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governing documents, the Corporation's purpose is limited to holding property for the benefit of the City and facilitating financing of such property for the City.

As part of its governmental function, the Corporation will use the net proceeds of bonds issued by Issuer to finance and oversee the design, construction, equipping and commencement of operations of the Hotel, and to establish necessary reserves. The Corporation will also fulfill its purpose for the City by entering into several agreements for the design, construction and management of the Hotel. The Corporation will enter into a development agreement for the construction and operation of the Hotel with the Hotel Developer. The Corporation will also enter into a construction contract with the Hotel Developer and Design Builder, and an operating agreement with the Hotel Operator. The Hotel will benefit the City as a lodging, meeting and banquet facility.

The Corporation is governed by a board of directors (the "Board") appointed by the City, the sole member of the Corporation. The Board initially will consist of five directors, all of whom are members of City Council. The City has retained the right to appoint additional directors to the Board who are not members of City Council. The City, at its discretion, may increase or decrease the number of directors between three and seven. Directors serve staggered terms. Initially, two directors will serve a one-year term, two directors will serve two-year terms and one director will serve a three-year term. Directors appointed after the initial director's terms have expired will serve three-year terms. The City has the right to remove any or all of the directors at any time, with or without cause. The City also has the right to appoint a replacement director for the remainder of the removed director's term. Directors receive no compensation for serving on the Board.

The Board will cause an annual audit of the Corporation's books and records to be conducted within 180 days of the close of the fiscal year. A report of the audit must be issued to the City. The Corporation's governing documents state that any net income of the Hotel, after subtracting the operating expenses, reasonable reserves, and other obligations of the Corporation, inures to the City. In the event of revenue shortfalls, the Corporation has no power to obligate the City and is financially dependent on the City to provide it with additional funds.

Although the Corporation's governing documents do not grant express rights of dissolution, Issuer represents that both Board and member approval is required for the dissolution of the Corporation. Since the City is the sole member of the Corporation, the Board cannot dissolve the Corporation without the City's approval. Upon dissolution, the Corporation's assets are to be distributed to the City to be used for public purposes.

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Law and Analysis:

Interest from state or local bonds generally is excluded from gross income under § 103(a) of the Code. Section 103(b)(1) provides, in part, that § 103(a) shall not apply to any private activity bond which 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 which meets the (1) private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2), or (2) the private loan financing test of § 141(c).

Section 141(b)(1) provides that, except as otherwise provided, 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)(A) defines “private business use” as use (directly or indirectly) in a trade or business carried on by a person other than a governmental unit. Section 1.141-3(a) of the Income Tax Regulations provides that the 10 percent private business use test is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person.

Section 141(b)(2) provides that, except as otherwise provided, an issue meets the private security or payment test if the payment of principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly (A) secured by any interest in (i) property used or to be used for a private business use, or (ii) payments in respect of such property or (B) to be derived from payments (whether or not the issuer) in respect of property, or borrower money, used or to be used for a private business use.

Section 1.141-1(b) defines a nongovernmental person as a person other than a governmental person. Section 1.141-1(b) defines governmental person as a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof.

Section 1.103-1 defines “governmental unit” to mean a state, territory, a possession of the United States, or any political subdivision thereof. For purposes of this section, the term “political subdivision” denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

Revenue Ruling 57-128, 1957-1 C.B. 311, sets forth the following factors to be taken into account in determining whether an entity is an instrumentality of one or more governmental units: (1) whether the organization is used for a governmental purpose and performs a governmental function; (2) whether performance of its function is on behalf of one or more states or political subdivisions; (3) whether there are any private

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interests involved, or whether the states or political subdivisions have the power and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) whether express or implied statutory or other authority is necessary for the creation and/or use of the organization, and whether this authority exists; and (6) the degree of financial autonomy of the entity and the source of its operating expenses.

The Corporation is used for a governmental purpose and performs a governmental function, and performs its function on behalf of a state or political subdivision. The City is a municipal corporation. It established the Corporation in order to assist the City with activities related to the design, construction, equipping, management, operation and other functions pertaining to the Hotel. The Hotel will provide lodging, meeting and banquet facilities for attendees of the Convention Center and for other visitors to the City. The Corporation's governing documents state that the Corporation's purpose is limited to holding property for the benefit of the City and facilitating the financing of such property for the City.

There are no private interests in the Corporation and the City has the power and interests of an owner. The Corporation's governing documents state that any net income of the hotel, after subtracting the operating expenses, reasonable reserves, and other obligations of the Corporation, inures to the City. Upon dissolution, the Corporation's assets are distributed to the City.

Control and supervision of the Corporation rests with the City. Initially, all directors will be members of City Council. The City can remove the Corporation's directors, with or without cause and can select replacements.

Statutory authority for the creation and use of the Corporation is found in the nonprofit corporation law of State.

The City, through the Board, controls the financial affairs of the Corporation. The Board is required to complete an audit of the Corporation's books and records within 180 days of the close of its fiscal year and must provide a report to the City. In the event of revenue shortfalls, the Corporation has no power to obligate the City, and is financially dependent on the City to provide it with additional funds.

Conclusion:

We conclude that the Corporation meets the criteria of Revenue Ruling 57-128 and therefore will be treated as an instrumentality of the City for the purposes of § 141 of the Code.

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Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

By: Timothy L. Jones
Senior Counsel
Tax Exempt Bond Branch

cc: