied to those proceeds as proceeds of the refunded issue.

(IV) Proceeds of the refunded issue, which for other purposes become Transferred Proceeds of the Obligations, continue to be treated as unspent proceeds of the refunded issue for purposes of applying the spending exceptions to an issue refunded by the Obligations.

(V) If the refunded issue satisfies one of the spending exceptions, the proceeds of the refunded issue that are excepted from rebate under that spending exception are not subject to rebate either as proceeds of the refunded issue or as Transferred Proceeds of the Obligations.

(VI) Expenditures for the governmental purpose of an issue include payments for interest, but not principal, on the issue, and for principal or interest on another issue of obligations. The



preceding sentence does not apply for purposes of the *18-month Exception* and *2-year Construction Exception* if those payments cause the issue to be a Refunding Issue.

(VII) Any failure to satisfy the final spending requirement of the *18-month Exception* or the *2-year Construction Exception* described in 4(a)(ii)(D) of this Section is disregarded if the Issuer exercises due diligence to complete the Project and the amount of the failure does not exceed the lesser of (1) 3 percent of the Issue Price of the Nonconstruction Issue in the case of the *18-month Exception* or the Construction Issue in the case of the *2-year Construction Exception* or (2) \$250,000.

(VIII) For purposes of this Section only, a Reasonably Required Reserve or Replacement Fund also includes any fund to the extent described in Treasury Regulations §1.148-5(c)(3)(i)(E) or (G).

(IX) Solely for purposes of determining whether the expenditure requirements with respect to the *6-month Exception* (as described in Section 4(a)(ii)(B)(I)) and the *18-month Exception* (as described in Section 4(a)(ii)(C)(I)) have been met, “gross proceeds” does not include (1) amounts in a Bona Fide Debt Service Fund; (2) amounts in a Reasonably Required Reserve or Replacement Fund (as defined for purposes of this Section); (3) amounts that, as of the date the Obligations are issued, are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the 6-month spending period (or the 1-year spending period in the case of the Minor Portion) and the third spending period in the case of the *18-month Exception*; and (4) amounts representing repayments of Grants financed by the Obligations (if any).

(B) *6-month Exception.* Earnings with respect to Gross Proceeds of a Nonconstruction Issue or the Refunding Issue (treated as separate issues) during the 6-month period beginning on the date of issue of the Obligations (the “6-month spending period”) and earnings with respect to an amount of Gross Proceeds of the Obligations not in excess of the Minor Portion during the 1-year period beginning on the date of issue of the Obligations (the “1-year spending period”) need not be taken into account if:

(I) The “gross proceeds” (as defined in this Section) of the respective issue are allocated to expenditures for the governmental purposes of the issue within the 6-month spending period, other than Gross Proceeds not in excess of the Minor

Portion and such Minor Portion is allocated to expenditures for the governmental purposes of the issue within the 1-year spending period; and

(II) The rebate requirement is met for amounts not required to be spent within the 6-month spending period (excluding earnings on a Bona Fide Debt Service Fund) or the 1-year spending period for the Minor Portion.

(C) *18-month Exception.* Earnings with respect to Gross Proceeds of the New Money Portion of the Obligations need not be taken into account if:

(I) The “gross proceeds” (as defined in this Section) are allocated to expenditures for a governmental purpose of the New Money Portion of the Obligations in accordance with the following schedule: (1) at least fifteen percent (15%) within 6 months; (2) at least sixty percent (60%) within 12 months; and (3) one hundred percent (100%) within 18 months (the “third spending period”). The New Money Portion of the Obligations will not be regarded as failing to satisfy the spending requirement for the third spending period as a result of a Reasonable Retainage if the Reasonable Retainage is allocated to expenditures within 30 months of the issue date.

(II) The rebate requirement is met for all amounts not required to be spent in accordance with the 18-month expenditure schedule (other than earnings on a Bona Fide Debt Service Fund).

(III) All of the “gross proceeds” (as defined in this Section) of the New Money Portion of the Obligations qualify for the initial temporary period under Treasury Regulations §1.148-2(e)(2).

(IV) No portion of the New Money Portion of the Obligations is treated as meeting the exception from the rebate requirement for certain proceeds used to finance construction expenditures as provided in section 148(f)(4)(C) of Code and Treasury Regulations 1.148-7(e), as described in (D) of this Section.

(D) *2-year Construction Exception.* Amounts earned on Gross Proceeds which are Available Construction Proceeds of a Construction Issue are not required to be taken into account if Available Construction Proceeds of the Construction Issue are allocated to expenditures for the governmental purposes of the Construction Issue in accordance with the

following schedule: (I) 10 percent or more within six months after the date of issue of the New Money Portion of the Obligations; (II) 45 percent or more within 1 year after the date of issue of the New Money Portion of the Obligations; (III) 75 percent or more within 18 months after the date of issue of the New Money Portion of the Obligations; and (IV) 100 percent within 2 years after the date of issue of the New Money Portion of the Obligations (the “fourth spending period”). The Construction Issue will not be regarded as failing to satisfy the spending requirement for the fourth spending period as a result of unspent amounts for Reasonable Retainage if those amounts are allocated to expenditures within 3 years of the issue date.

(b) *Computation Dates.* The Computation Date for the calculation of the Rebate Amount required by this Section 4 for Obligations with a term of less than five years will be the latest of: (i) the date that the Obligations are discharged; (ii) 8 months after the date the Obligations were issued; or (iii) the date the Issuer no longer reasonably expects that any of the spending exceptions under Treasury Regulations §1.148-7 (as described in 4(a)(ii) of this Section) will apply to the Obligations. The Computation Dates for the calculation of the Rebate Amount required by this Section 4 for Obligations with a term of five years or more will be: (i) a date selected by the Issuer which is no later than 5 years after the issue date of the Obligations, (ii) each fifth year thereafter, and (iii) the date that the last of the Obligations are discharged (i.e., the date of the retirement of the last maturity of the Obligations).

(c) *Rebate Payments.* The Issuer will pay the Rebate Amount to the United States no later than 60 days after the Computation Date. Payment of a Rebate Amount will be filed with the Internal Revenue Service Center, Ogden, Utah 84201. Payment of a Rebate Amount will be accompanied by Form 8038-T.

**4E.**

## 2.3

**CERTIFICATE AS TO PUBLIC MEETINGS**

We, the undersigned members of the Board of Supervisors (the “Board”) of **GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT** (the “District”), recognizing that the purchaser of the District’s \$2,945,0000 Special Assessment Refunding Bond, Series 2020 (the “Series 2020 Bond”) will have purchased said Series 2020 Bond in reliance upon this certificate, do hereby certify, individually and collectively, that we have no personal knowledge that any two or more members of the Board, meeting together, reached any prior conclusion as to whether the actions taken by the Board with respect to said Series 2020 Bond, the security therefor, and the application of the proceeds thereof, should or should not be taken by the Board or should or should not be recommended as an action to be taken or not to be taken by the Board, except at public meetings of the Board held after due notice to the public was given in the ordinary manner required by law and custom of the Board.

**IN WITNESS WHEREOF**, we have hereunto set our hands as of the 28th day of August, 2020.

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Benny Barak

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Peter Marocco

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Linda Armstrong

---

Madeline DiComo

---

Teresa West

**4F.**

THIS INSTRUMENT PREPARED  
BY AND RETURN TO:

Michael J. Pawelczyk, Esq.  
Billing, Cochran, Lyles, Mauro & Ramsey, P.A.  
515 East Las Olas Boulevard, Sixth Floor  
Fort Lauderdale, FL 33301

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

**LIEN OF RECORD OF  
GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT**

**(Special Assessment Refunding Bond, Series 2020)**

Notice is hereby given effective as of the 28<sup>th</sup> day of August, 2020, that the Griffin Lakes Community Development District (the “District”), a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, the Uniform Community Development District Act of 1980 (the “Act”), enjoys a governmental lien of record on the property within the boundaries of the District, as described in Exhibit “A” attached hereto. Such lien is coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other non-federal liens, titles, and claims until paid pursuant to the Act and other applicable law. The District’s lien secures the payment of special assessments levied in accordance with the Act and other applicable law, for the purpose of funding the District’s operating and maintenance expenses, and to pay the District’s **\$2,945,000** Griffin Lakes Community Development District Special Assessment Refunding Bond, Series 2020 which were issued for the purpose of refinancing various public infrastructure, facilities and related costs. For information regarding the amount of the special assessments encumbering the specified real property, contact the District at:

Governmental Management Services-South Florida, LLC  
5385 North Nob Hill Road  
Sunrise, Florida 33351  
Phone: (954) 721-8681

**THIS CONSTITUTES A LIEN OF RECORD FOR PURPOSES OF SECTION 190.021(3), FLORIDA STATUTES, AND ALL OTHER APPLICABLE PROVISIONS OF THE FLORIDA STATUTES AND ANY OTHER APPLICABLE LAW AND SUPERCEDES ANY NOTICE OF SPECIAL ASSESSMENTS OR LIEN OF RECORD PREVIOUSLY RECORDED BY THE DISTRICT IN CONNECTION WITH ITS SPECIAL ASSESSMENT REFUNDING BONDS, SERIES 2008, WHICH WERE REFUNDED BY THE DISTRICT’S SPECIAL ASSESSMENT REFUNDING BOND, SERIES 2020.**

**GRIFFIN LAKES COMMUNITY  
DEVELOPMENT DISTRICT**

**WITNESSES:**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

By: \_\_\_\_\_

Chairman, Board of Supervisors

**ATTEST:**

\_\_\_\_\_

Secretary

STATE OF FLORIDA                    }  
COUNTY OF BROWARD               }

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_ day of August 2020, by \_\_\_\_\_, the Chairman of the Board of Supervisors of the Griffin Lakes Community Development District, respectively, on behalf of the District. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

(SEAL)

Printed/Typed Name: \_\_\_\_\_

Notary Public-State of \_\_\_\_\_

Commission Number: \_\_\_\_\_



**Exhibit "A"****LEGAL DESCRIPTION**

A parcel of land being a portion of Tracts 3, 4, 5 and 6, Block I in the Northeast One-Quarter (NE 1/4) of Section 32, Township 50 South, Range 42 East, according to the "PLAT OF SECTIONS 28,29,31 AND 32", as recorded in Plat Book 2, Page 32 of the public records of Miami-Dade County, Florida, Being more particularly described as follows:

COMMENCE at the Northeast corner of said Section 32; Thence South 88°25'04" West along the North line of said section 32, 1317.17 feet, Thence South 01 °34'56" East, 55.00 feet to the POINT OF BEGINNING; Thence along the South right-of-way line of Griffin Road as shown on the Broward County right-of-way map for Griffin Road, County Bond Project 86015 (004110) sheet 5 of 9, the following four (4) courses; North 88°25'04" East, 650.55 feet; thence North 88°33'14" East, 201.99 feet; Thence South 85°18'59" East, 112.42 feet; Thence North 88°25'04" East, 23.82 feet; Thence departing said right-of-way South 01 °44,23" East along the East line of the West 330 feet of said Tract 4, 602.73 feet; Thence North 88°23'35" East, along the South line of said Tract 4 290.15 feet; Thence South 01 °49'00" East along a line 40.00 feet West and parallel with the East Line of said Section 32, 459.36 feet; Thence North 88°23'00" West, 15.00 feet; Thence South 01 °49'00" East along a line 55.00 feet west of and parallel with the East line of said Section 32, 210.80 feet to a point on the South line of Tract 3; Thence South 88°22'09" West along said South line 1267.62 feet, said line also being the north line of Ravenswood Gardens according to the Plat thereof, as recorded in Plat Book 89, Page 43, of the Public Records of Broward County, Florida; Thence North 01 °35,02" West along the West line of said Tract 6, said line also being the East line of Seaboard Heights, according to the Plat thereof, as recorded in Plat Book 14, Page 14 of the Public records of Broward County, Florida, a distance of 1286.59 feet to the POINT OF BEGINNING. Said lands situate, lying and being in Broward County, Florida and containing 33.60 acres more or less.

## **Fifth Order of Business**

**5A**

**PROPOSED**

**NOTICE OF MEETINGS  
GRIFFIN LAKES  
COMMUNITY DEVELOPMENT DISTRICT**

The Board of Supervisors of the Griffin Lakes Community Development District will hold their meetings for **Fiscal Year 2021** on the second Thursday of each month at 12:30 p.m. at the Villas at Harbor Isles HOA Offices, 2317 Clipper Place, Fort Lauderdale, FL 33312 as follows:

October 8, 2020  
November 12, 2020  
December 10, 2020  
January 14, 2021  
February 11, 2021  
March 11, 2021  
April 8, 2021  
May 13, 2021  
June 10, 2021  
July 8, 2021  
August 12, 2021  
September 9, 2021

The meetings are open to the public and will be conducted in accordance with the provision of Florida Law for Community Development Districts. Meetings may be continued to a date, time and location to be specified on the record at the meetings. A scheduled meeting may be cancelled by the Board of Supervisors based on the business needs of the District.

There may be occasions when one or more Supervisors will participate via telephone. Any person requiring special accommodations at these meetings because of a disability or physical impairment should contact the District Management Company, Inframark, Infrastructure Management Services at (954) 603-0033 at least two (2) calendar days prior to the meetings. If you are hearing or speech impaired, please contact the Florida Relay Service at 711 for aid in contacting the District Office at least two (2) days prior to the date of the meetings.

Each person who decides to appeal any action taken at these meetings is advised that person will need a record of the proceedings and accordingly, the person may need to ensure a verbatim record of the proceedings is made, including the testimony and evidence upon which such appeal is to be based.

Kenneth Cassel  
District Manager

## **Eighth Order of Business**

**MEMORANDUM**

**TO: Board of Supervisors, Griffin Lakes CDD**  
**FROM: Fernand Thomas, Accountant II**  
**CC: Kenneth Cassel, District Manager, Alan Baldwin, Accounting Manager**  
**DATE: July 15, 2020**  
**SUBJECT: June Financial Report**

Attached, please find the June 2020 Financial Report. During your review, please keep in mind that the goal is for revenue to meet or exceed the year-to-date budget and for expenditures to be at or below the year-to-date budget. To assist with your review, an overview of each of the District's Funds is provided below. If you have any questions or require additional information, please contact me at [fernand.thomas@inframark.com](mailto:fernand.thomas@inframark.com).

**General Fund:**

- Total revenues are approximately 98% of the annual budget.
- Non-Ad Valorem Assessments are approximately 97% collected.
- For the current month, year-to-date expenditures are approximately 82% of the annual budget.

**Debt Service Fund:**

**Series 2008**

- Total revenues are approximately 98% of the annual budget.
- Non-Ad Valorem Assessments are approximately 97% collected.
- Principal and Interest are paid in May.

**GRIFFIN LAKES**  
Community Development District  
*Financial Report*  
*June 30, 2020*

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**GRIFFIN LAKES**

Community Development District

**Financial Report**

(Unaudited)

**June 30, 2020**

**Balance Sheet**

June 30, 2020

ACCOUNT DESCRIPTION	GENERAL FUND	SERIES 2008 DEBT SERVICE FUND	TOTAL
<b><u>ASSETS</u></b>			
Cash - Checking Account	\$ 20,372	\$ -	\$ 20,372
Assessments Receivable	316	782	1,098
Allow-Doubtful Collections	(316)	(782)	(1,098)
Due From Other Funds	-	2,843	2,843
Investments:			
Money Market Account	130,927	-	130,927
Reserve Fund	-	161,430	161,430
Revenue Fund	-	131,428	131,428
<b>TOTAL ASSETS</b>	<b>\$ 151,299</b>	<b>\$ 295,701</b>	<b>\$ 447,000</b>
<b><u>LIABILITIES</u></b>			
Accounts Payable	\$ 10,336	\$ -	\$ 10,336
Accrued Expenses	630	-	630
Due To Other Funds	2,843	-	2,843
<b>TOTAL LIABILITIES</b>	<b>13,809</b>	<b>-</b>	<b>13,809</b>
<b><u>FUND BALANCES</u></b>			
<b>Restricted for:</b>			
Debt Service	-	295,701	295,701
<b>Assigned to:</b>			
Operating Reserves	30,134	-	30,134
<b>Unassigned:</b>	107,356	-	107,356
<b>TOTAL FUND BALANCES</b>	<b>\$ 137,490</b>	<b>\$ 295,701</b>	<b>\$ 433,191</b>
<b>TOTAL LIABILITIES &amp; FUND BALANCES</b>	<b>\$ 151,299</b>	<b>\$ 295,701</b>	<b>\$ 447,000</b>

**Statement of Revenues, Expenditures and Changes in Fund Balances**

For the Period Ending June 30, 2020

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE ACTUAL	YTD ACTUAL AS A % OF ADOPTED BUD	JUN-20 ACTUAL
<b>REVENUES</b>				
Interest - Investments	\$ 400	\$ 751	187.75%	\$ 27
Interest - Tax Collector	-	241	0.00%	-
Special Assmnts- Tax Collector	125,141	121,602	97.17%	1,015
Special Assmnts- Discounts	(5,006)	(4,381)	87.51%	42
<b>TOTAL REVENUES</b>	<b>120,535</b>	<b>118,213</b>	<b>98.07%</b>	<b>1,084</b>

**EXPENDITURES**
**Administration**

P/R-Board of Supervisors	8,000	7,800	97.50%	2,000
FICA Taxes	612	597	97.55%	153
ProfServ-Dissemination Agent	1,000	1,000	100.00%	-
ProfServ-Engineering	3,000	-	0.00%	-
ProfServ-Legal Services	8,000	5,718	71.48%	868
ProfServ-Mgmt Consulting Serv	17,496	13,122	75.00%	1,458
ProfServ-Property Appraiser	854	854	100.00%	-
ProfServ-Special Assessment	4,501	4,501	100.00%	-
ProfServ-Trustee Fees	4,338	3,578	82.48%	-
Auditing Services	3,250	-	0.00%	-
Postage and Freight	175	119	68.00%	71
Insurance - General Liability	10,733	9,200	85.72%	-
Printing and Binding	674	172	25.52%	9
Legal Advertising	500	521	104.20%	321
Misc-Property Taxes	138	138	100.00%	-
Misc-Assessmnt Collection Cost	2,503	2,344	93.65%	21
Misc-Web Hosting	1,600	5,206	325.38%	964
Office Supplies	30	-	0.00%	-
Annual District Filing Fee	175	175	100.00%	-
<b>Total Administration</b>	<b>67,579</b>	<b>55,045</b>	<b>81.45%</b>	<b>5,865</b>

**Statement of Revenues, Expenditures and Changes in Fund Balances**

For the Period Ending June 30, 2020

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE ACTUAL	YTD ACTUAL AS A % OF ADOPTED BUD	JUN-20 ACTUAL
<b>Field</b>				
Contracts-Lake and Wetland	3,540	2,655	75.00%	295
Contracts-Fountain	900	-	0.00%	-
Contracts-Landscape	6,344	4,758	75.00%	529
Contracts-Mulch	7,740	10,212	131.94%	5,542
Contracts-Irrigation	1,440	2,832	196.67%	120
Contracts-Pest Control	6,000	4,500	75.00%	500
R&M-Grounds	1,000	-	0.00%	-
R&M-Lake	1,140	855	75.00%	95
R&M-Plant Replacement	15,624	17,090	109.38%	2,125
Misc-Contingency	9,228	1,225	13.27%	1,225
<b>Total Field</b>	<b>52,956</b>	<b>44,127</b>	<b>83.33%</b>	<b>10,431</b>
<b>TOTAL EXPENDITURES</b>	<b>120,535</b>	<b>99,172</b>	<b>82.28%</b>	<b>16,296</b>
Excess (deficiency) of revenues				
Over (under) expenditures	-	19,041	0.00%	(15,212)
Net change in fund balance	\$ -	\$ 19,041	0.00%	\$ (15,212)
<b>FUND BALANCE, BEGINNING (OCT 1, 2019)</b>	<b>118,449</b>	<b>118,449</b>		
<b>FUND BALANCE, ENDING</b>	<b>\$ 118,449</b>	<b>\$ 137,490</b>		

**Notes to the Financial Statements****Assets**

- ▶ District has one MMA (See Cash & Investments Report for details).

**Liabilities**

- ▶ Accounts Payable represents invoices received that were paid in following month.
- ▶ Accrued expenses represents legal services for June 2020.
- ▶ Due to Other Funds represents amount due from Assessments.

**Fund Balance**

- ▶ In the General Fund, the District has assigned Reserves for one quarter of a year of Operating Expenses.

**Statement of Revenues****Budget Analysis**

Name	Budget	Actual	Budget	Explanation
<b><u>Administrative</u></b>				
ProfServ-Trustee Fees	\$4,338	\$3,578	82%	Paid in full.
Insurance-General Liability	\$10,733	\$9,200	86%	Paid in full.
Misc-Web Hosting	\$1,600	\$5,206	325%	Website ADA Compliance services- 1 YR and ADA implementation on Website.
Contracts-Mulch	\$7,740	\$10,212	132%	Mulch invoices are higher than expected.
Contracts-Irrigation	\$1,440	\$2,832	197%	It is higher due to a FY18 invoice being paid in current year and repair of broken irrigation lines.
R&M-Plant Replacement	\$15,624	\$17,090	109%	Install new plants, East side of perimeter wall South of entrance, monument sign and entrance median.

*The notes are intended to provide additional information helpful when reviewing the financial statements.*

**GRIFFIN LAKES**

Community Development District

**Debts Service**

**June 30, 2020**

**Statement of Revenues, Expenditures and Changes in Fund Balances**

For the Period Ending June 30, 2020

ACCOUNT DESCRIPTION	ANNUAL ADOPTED BUDGET	YEAR TO DATE ACTUAL	YTD ACTUAL AS A % OF ADOPTED BUD	JUN-20 ACTUAL
<b>REVENUES</b>				
Interest - Investments	\$ 200	\$ 2,002	1001.00%	\$ 5
Special Assmnts- Tax Collector	343,466	333,836	97.20%	2,788
Special Assmnts- Discounts	(13,739)	(12,027)	87.54%	114
<b>TOTAL REVENUES</b>	<b>329,927</b>	<b>323,811</b>	<b>98.15%</b>	<b>2,907</b>
<b>EXPENDITURES</b>				
<b>Administration</b>				
Misc-Assessmnt Collection Cost	6,869	6,436	93.70%	58
<b>Total Administration</b>	<b>6,869</b>	<b>6,436</b>	<b>93.70%</b>	<b>58</b>
<b>Debt Service</b>				
Principal Debt Retirement	160,000	160,000	100.00%	-
Interest Expense	166,709	166,709	100.00%	-
<b>Total Debt Service</b>	<b>326,709</b>	<b>326,709</b>	<b>100.00%</b>	<b>-</b>
<b>TOTAL EXPENDITURES</b>	<b>333,578</b>	<b>333,145</b>	<b>99.87%</b>	<b>58</b>
Excess (deficiency) of revenues				
Over (under) expenditures	(3,651)	(9,334)	0.00%	2,849
<b>OTHER FINANCING SOURCES (USES)</b>				
Contribution to (Use of) Fund Balance	(3,651)	-	0.00%	-
<b>TOTAL FINANCING SOURCES (USES)</b>	<b>(3,651)</b>	<b>-</b>	<b>0.00%</b>	<b>-</b>
Net change in fund balance	\$ (3,651)	\$ (9,334)	0.00%	\$ 2,849
<b>FUND BALANCE, BEGINNING (OCT 1, 2019)</b>	<b>305,035</b>	<b>305,035</b>		
<b>FUND BALANCE, ENDING</b>	<b>\$ 301,384</b>	<b>\$ 295,701</b>		

**GRIFFIN LAKES**

Community Development District

**Supporting Schedules**

**June 30, 2020**



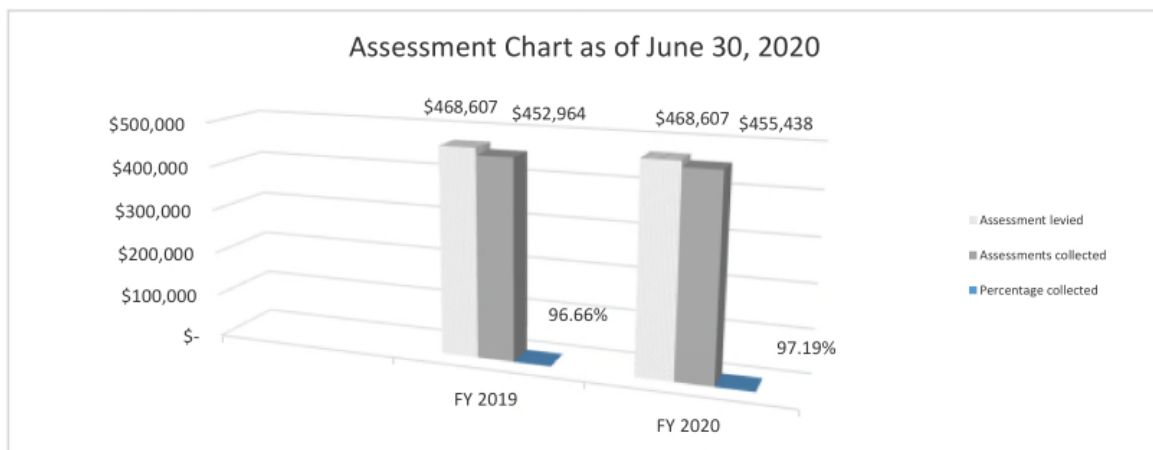
**Non-Ad Valorem Special Assessments**  
**(Broward County Tax Collector - Monthly Collection Distributions)**  
**For the Fiscal Year Ending September 30, 2020**

						ALLOCATION BY FUND	
Date Received	Net Amount Received	Discount / (Penalties) Amount	Property Appraiser Costs (1)	Tax Collector Collection Costs	Gross Amount Received	General Fund	Series 2008 Debt Service Fund
Assessments Levied					468,607	125,141	343,466
Allocation %					100%	26.70%	73.30%
11/15/19			854				
11/21/19	77,706	3,301	-	1,586	82,593	22,052	60,541
12/05/19	274,637	11,677	-	5,605	291,919	77,942	213,977
12/08/19	13,422	571	-	274	14,267	3,809	10,458
12/17/19	8,303	307	-	169	8,780	2,344	6,435
01/15/20	9,263	292	-	189	9,745	2,602	7,143
02/14/20	13,124	316	-	268	13,708	3,660	10,048
03/13/20	9,583	99	-	196	9,877	2,637	7,240
04/15/20	16,368	-	-	334	16,702	4,459	12,242
05/15/20	3,964	(40)	-	81	4,005	1,069	2,936
06/15/20	3,879	(115)	-	79	3,843	1,026	2,817
	-	-	-	-	-	-	-
<b>TOTAL</b>	<b>\$ 430,249</b>	<b>\$ 16,408</b>	<b>\$ 854</b>	<b>\$ 8,781</b>	<b>\$ 455,438</b>	<b>\$ 121,602</b>	<b>\$ 333,836</b>

% COLLECTED 97.19%      97.17%      97.20%

<b>TOTAL OUTSTANDING</b>	<b>\$ 13,170</b>	<b>\$ 3,539</b>	<b>\$ 9,630</b>
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(1) Marty Kiar, Property Appraiser, 427 parcels @ \$2/parcel



**Cash & Investment Report**  
**June 30, 2020**

<b><u>ACCOUNT NAME</u></b>	<b><u>BANK NAME</u></b>	<b><u>YIELD</u></b>	<b><u>BALANCE</u></b>
<b>OPERATING FUND</b>			
Super Checking Non-Profit Account	CenterState Bank	0.00%	\$20,372
Business Money Market Account	BankUnited	0.25%	130,927
		<b>Subtotal</b>	<b>\$151,299</b>
<b>DEBT SERVICE AND CAPITAL PROJECT FUNDS</b>			
Series 2008 Reserve Fund	U.S. Bank	0.02%	131,428
Series 2008 Revenue Fund	U.S. Bank	0.02%	161,430
		<b>Subtotal</b>	<b>292,858</b>
		<b>Total</b>	<b>\$444,157</b>

# Griffin Lakes CDD

Page Number 195

## Bank Reconciliation

Bank Account No. 6606 CenterState Bank GF  
Statement No. 06-2020  
Statement Date 6/30/2020

G/L Balance (LCY)	20,372.47	Statement Balance	23,836.07
G/L Balance	20,372.47	Outstanding Deposits	0.00
Positive Adjustments	0.00		
		Subtotal	23,836.07
Subtotal	20,372.47	Outstanding Checks	3,463.60
Negative Adjustments	0.00	Differences	0.00
Ending G/L Balance	20,372.47	Ending Balance	20,372.47
Difference	0.00		

Posting Date	Document Type	Document No.	Description	Amount	Cleared Amount	Difference
Outstanding Checks						
6/25/2020	Payment	2157	CUTTERS EDGE LAWN & MAINTENANCE	1,028.65	0.00	1,028.65
6/25/2020	Payment	2159	INFRAMARK, LLC	2,434.95	0.00	2,434.95
Total Outstanding Checks.....				3,463.60		3,463.60

**GRIFFIN LAKES COMMUNITY DEVELOPMENT DISTRICT**

Payment Register by Fund  
For the Period from 6/1/2020 to 6/30/2020  
(Sorted by Check / ACH No.)

Fund No.	Check / ACH No.	Date	Payee	Invoice No.	Payment Description	Invoice / GL Description	G/L Account #	Amount Paid
<b>GENERAL FUND - 001</b>								
001	2152	06/04/20	BILLING, COCHRAN, LYLES,	162251	Legal Services- April 2020	ProfServ-Legal Services	531023-51401	\$587.50
001	2155	06/18/20	ALM MEDIA LLC	I0000471210-0526	Notice for Meeting- 5/26/20	Legal Advertising	548002-51301	\$164.83
001	2155	06/18/20	ALM MEDIA LLC	I0000472533-0604	Meeting Notice- 6/4/20	Legal Advertising	548002-51301	\$155.99
001	2156	06/25/20	ADVANCED AQUATIC SERVICES, INC	10535664	Lake Maintenance- June 2020	R&M-Lake	546042-53901	\$95.00
001	2156	06/25/20	ADVANCED AQUATIC SERVICES, INC	10535664	Lake Maintenance- June 2020	Contracts-Lake and Wetland	534021-53901	\$295.00
001	2157	06/25/20	CUTTERS EDGE LAWN & MAINTENANCE	39979	Landscaping/Pest Control- June 2020	Contracts-Landscape	534050-53901	\$528.65
001	2157	06/25/20	CUTTERS EDGE LAWN & MAINTENANCE	39979	Landscaping/Pest Control- June 2020	Contracts-Pest Control	534125-53901	\$500.00
001	2159	06/25/20	INFRAMARK, LLC	52296	Management Services- June 2020	ProfServ-Mgmt Consulting Serv	531027-51201	\$1,458.00
001	2159	06/25/20	INFRAMARK, LLC	52296	Management Services- June 2020	Postage and Freight	541006-51301	\$4.00
001	2159	06/25/20	INFRAMARK, LLC	52296	Management Services- June 2020	Printing and Binding	547001-51301	\$9.00
001	2159	06/25/20	INFRAMARK, LLC	52296	Management Services- June 2020	Misc-Web Hosting	549915-51301	\$137.33
001	2159	06/25/20	INFRAMARK, LLC	52296	Management Services- June 2020	email storage renewal	549915-51301	\$826.62
001	DD00208	06/08/20	TERESA B. WEST	PAYROLL	June 08, 2020 Payroll Posting			\$184.70
001	DD00209	06/08/20	BENNY BARAK	PAYROLL	June 08, 2020 Payroll Posting			\$184.70
001	DD00210	06/08/20	LINDA M. ARMSTRONG	PAYROLL	June 08, 2020 Payroll Posting			\$184.70
001	DD00211	06/08/20	PETER A. MAROCCO	PAYROLL	June 08, 2020 Payroll Posting			\$184.70
001	2153	06/08/20	MADELINE T. DICOMO	PAYROLL	June 08, 2020 Payroll Posting			\$184.70
001	2154	06/15/20	MADELINE T. DICOMO	PAYROLL	June 15, 2020 Payroll Posting			\$184.70
001	DD00212	06/15/20	TERESA B. WEST	PAYROLL	June 15, 2020 Payroll Posting			\$184.70
001	DD00213	06/15/20	BENNY BARAK	PAYROLL	June 15, 2020 Payroll Posting			\$184.70
001	DD00214	06/15/20	LINDA M. ARMSTRONG	PAYROLL	June 15, 2020 Payroll Posting			\$184.70
001	DD00215	06/15/20	PETER A. MAROCCO	PAYROLL	June 15, 2020 Payroll Posting			\$184.70
<b>Fund Total</b>								<b>\$6,608.92</b>
<b>SERIES 2008 DEBT SERVICE FUND - 202</b>								
202	2158	06/25/20	GRIFFIN LAKES-C/O U.S BANK N.A.	06.09.2020	DS Assessment Trsfr-Series 2008	Due From Other Funds	131000	\$21,927.27
<b>Fund Total</b>								<b>\$21,927.27</b>
<b>Total Checks Paid</b>								<b>\$28,536.19</b>

# **Ninth Order of Business**

**MINUTES OF MEETING  
GRIFFIN LAKES  
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Griffin Lakes Community Development District was held Thursday, July 9, 2020 at 12:33 p.m. via Call-In Number 800-747-5150, Access Code 4129245#. Present and constituting a quorum were:

Benny Barak	Chairperson
Peter Marocco	Vice Chairperson
Linda Armstrong	Assistant Secretary
Madeline DiComo	Assistant Secretary
Teresa West	Assistant Secretary

Also present were:

Ken Cassel	District Manager
Vanessa Steinerts	District Counsel
Harry Goldberg	HOA Manager
Seta Zare	MBS Capital Markets

*The following is a summary of the discussions and actions taken at the July 9, 2020 Griffin Lakes Community Development District's Board of Supervisors Meeting.*

**FIRST ORDER OF BUSINESS**

**Call to Order and Roll Call**

- Mr. Cassel called the meeting to order and called the roll.

**SECOND ORDER OF BUSINESS**

**Public Comment**

- There not being any, the next item followed.

**THIRD ORDER OF BUSINESS**

**District Manager's Report**

**A. MBS Capital Markets Presentation on Refinancing**

- Mr. Cassel noted the Board should have received documents from Ms. Zare at MBS Capital Markets as well as a copy of a potential agreement letter with BB&T which is now Truist Bank.
- Ms. Zare noted they submitted an RFP to multiple banks. One from SunTrust which is the current partial holder of your bond.

*Let the record reflect Mr. Marocco has joined the meeting.*

- She gave background information noting the estimated average interest rate of 2.54%.
- The maturity date on the refunding bonds is May 1, 2033 which is consistent with the maturity date on the Series 2008.

- In answer to Ms. DiComo's question, it was noted that is the current structure of your current bonds. There are two payments made to US Bank every year. May is interest and principal and November is interest payment.
- Ms. Zare explained what the fees involved means, underwriters fee, District legal, methodology costs, cost for bond counselor and management fees.
- The Board members had several questions for Ms. Zare, for example, the lender fees.
- Ms. Zare noted when looking at refinancing, her main objective is never increasing the total debt for the District. She looks for annual debt reduction.

On MOTION by Ms. Armstrong seconded by Ms. West with all in favor to move forward with Sun Trust now called Truist Bank proposal with the clarification on the \$10,000 subject to Management, District Counsel and Bond Counsel review, and the Chairman can execute once approved the final document was approved.

- Ms. Zare asked for approval to engage Bond Counselor, Denise Ganz of Greenspoon Marder, in order to start the process.
- Ms. Steinerts noted she reviewed the engagement letter from Bond Counselor, Denise Ganz, with the law firm of Greenspoon Marder. She was the bond counselor on the District's prior bond issuance and refunding. It is important to formally engage her.

On MOTION by Ms. Armstrong seconded by Mr. Marocco with all in favor to engaging Bond Counselor, Denise Ganz, of Greenspoon Marder, and authorize the Manager to execute the Engagement Letter.

- Ms. Zare asked for an additional motion to be approved.

On MOTION by Ms. Armstrong seconded by Mr. Barak with all in favor the execution of the direction to mail conditional notice of optional reduction and to redeem, was approved.

- Ms. Zare noted all parties will begin document preparation, will bring those documents to the Board at the next meeting on August 13<sup>th</sup>, the Board will approve, and we will then close.

**B. Acceptance of Audit for Fiscal Year 2019**

- Mr. Cassel noted it was a clean audit.

On MOTION by Ms. Armstrong seconded by Ms. West with all in favor the Audit for Fiscal Year 2019 was accepted.

**FOURTH ORDER OF BUSINESS**

**Attorney's Report**

- There being no report, the next item followed.

**FIFTH ORDER OF BUSINESS**

**Supervisors' Requests**

- There not being any, the next item followed.

**SIXTH ORDER OF BUSINESS**

**Approval of Financial Report and Check Register**

- Ms. West asked about the number of meetings for the Board.
- Mr. Cassel noted we advertise for 12 meetings per year. We usually meet six to eight times, depending on whether there are issues to deal with.

On MOTION by Ms. West seconded by Mr. Marocco with all in favor the financial statements were accepted, and the check register was approved.

**SEVENTH ORDER OF BUSINESS**

**Approval of the Minutes of June 4, 2020 Special Meeting**

- There being no comments or questions,

On MOTION by Ms. West seconded by Mr. Barak with all in favor the minutes of the June 4, 2020 special meeting were approved.

**EIGHTH ORDER OF BUSINESS**

**Approval of the Minutes of the June 11, 2020 Regular Meeting**

- There being no comments or questions,

On MOTION by Ms. Armstrong seconded by Ms. West with all in favor the minutes of the June 11, 2020 regular meeting were approved.

**FIFTH ORDER OF BUSINESS (Continued)**

**Supervisors' Requests**

- Ms. Armstrong asked whether the Cutters Edge bids that came in today were addressed?
- Mr. Cassel noted he is not ready to discuss that with Michael yet. He asked Michael to give him some numbers on potentially replacing some sod and some hedges. He received it today and does not want to respond today. You can motion to authorize the manager to spend up to \$1,892 for reworking the front area providing all of it is necessary.



- Mr. Cassel noted we need to find out who did the damage and have them reimburse us. There were three different operations working there who did not fix it correctly. It could have been AT&T, Comcast or some other company.
- They have utility easements and have the right to be there. They did not have to have written permission. It is part of the platting process. It is up to whoever's property it is to try to stay on top of them to make sure when they are out there to get a number, name, a photo. They show up on a weekend and start plowing stuff and then they are gone before you realize they are out there.
- Discussion ensued on the damage and who is responsible.

On MOTION by Ms. Armstrong seconded by Mr. Barak with all in favor spending up to \$1,892.50 to cover the cost of the damage at Cutters Edge to replace sod and hedges with the hope the District will be reimbursed, was approved.

- Ms. Armstrong wanted to go out for bid to replace Cutters Edge.
- The Board discussed issues with Cutters Edge.
- Ms. Armstrong asked Mr. Cassel for the next meeting can we start looking at next year's budget where we can trim some items?

**NINTH ORDER OF BUSINESS**

**Adjournment**

- There being no further business,

On MOTION by Mr. Barak seconded by Ms. West with all in favor the meeting was adjourned.

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Secretary/Assistant Secretary

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Benny Barak, Chairperson