

**THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE
COUNTY OF MARICOPA**

Procedural Pamphlet dated March 10, 1998

(This edition supersedes all prior
drafts and is referred to as
Procedural Pamphlet No. 1, Change XIX.)

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(This edition supersedes all prior drafts and is referred to as Procedural Pamphlet No. 1, Change XIX.)¹

ARTICLE I

INTRODUCTION AND LEGISLATIVE INTENT

The Industrial Development Authority of the County of Maricopa (the “Authority”) is a nonprofit corporation designated a political subdivision of the State of Arizona (the “State”). The Authority’s governing body is the Maricopa County Board of Supervisors (the “County Supervisors”) which approved the formation of the Authority to fulfill the following legislative intent:

It is the intent of the legislature...to authorize the incorporation of [industrial development authorities] to acquire, own, construct, lease and dispose of properties and to the end that such [industrial development authorities] may be able to promote industry and develop trade by inducing manufacturing, industrial and commercial enterprises to locate in this state, and to further the use of this state’s agricultural products and natural resources; and to vest such [industrial development authorities] with all powers that may be necessary to enable them to accomplish such purposes; and to further assure adequate job opportunities and an improved standard of living for the growing population of this state and for the increase of prosperity; and it is declared that such actions, efforts, and [industrial development authorities] be for a public purpose and are an essential governmental function....

Laws 1968, Chapter 201, Section 1.

The Authority issues its Bonds, which are sold either pursuant to a public offering or a private placement, the proceeds of which are usually lent to qualified businesses to finance a Project located within the County. The Authority does not provide its own money to Applicants. The Authority, instead, is a conduit that provides a formal mechanism through which an Applicant can seek financing from private sources through either a private placement or public offering of the Bonds. This Procedural Pamphlet establishes the guidelines which are to be followed by Applicants in applying to the Authority for the issuance of Bonds.

Prospective Applicants should note the sole source of monies for the repayment of principal and interest on the Bonds will be revenues generated by or for the benefit of the Project being financed. The Bonds will *not* become a general obligation or liability of the Authority, the County,

¹ Please refer to the pamphlet and change numbers when submitting an Application, *e.g.*, Procedural Pamphlet No. 1, Change XIX. Submission of an Application will be deemed to be acceptance of the terms and conditions set forth herein.

or the State, *nor* will the Bonds result in a charge against the general credit or taxing power of the Authority, the County, or the State. The Authority has *no* taxing power.

ARTICLE II

POLICY STATEMENT

The Authority's Directors have agreed to serve because it is their belief that their service can aid the general welfare and economic growth of the County. The Authority's Directors believe that, through the issuance of the Bonds, Projects can be financed for Applicants at the lowest possible borrowing costs.

The Authority's Directors are mindful, however, that civil and criminal liabilities may accrue to them if fraudulent statements or material omissions are contained in any Official Statement or proceeding relative to the issuance and distribution of the Bonds. The Authority's Directors take every possible precaution to protect themselves against such liability. Therefore, the Applicant, its legal counsel, Placement Agents or Underwriters and their legal counsel, Accountants and Bond Counsel are advised of the following general rule:

The Authority and its Directors will not take risks, adopt proceedings or approve an Official Statement or Placement Memoranda unless experts, who are in a position to determine the facts, will certify that the information, forecasts, estimates, assumptions, and expressions of opinion included in the Official Statement or Placement Memoranda do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Experts in this instance means: 1) Accountants, 2) Bond Counsel, 3) Applicant's Counsel, 4) Placement Agents or Underwriters and their Counsel, and 5) municipal securities dealers.

The Authority will expect that any municipal securities broker or municipal securities dealer engaged by the Applicant, or the Authority, or otherwise participating in the issuance and distribution of securities involved in financing a Project will have complied, and will continue to comply, with all applicable state and federal securities laws², and the Authority may require such parties to establish and certify to their compliance with such laws.

In analyzing the proposed issuance of the Bonds, the Authority is primarily concerned about the proposed Project's ability to generate sufficient cash flow to meet its operating and capital expenses and its ability to service the debt associated with the Bonds. The Authority prefers to see a Debt Service Coverage Ratio of at least 1.2 to 1. As examples, the Authority has been willing to entertain Applications which involve, historically, the following:

² If applicable, registration under Section 15(b) of the Securities Exchange Act of 1934, as amended, and with the Arizona Corporation Commission under Title 44, Chapter 12, Arizona Revised Statutes and Arizona Corporation Commission Rule 14-4-104 and similar laws of any other applicable jurisdiction.

(i) A public offering of Bonds with a rating of “A” or higher from a Rating Agency; or

(ii) A private placement of Bonds, provided that the Bonds are sold in \$100,000 denominations to a “qualified institutional buyer” within the meaning of Rule 144(A) of the 1933 Act or an “accredited investor” as defined in Rule 501 of Regulation D (the rules governing the limited offering and sale of securities without registration under the 1933 Act) and that each investor executes an investor letter acknowledging the restriction on the bondholder’s ability to subsequently transfer the Bonds.

Historically, the County Supervisors have required the Applicants for all Projects, other than refinancings or financings for the benefit of nonprofit organizations established under Code Section 501(c)(3), provide equity in an amount not less than 10% of the total costs for the acquisition, constructing, improving, and equipping of the proposed Project. Under certain circumstances, the Authority or the County Supervisors will require an Applicant to contribute additional equity toward the financing of the proposed Project.

ARTICLE III

DEFINITIONS

As used herein:

“*Accountant*” means an independent certified public accountant as the term is defined in the 1933 Act.

“*Act*” means the Industrial Development Financing Act, Arizona Revised Statutes Sections 35-701, *et seq.*, as amended.

“*Affiliate*” means any Person sharing common ownership, management, or control.

“*Applicant*” or “*Borrower*” means the Person seeking to have Bonds issued on its behalf to purchase, construct, improve, rehabilitate, or equip one or more Projects, or to refund Prior Bonds, the proceeds of which were loaned to acquire, construct, improve, rehabilitate, or equip 1 or more Projects, and its successors and assigns.

“*Application*” means a filing with the Authority of information upon which the Authority may base its decision to consider preliminary approval to the issuance of the proposed Bonds, substantially in the form approved by the Authority.

“*Arizona Blue Sky Law*” means Arizona Revised Statutes Sections 44-1871, *et seq.*, as amended.

“*Authority*” means The Industrial Development Authority of the County of Maricopa.

“*Authority’s Counsel*” means the legal counsel representing the Authority and its Directors.

“*Authority’s Directors*” or “*Directors*” means the members of the Board of Directors of the Authority.

“*Bond*” or “*Bonds*” shall mean any or all of the Bonds authorized to be issued by the Authority.

“*Bond Counsel*” means an attorney at law or a firm of attorneys acceptable to the Authority, the Applicant, and the Trustee, with a proven reputation in the field of municipal finance retained by the Authority, the Applicant, or the Placement Agent or Underwriter to render an unqualified opinion on the legality of the Bonds and such other matters as are herein set forth and also to draft or be responsible for the drafting of the Legal Proceedings leading to the issuance of the Bonds.

“*Bond Placement Agreement*” or “*Bond Purchase Agreement*” shall mean the Bond Placement Agreement or Bond Purchase Agreement with respect to the Bonds among the Authority, the Applicant, and the Placement Agent or the Underwriter.

“*Business Day*” means the period of time between the hours of 8:00 a.m. and 5:00 p.m., Mountain Standard Time (Phoenix Time), any day of the week other than a Saturday, Sunday, or a legal holiday in the State.

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

“*Concern*” or “*Person*” means any natural person, group of natural persons, general or limited partnership, registered limited liability partnership, limited liability company, association, corporation, syndicate, joint venture, joint stock company, trust, unincorporated association, governmental body, or any agency or political subdivision thereof or any other form of legal entity.

“*County*” means Maricopa County, Arizona.

“*County Supervisors*” means the Maricopa County Board of Supervisors.

“*Debt Service Coverage Ratio*” means net operating income divided by debt service.

“*Designated Area*” means any area of the State which is either designated pursuant to Section 36-1479, Arizona Revised Statutes, as a “slum or blighted area,” as defined in Section 36-1471, Arizona Revised Statutes, or designated by regulation as a “pocket of poverty” or a “neighborhood strategy area” by the United States Department of Housing and Urban Development pursuant to Title I of the Housing and Community Development Act of 1977 (42 U.S.C. Sections 5301-5320), as amended, and the Department of Housing and Urban Development Act (42 U.S.C. Section 3535(d)).

“*Document Standards*” means the Authority’s document standards setting forth certain standards established by the Authority for use by its counsel in reviewing legal documents submitted for approval by the Authority.

“*Environmental Law*” means any federal, state or local law, regulation, or requirement now or hereafter in effect relating to human health or safety or the protection of the environment.

“*Financial Consultant*” means a Concern retained to draft and circulate a Notice of Public Sale and an Official Statement in order to generate interest in the Bonds which are to be sold by competitive bidding as opposed to private negotiation.

“*Guarantor*” or “*Third Party Guarantor*” or means any Concerns other than the Applicant (including a parent, affiliate, or subsidiary of the Applicant) who guarantees or provides either the revenue for the payment of the Bonds or the underlying security for the payment of the Bonds.

“*Guaranty*” means either guaranty of payment or guaranty of collection.

“*Indemnified Party*” or “*Indemnified Parties*” means the Authority, its past, present, and future directors, officers, counsel, advisors and agents, and the County, its past, present, and future Board of Supervisors, employees and agents, individually and collectively.

“*Indenture*” means the Indenture of Trust between the Authority and the Trustee which is executed in connection with the issuance of the Bonds.

“*Legal Proceedings*” includes, among other things, the following documents relating to the issuance of the Bonds:

1. Any lease, loan agreement, purchase contract, note, mortgage, deed of trust or other security which is to be executed by the Applicant;
2. The resolution(s) of the Authority authorizing the issuance of the Bonds;
3. Any trust indenture or similar trust instrument;
4. All draft preliminary Official Statements and final Official Statements;
5. A notice of sale if the Bonds are to be sold through competitive public bidding;
6. The Bond Purchase Agreement, or Bond Placement Agreement, together with any related letters required by the Placement Agent, the Underwriter, Bond Counsel, or the Bond Purchaser;
7. Any Guaranty;
8. The form of Bond Counsel’s opinion;
9. The form of the Accountant’s consent and agreed upon procedures letters;
10. Non-litigation Certificate;
11. Arbitrage Certificate;
12. Trustee’s Receipt;

13. The Minutes of all meetings of the Authority where official action was to be taken in connection with the Project;

14. Such other proceedings as the Placement Agent, the Underwriter, Bond Counsel or the Authority shall require;

15. Drafts of any instruments which the Authority must adopt or approve, or any Director must sign or any questionnaire which must be completed relative to contemplated submissions to any federal or state regulatory body or to any rating agency;

16. A copy of the indemnity agreement or agreements, if any;

17. Resolutions and certificates of the Applicant deemed necessary by Bond Counsel to complete the financing; and

18. Affidavits of Publication of Notices of Public Hearings, if any.

“*Loan Agreement*” shall mean the Loan Agreement between the Authority and the Applicant and assigned by the Authority to the Trustee, as originally executed or as it may from time to time be supplemented or amended in accordance with its terms.

“*Net Proceeds*” means the amount of the proceeds from the sale of the Bonds (including premium, if any) which are intended to be used in the acquisition, purchase, construction, improvement, equipping or refinancing of the Project, but does not include bond discounts, accrued interest, costs of issuance, capitalized interest or reserve funds, or amounts used to pay Trustee’s or paying agent’s fees.

“*1933 Act*” means the Securities Act of 1933, as amended.

“*1934 Act*” means the Securities Exchange Act of 1934, as amended, and regulations of the Securities Exchange Commission pertaining to the marketing or transfer of municipal securities and the rules of the Municipal Securities Rulemaking Board.

“*1939 Act*” means the Trust Indenture Act of 1939, as amended.

“*Official Statement*” means a prospectus or offering statement concerning the Bonds, and where a sale by competitive public bidding is concerned, it also includes a notice of the sale of the Bonds.

“*Placement Agent*” means any Person who assists in the issuance and sale of the Bonds or facilitates the issuance and sale of the Bonds.

“*Private Placement Memorandum*” means a prospectus or offering document concerning the Bonds utilized in connection with a private placement sale of the Bonds.

“*Procedural Pamphlet*” means the Authority’s Procedural Pamphlet No. 1, Change XIX, dated March 10, 1998.

“*Project*” has the definitions specified in Section 35-701, Arizona Revised Statutes, as amended, which currently reads, in part, as follows:

“*Project*” means any land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment whether or not now in existence or under construction, whether located within or without the municipality or county approving the formation of the corporation, which are suitable for any of the following:

(a) With respect to a corporation formed with the permission of a municipality or county other than the Arizona Board of Regents:

i. Any enterprise for the manufacturing, processing or assembling of any agricultural or manufactured products.

ii. Any commercial enterprise for the storing, warehousing, distributing or selling of products of agriculture, mining or industry, or of the processes related thereto, and including research and development therefor.

iii. Office building or buildings for use as corporate or company headquarters or regional offices or the adaptive use for offices of any building within this state that is on the national register of historic places or rehabilitation of residential buildings located in registered historic neighborhoods.

iv. A health care institution as defined in Arizona Revised Statutes Section 36-401.

v. Residential real property for dwelling units located within the municipality or county approving the formation of the corporation and, in the case of a county, whether or not also within a municipality which is within the County.

vi. Repairing or rehabilitating single family dwelling units or constructing or repairing residential fences and walls.

vii. Convention or trade show facilities.

viii. Airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the facilities as provided in this item.

ix. Sewage or solid waste disposal facilities or facilities for the furnishing of electric energy, gas or water.

x. Industrial park facilities.

xi. Air or water pollution control facilities.

xii. Any educational institution operated by a nonprofit organization not otherwise funded by State monies which is accredited by a nationally recognized educational accrediting association.

xiii. Research and development facilities.

xiv. Commercial enterprises, including facilities for office, recreational, hotel, motel and service uses if the facilities authorized by this item are to be located in a designated area.

xv. A child welfare agency, as defined in Arizona Revised Statutes Section 8-501, owned and operated by a nonprofit organization.

xvi. A transportation facility constructed or operated pursuant to Arizona Revised Statutes Title 28, Chapter 26, Article 1 or 2.

xvii. A museum operated by a nonprofit organization.

“*Property*” has the definition specified in Section 35-701, Arizona Revised Statutes, as amended, which currently reads as follows:

“*Property*” means any land, improvements thereon, buildings, and any improvements thereto, machinery and equipment of any and all kinds necessary to a Project and any other personal properties deemed necessary in connection with a Project.

“*Rating Agency*” means Moody’s Investors Service, Inc., Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., Fitch Investors Service, Inc., Duff & Phelps, and their respective successors and assigns. Other rating agencies which are well regarded by the securities industry will also be considered.

“*Regulatory Agreement*” shall mean the Regulatory Agreement, Land Use Restriction Agreement, and/or Declaration of Restrictive Covenants among the Authority, the Trustee, and the Applicant.

“*Review Advisors*” means the Person retained by the Authority to consider public purpose attainment by reviewing information provided by Applicant related to the Applicant itself, the Project, the Guarantor, and any related parties.

“*Section 103*” means Code Section 103, as amended.

“*State*” means the State of Arizona.

“*Trustee*” shall mean the Person serving as trustee under the Indenture.

“*Trustee’s Counsel*” means the legal counsel representing the Trustee, if any.

“*Underwriter*” means any Person who has purchased from the Authority with a view to, or sells for the Authority in connection with, the distribution of the Bonds, or participates or has a participation in the direct or indirect underwriting of such a distribution.

“*Underwriter’s Counsel*” means the legal counsel representing the Underwriter.

“*User*” means the Concern for whose benefit the Bonds were issued to assist in the financing or refinancing of all or a portion of the expense of one or more Projects.

ARTICLE IV

APPLICATION PROCEDURE

Section 4.01. Generally. The Authority requires all Applicants to make a full and complete Application in accordance with the requirements of this Procedural Pamphlet prior to the Authority considering whether to grant preliminary approval to proceed with the financing arrangements for a Project. Applications must be delivered to:

The Industrial Development Authority
of the County of Maricopa
% Maricopa County
County Administration Office
ATTN: President
301 West Jefferson, 10th Floor
Phoenix, Arizona 85003

Applications may be submitted in either of the following manners:

1. No fewer than 14 Business Days prior to the Authority’s meeting at which consideration of the Application is requested, one original and 11 copies of an Application along with a \$3,000 Application Filing Fee must be actually received by the Authority at the above address; or
2. No fewer than 14 Business Days prior to the Authority’s meeting at which consideration of the Application is requested, one original of an Application along with a \$3,000 Application Filing Fee and a \$300 Application Reproduction and Distribution Fee must be actually received by the Authority at the above address.

By submitting the Application to the Authority, the Applicant will be deemed to know, understand, and accept the Authority’s procedures as outlined in this Procedural Pamphlet.

Section 4.02. Public Documents. The Authority is a nonprofit corporation designated a political subdivision of the State. The Authority's meetings are generally required to be open to the public.³

The instruments, documents, files, and records of the Applicant (and any Guarantor) filed with the Authority, directly or through its Counsel, will be available for inspection by the public.⁴ Thus, the Applicant, by filing the Application, agrees that any information delivered to the Authority by or on behalf of the Applicant is not privileged and may be disclosed to the public. By submitting the Application to the Authority, the Applicant is expected to have disclosed any and all matters material to the proposed financing as of the date of the Application.

If an Applicant is concerned about divulging proprietary information or trade secrets, the Applicant should discuss the matter with the Authority's Counsel or Review Advisors.

Section 4.03. Authority Review. The Authority will refer the Application to its Counsel, Review Advisors and such others as it deems necessary for their review. At least one week prior to the Authority's meeting at which its Application is to be considered, the Applicant should contact the Authority's Counsel and Review Advisors regarding the sufficiency of the information furnished. The Authority's Counsel and Review Advisors will report on their respective reviews of the Application at the Authority's meeting, prior to the Applicant's oral presentation requesting preliminary approval.

Section 4.04. Applicant Presentation. A representative of the Applicant is expected to be present and to make an oral presentation to the Authority at any meeting at which its Application, an amendment to its Application, a request for the extension of preliminary approval previously given to its Application, or any other matter involving its Application is to be considered. The oral presentation may cover any aspects of the Project or its financing, but an oral presentation may not be made in lieu of the written Application herein required. The Applicant must have representatives able to respond to questions concerning the Project and its financing present at all meetings at which the Application is considered by the Authority. Such representatives must be prepared to answer any and all questions propounded by the Authority, its Counsel or Review Advisors concerning matters relating to the Project, to the issuance of the Bonds, the information contained in the financial statements, or any other matters deemed pertinent. If the answers appear inadequate, the Authority may table the resolution authorizing the issuance of the Bonds until the Authority is satisfied with the answers notwithstanding that any agreements or approvals or understandings that may have been indicated to the Applicant, the Placement Agent, or the Underwriter that the resolution would be adopted on or before any certain date.

If there is a Guarantor, such Guarantor may likewise present an authorized representative of the Guarantor for similar interrogation at the same meeting. The Authority, at its discretion, may record questions propounded and the answers thereto.

³ The Act requires the Authority's meetings be governed by the State's Open Meeting Laws, Arizona Revised Statutes Sections 38-431, *et seq.*

⁴ Public Records, Printing, and Notices, Arizona Revised Statutes Sections 39-101, *et seq.*

Section 4.05. Authority Fees and Expenses. The complete fee for filing the Application is \$3,000, which must be paid at the time the Application is filed.

If the Applicant elects to provide the Authority only one original of its Application, then the Applicant does so with the understanding that for a \$300 fee the Authority will take responsibility for making the requisite copies of the Application for Distribution to its Board of Directors, Counsel and Review Advisors.

In addition to the Application fee (\$3,000), the Applicant must agree to pay all costs and expenses incurred by the Authority, its Directors, officers, Counsel, Review Advisors, and agents related to the Bonds or the Project, including, but not limited to, the fees and expenses of the Authority's Counsel and Review Advisors whether incurred before or after the sale of the proposed Bonds. The Authority's Counsel and Review Advisors may require that an Applicant or Guarantor enter into a separate written fee agreement on terms and conditions acceptable to the Authority and its Counsel or Review Advisors.

If the Applicant requests an extension of preliminary approval, an additional nonrefundable fee of \$500 may become payable, at the discretion of the Authority, by the Applicant to the Authority at the time the extension is granted.

Additionally, as a condition to the issuance of the Bonds, the Applicant must agree to pay an annual assessment fee on the outstanding principal amount of the Bonds in accordance with the Authority's current Fee Schedule.

ARTICLE V

PRELIMINARY APPROVAL; LEGAL PROCEEDINGS

Section 5.01. Generally. The Authority shall make a ruling preliminarily approving or rejecting each Application.

Section 5.02. Validity of Preliminary Approval; Extensions of Time. If the Authority grants preliminary approval for the financing of the Project, the Applicant will be so notified in writing. The Authority's preliminary approval will expire 180 days after the date of the written notice to the Applicant unless within that time the Applicant has obtained final approval from the Authority or has obtained an extension of time from the Authority. Historically, the Authority has been willing to entertain at the time preliminary approval is considered extensions of the 180-day validity period as a result of the Applicant's concern about the ability to obtain private activity bonding authority. Subsequently, an extension of time may be obtained by submitting an affidavit to the Authority, in a form acceptable to the Authority, requesting an extension of time and demonstrating good cause why such an extension should be granted. In its discretion, the Authority may require that an Applicant pay to the Authority an additional nonrefundable fee of \$500 at the time an extension of preliminary approval is granted.

Section 5.03. Documentation of Legal Proceedings. All instruments, resolutions, contracts, or other Legal Proceedings, except the Official Statement, shall be on 8-1/2" x 11" paper. The Official Statement may be any size desired. The name of the person or firm actually preparing and assuming responsibility for each document and his/her firm name must appear at least 1 place

on each document, or shall designate the portion of such document, such person or firm was responsible for drafting or preparing. The proposed form of the Legal Proceedings will be referred to the Authority's Counsel and Review Advisors for review and comment. The Authority's Counsel and Review Advisors will work with the Applicant, the Applicant's Counsel, the Applicant's Accountants, the Placement Agent, the Placement Agent's Counsel, the Underwriter, the Underwriter's Counsel, the bond purchaser, the bond purchaser's counsel, the Guarantor, the Guarantor's Counsel, the Trustee, the Trustee's Counsel, and the Bond Counsel in the documentation of the Legal Proceedings.

The Applicant or the Applicant's Accountant shall report to the Authority any changes deemed appropriate prior to the date set for adoption of the Legal Proceedings. Thereafter, complete copies of the Legal Proceedings must be submitted to the Authority, its Counsel, Review Advisors, and the Clerk of the County Supervisors prior to the date set for final approval.

ARTICLE VI

OTHER APPROVALS

Section 6.01. Arizona Attorney General. The Authority is required to deliver a description of each Project to be financed by the Net Proceeds of the Bonds to the State's Attorney General, who is given 10 days to determine whether the Project comes within the purview of the Act. If 10 days pass without objection by the Attorney General, the Bonds may be issued. The Attorney General's policy is to make no comment (except to acknowledge receipt of the transmittal) unless he objects.

Section 6.02. Allocation of Private Activity Bonding Authority. The Applicant or Bond Counsel shall be responsible for preparing and filing with the Arizona Department of Commerce all applicable requests for allocations, requests for extensions, notices of intent, and certificates of closing required by any federal or state statutes or executive order of the Governor of Arizona.

Section 6.03. Conflict of Interest Law. The Authority, its Directors, the County, and the County Supervisors are governed by the State's conflict of interest law, Arizona Revised Statutes Sections 38-501, *et seq.* The Applicant should take every precaution available to it to learn of any possible conflict between itself and each of the Indemnified Parties or any "relative" (as defined in Arizona Revised Statutes Section 38-502) of each of the Indemnified Parties which might prohibit the Authority or the County from completing the financing, especially where construction or other contracts may be signed before the Bonds are authorized or issued.

Section 6.04. Notice of Section 38-511. Each agreement entered into by the Authority must, in accordance with the provisions of Arizona Revised Statutes Section 38-511, contain language notifying the reader of the existence of such statute such as the following:

Notice of Section 38-511 - Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511. By this reference, the provisions of said statute are incorporated herein to

the extent of their applicability to contracts of the nature of this agreement under the laws of the State.

Section 6.05. Final Approval. The Authority shall make a ruling finally approving or rejecting each Application and the Legal Proceedings. If the Authority grants final approval to an Application and the Legal Proceedings, it does so with the understanding that (1) all of the conditions imposed on the Applicant in the Authority’s resolution granting preliminary approval to the issuance of the Bonds have been or will be satisfied, (2) the documents comprising the Legal Proceedings are all in substantially final form, (3) the Authority’s final approval resolution is conditioned on receipt of all approvals required by this Article VI, and (4) such other requirements as may be imposed in connection with the financing of the Project.

Applicants must cause the issuance of the Bonds within 120 days of the Authority’s resolution granting final approval to the issuance of the Bonds or the Authority’s final approval resolution will be deemed to be invalid without any further action on the part of the Authority, unless otherwise expressly extended by the Authority.

If the Bonds are to be privately placed, the amount of Bonds, the purchase price and interest rates to be borne on the Bonds, as well as all of the Placement Agent’s compensation and expense reimbursement, should be determined on or before the date set for the Authority to adopt the resolution authorizing the Bonds.

If there is to be a public offering, the Authority prefers to have all aspects of the financing determined at the time of sale; however, the Authority will entertain the granting of final approval and adoption of Legal Proceedings containing “not to exceed” limits on the following items: interest rate, amount of issue, discount, and maximum life of the Bonds.

Section 6.06. Governing Body. The Authority is required by law to submit its Legal Proceedings to the County Supervisors for approval before the Bonds may be issued. Approval of any Application or the Legal Proceedings by the Authority shall not be deemed a “recommendation” that the County Supervisors approve the Legal Proceedings. Past experience has indicated that the County Supervisors consider their function to be more than ministerial. In this regard, it will be the Applicant’s responsibility to present its case for approval to the County Supervisors. The Authority and its counsel will not “pitch” a Project to the County Supervisors.

Section 6.07. Bond Counsel’s Role. If Bond Counsel is intending to represent any Person other than the Authority, Bond Counsel may only do so if the Authority acknowledges such representation expressly in either its preliminary approval or final approval resolution.

ARTICLE VII

RESERVATION OF RIGHTS

Until the Bonds are issued, the Authority reserves the right to:

- (a) Reject the Application in whole or in part;
- (b) Reject the Application as being incomplete;

- (c) Reject the Project in whole or in part;
- (d) Require corrections, deletions, changes, additions, or amendments to any of the documents within the Legal Proceedings or the Official Statement;
- (e) Postpone, from time to time, consideration of the Application;
- (f) Impose conditions in addition to those set forth in this Procedural Pamphlet and the Authority's Document Standards;
- (g) Waive conditions or requirements set forth in this Procedural Pamphlet or the Authority's Document Standards; and
- (h) Impose any other reasonable requirements as conditions precedent to the issuance of the Bonds.

ARTICLE VIII

SPECIAL CONDITIONS REGARDING CERTAIN PROJECTS

Section 8.01. New Construction.

(a) *Construction Escrow.* In all Projects, when the Bonds are issued and construction is contemplated or is ongoing, provisions acceptable to the Authority must be inserted in the Legal Proceedings providing for the retention of the construction fund by a Trustee or depository selected for that purpose, who may be the Trustee, and allowing payment only on a draw or "as completed" basis with a small (5%-10%) reserve against final completion of the Project. Such escrows will be structured on a case-by-case basis, and may be incorporated into any bond resolution or Indenture or may be established under a separate document.

(b) *Construction Site Sign.* For all Projects where construction is contemplated or in progress when the Bonds are issued, a sign, the size and design of which must be approved by the Authority's Review Advisors, must be posted at the Project site at a location causing such sign to be clearly visible from the roadway, which states the Project has been "financed through The Industrial Development Authority of the County of Maricopa."

Section 8.02. Commercial/Industrial Projects.

(a) *Geographic Preference.* The Authority's policy is to issue its Bonds to encourage the location of Projects principally in unincorporated areas of the County in order to assist the County in its goals of encouraging job growth and increasing and expanding the tax base. However, the Authority will also entertain the issuance of the Bonds to allow for the financing or refinancing of Projects located in cities and towns within the County.

(b) **Employment Plan.** In addition to the Application, Applicants must agree, in their Application, to provide the Authority with an employment plan. The purpose of an employment plan is to assure that, whenever possible and practical, the proceeds of the Bonds are directed to those Applicants who are willing to create new permanent jobs at their facilities.

Section 8.03. Multifamily Residential Housing. Some or all of the following requirements may be imposed with respect to the financing of multifamily rental housing projects:

(a) **Applicant's Equity Contribution to the Project.** Currently, the County Supervisors, as a condition to their approval of the issuance of the Bonds, require that all Projects, except refinancings and financings for nonprofit corporations, demonstrate that the amount of the Bonds' proceeds (less any required debt service reserve fund) will not exceed 90% of the total Project costs. The Authority and the County Supervisors may require an equity contribution equal to or greater than 10% of the total Project costs.

(b) **Transfer Fee.** The Authority recognizes the fair market value of a Project sold with tax-exempt financing may have a 10% - 30% premium over an identical building financed conventionally. The premium is based on the incremental future cash flow received by the owner of the Project as a result of having tax-exempt financing. The Authority *may* require that if the Project is sold during the first 2 years of the loan, the Authority receive a transfer fee to recapture the benefit of the tax-exempt financing. The amount of the transfer fee may be up to 5% of the outstanding principal amount of the Bonds.

(c) **Additional Public Purpose Conditions.** The Authority reserves the right to impose upon a project additional public purpose conditions such as:

(i) the Applicant's obligation to utilize its excess cash flow from the Project's operations for the provisions of tenant services at the Project;

(ii) the Applicant covenant that any affiliated project management company cap or subordinate its project management fees during the term that the bonds are outstanding;

(iii) the Project have additional set aside requirements for low and moderate income tenants in excess of that mandated by the Code;

(iv) the Applicant establish a rental differential program in order to ensure that the rents charged low to moderate income tenants are beneath that charged to market rate tenants; or alternately;

(v) the Applicant will elect to pay a fee to the Authority at closing.

(d) **Continuing Program Compliance Certificates; Annual Review.** Users must agree to provide the Authority with quarterly Continuing Program Compliance Certificates concerning the Project's continual compliance with the terms of the Regulatory Agreement. Users must also agree to retain, on behalf of the Authority, at the User's sole

expense, Accountants or other third parties acceptable to the Authority (the “Review Agent”). As long as the Bonds are outstanding, the Review Agent shall annually conduct a review of the Project’s compliance with the provisions of the Regulatory Agreement. The Review Agent shall be obligated to annually report its findings to the Authority, both in writing and orally, at the Authority’s Annual and Regular Meeting each August.

(e) **General Plan Review.** Arizona Revised Statutes Section 35-726.F. requires, under certain circumstances, that before bonds may be issued for the purpose of financing a multifamily residential rental housing project, the Arizona Department of Commerce must approve the Project. It shall be the Applicant’s responsibility to take all steps necessary in order to obtain the Arizona Department of Commerce’s approval.

(f) **Geographic Preference; Municipality Consent Letters.** The Authority’s policy is to issue its Bonds and encourage the location of Projects principally in unincorporated areas of the County, in order to assist the County in its goals of providing safe, sanitary, and affordable housing. However, the Authority will also entertain the issuance of the Bonds to allow for the financing or refinancing of Projects located in cities and towns within the County. If a Project is located in an incorporated area, the Authority may request that the Applicant provide the Authority with a letter from the office of the Mayor, City Manager, City Finance Director, or, if applicable, councilman in whose district the Project will be located advising the Authority the municipality has no objection to the proposed financing by the Authority.

Section 8.04. Healthcare Institutions.

(a) **Effect on Patients.** When a healthcare institution is to be financed, the Applicant must provide, as a part of the Application, a statement of the Applicant’s assessment of the feasibility of the proposed Project and a statement of the effect of the proposed financing on the Applicant’s patient charges, including, but not limited to, the gross dollar amount of anticipated savings as a result of the proposed financing as opposed to conventional financing, taking into consideration the effect of such savings on the Applicant’s claims for reimbursement under government-sponsored medical insurance/expense reimbursement programs such as Medicare.

(b) **Demand Study; Financial Feasibility Study.** Prior to the authorization of the Placement Memorandum or the Official Statement and adoption of the bond resolution, the Authority may require that the Applicant procure and deliver to the Authority a demand study and a financial feasibility study rendered by a nationally-recognized firm of hospital consultants, engineers, architects, or accountants having a proven reputation for such reports. Historically, the Authority has been receptive to requests to waive the demand and financial feasibility studies for private placements based upon acceptable investor letters and for public offerings with a rating of “A” or better from a Rating Agency.

(c) **Environmental Compliance.** It will be the responsibility of the Applicant to demonstrate to the Authority that the proposed healthcare institution will have a written set of policies and procedures designed to comply with all Environmental Laws.

(d) **Mailing.** The information required to be furnished to the Authority pursuant to this Article VIII, all in substantially final form, must have been received and approved by the Authority or its authorized representatives prior to the mailing of any preliminary Placement Memorandum, preliminary Official Statement, or any offering of the Bonds by the Applicant, the Placement Agent, or the Underwriter.

ARTICLE IX

PRIVATE PLACEMENTS

If a private placement is desired and the Applicant wishes to dispense with the Placement Memorandum, or the Official Statement, the following will apply and will be provided for in the Legal Proceedings:

Section 9.01. Disclosure Document. Except as set forth in Section 9.03 below, the Authority may determine that no Placement Memorandum, Official Statement, or other disclosure document will be authorized by the Authority or its officers. The Placement Agent or the bond purchaser shall have the responsibility for assuring itself, by the exercise of the appropriate level of due diligence, that the statements attributed to the Applicant in any Placement Memorandum are substantially true and correct, and that there are no material misrepresentations of facts contained in or omissions of material facts from the Placement Memorandum. The Authority and its officers will not execute any Placement Memorandum, Official Statement, or other disclosure document.

Section 9.02. Investment Letters. The bond purchaser may be required to waive due diligence on the part of each of the Indemnified Parties and may be required to rely solely on statements and representations of the Applicant and such bond purchaser's own investigation of the facts and circumstances relating to the purchase of the Bonds. Further, the bond purchaser may be required to waive any claims the bond purchaser may have against any of the Indemnified Parties for any liability, directly or indirectly, arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any document(s) comprising the Legal Proceedings or other official representation or inducement made by the Authority or the County pertaining to the Project or the Bonds and (ii) any fraud or misrepresentations or omissions contained in the proceedings of the Authority or the County relating to the issuance of the Bonds or pertaining to the financial condition of the Applicant, which, if known to the bond purchaser, would be considered a factor in its decision to purchase the Bonds.

Section 9.03. Transfer Restriction. If a bond has not been rated "A" or better by a Rating Agency, then the Authority is concerned about its suitability for purchase by all investors. For that reason, private placement of bonds generally require that the bonds be transferred only to suitable investors such as "qualified institutional buyers" as defined in Rule 144(A) of the 1933 Act or to an "accredited investor" within the meaning of Rule 501 of Regulation D of the rules governing the limited offering and sale of securities without registration under the 1933 Act. The bond purchaser may be required to stipulate that the Bonds will not, except as herein provided, be resold without the Authority's approval and without the approval and execution of an Official Statement or a Placement Memorandum acceptable to the Authority at the time the resale is requested, unless the Authority at that time waives the requirement of an Official Statement.

ARTICLE X

PUBLIC OFFERINGS

Section 10.01. Disclosure, Printing, and Notice. The Authority shall have no responsibility for the accuracy or content of the Official Statement, except for the sections directly pertaining to the Authority. Further, the Authority shall not execute any Official Statements. The Underwriter or the primary purchaser of the Bonds shall have the responsibility of assuring itself, by the exercise of an appropriate level of due diligence, that the statements attributed to the Applicant in any Official Statement are substantially true and correct and that there are no material misrepresentations of facts contained in, or omission of material facts from, the Official Statement.

The accuracy of the Official Statement will be the responsibility of the Applicant. Responsibility for the drafting of the various parts of the Official Statement will be determined by the Underwriter, and when determined, the Applicant's Counsel will notify each person or entity responsible for the respective part. If any Person assuming such responsibility or any other Person has knowledge of any material misrepresentation or omission in the Official Statement or any other document, such Person is expected to notify the Authority or Bond Counsel prior to the closing of the issuance of the Bonds.

The Applicant and Underwriter or other purchaser must decide among themselves who shall have responsibility for ordering and printing the Official Statement and the definitive Bonds.

A "notice of proposed offering" is required to be filed with the Arizona Corporation Commission, Securities Division, in connection with Bonds offered for public sale by means of an Official Statement, unless specifically exempt pursuant to Section 44-1843.01, Arizona Revised Statutes. The filing of the "notice of proposed offering" shall be the joint responsibility of the Applicant and the Underwriter.

By agreeing to act as Underwriter, the Underwriter shall be deemed to know of and have read this Procedural Pamphlet and have agreed to all of its terms, in the manner required by the Application.

Section 10.02. Rule 15c2-12. Except for the portion of the Official Statement describing the Authority, the Authority will not take responsibility for deeming any Official Statement final, and shall require that the Applicant or the Guarantor assume the responsibility to do so. Further, the Authority shall require that the Applicant covenant to assume the ongoing disclosure obligations required by SEC Rule 15c2-12 in a form and substance satisfactory to the Authority and the Underwriter.

Section 10.03. Service of Process. The Authority will not agree to receive service of process in any state other than Arizona. For that reason, it may not be possible to qualify the Bonds for sale in certain states.

ARTICLE XI
RESPONSIBILITY

Section 11.01. Indemnification. The Applicant must hold each of the Indemnified Parties harmless for, from, and against any fraud or misrepresentations or omissions contained in the Legal Proceedings or pertaining to the financial condition of the Applicant which, if known to the bond purchaser, might be considered a factor in its decision whether to purchase the Bonds. In this connection, the Applicant must execute and deliver to the Authority an indemnity and hold harmless agreement in a form acceptable to the Authority.

As a further condition to the Closing, the Applicant and any Guarantor may be required to execute and deliver to the Authority an indemnity agreement, in form and substance acceptable to the Authority under which each of the Indemnified Parties are indemnified and held harmless for, from, and against all errors or omissions of every nature whatsoever contained in any of the documents comprising the Legal Proceedings or any Official Statement or other official representation or inducement made by the Authority or the County Supervisors pertaining to the Bonds.

Additionally, the Applicant may be required to provide security for its indemnification obligation to the Authority in the form of a pledge or trust agreement encumbering liquid assets or by the posting of a letter of credit inuring to the Authority's benefit in an amount to be determined by the Authority. The indemnity agreement and form of security therefor must be submitted to and approved by the Authority prior to the Closing.

Section 11.02. Closing Memorandum. The Applicant shall cause to be distributed to the Authority's Counsel and the Review Advisors a closing memorandum at least 3 Business Days prior to closing.

Section 11.03. Title Insurance. When liens on or revenues from operations of real property secure the Bonds, the Closing may be conditioned upon proof of issuance of a title insurance policy insuring ownership of the Project in the name of the Concern who is required to hold legal title to the Project throughout the term of the Bonds. Title insurance policies are to be for the benefit of the Authority and must be issued by title insurance companies doing business in the State which are acceptable to the Authority. It will be the responsibility of the Applicant to acquire and pay for such policies. It is advisable for the Applicant to order a preliminary title report as soon as possible after preliminary approval.

Section 11.04. Deeds, Deeds of Trust, Financing Statements, and IRS Filings. Bond Counsel shall be responsible for recordings to be made with the County Recorder or the Secretary of State, as applicable, and for the preparation and filing of any document required at the time the Bonds are issued pursuant to the Code.

Section 11.05. Appointment and Compensation of Third Parties. The Applicant will be responsible for the retention and charges of any Trustee, registrar, or paying agent; however, the Trustee, registrar, or paying agents may agree to be paid from bond proceeds of the Bonds or revenues payable to the Authority by the Applicant. Under no circumstances will the Authority

be involved in the remarketing of any Bonds, nor will the Authority appoint or consent to the appointment of a remarketing agent or tender agent.

Section 11.06. Opinions of Counsel. All opinions of counsel requested in connection with the issuance of the Bonds must be contained in a bound volume of the Legal Proceedings. All opinions of counsel shall be addressed to the Authority and any other applicable parties and shall be in a form and substance acceptable to the Authority's Counsel. Attorneys from jurisdictions other than Arizona will be required to associate Arizona counsel to opine with respect to Arizona law issues and matters. The remainder of this subsection generally discusses the Authority's concerns related to opinions of counsel.

(a) **10b-5.** In addition to the usual contents, the final opinion of the Applicant's counsel, and/or such other counsel acceptable to the Authority, must be substantially similar to the following:

In the course of our preparation of the Official Statement (offering memorandum or private placement sale agreement), no facts came to our attention that would lead us to believe the Official Statement (offering memorandum or private placement sale agreement), as of its date and as of the date hereof, contains any untrue statement of material fact or omits any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) **Bond Counsel.** Bond Counsel's bond opinion, and any supplemental opinion of Bond Counsel, must be addressed to the Authority. In addition to the usual contents, the final opinion of Bond Counsel, or other counsel acceptable to the Authority, shall state that no filing or registration of the Bonds, the underlying security, including any Guaranty, or the trust indenture is required by the 1933 Act, the 1934 Act or the 1939 Act or the Arizona Blue Sky Law or, if such filing or registration is required, it has been done in full accordance with the referenced act or acts.

On private placements, Bond Counsel's opinion *must* include a statement that the opinion may not be relied upon by any person who acquires a Bond in a transaction that does not comply with the restrictions on transfers contained in the Legal Proceedings and form of the Bonds.

(c) **Guarantor's Counsel.** If a guaranty agreement is an integral part of the Bonds' security, the Guarantor's Counsel, or other counsel acceptable to the Authority, must render an opinion stating that the Guaranty is in all respects binding upon the Guarantor (including that good and sufficient consideration exists for the guaranty) and that no Securities and Exchange Commission or Arizona "Blue Sky" registration of the Guaranty is required.

(d) **Indemnification Opinion.** Any party providing the Indemnified Parties with indemnification, including the Applicant and the Guarantor, in addition to the usual contents of their counsel's opinion, their counsel must render an opinion stating that such counsel's client has adopted all necessary proceedings and has taken all necessary steps to

legally bind itself to fulfill its obligations to indemnify the Indemnified Parties. See, *Washington Elementary School District No. 6. v. Baglino Corporation*, 169 Ariz. 58, 817 P.2d 3 (1991).

(e) ***Opinions Addressed to Rating Agency.*** In a public offering, any opinion to be delivered to the Rating Agency by any counsel involved in the financing of a Project, in addition to being addressed to the Rating Agency, must also be addressed to the Authority. The Authority will also accept a “side letter” from counsel stating that the Authority can rely on the opinion addressed and delivered to the Rating Agency.

(f) ***Opinions Addressed to Bond Purchaser.*** In a private placement, any opinion to be delivered to the bond purchaser by any counsel involved in the financing of the Project, in addition to being addressed to the bond purchaser, must also be addressed to the Authority. The Authority will also accept a “side letter” from counsel stating that the Authority can rely on the opinion addressed and delivered to the bond purchaser.

Section 11.07. Accountant’s Consent. If the Official Statement includes a balance sheet or annual financial statement of the Applicant and/or the Guarantor, the Applicant and/or the Guarantor must acquire a manually executed statement from the Accountant or Accountants who certified the financial statements allowing the Authority to rely on the Accountants’ opinion with respect to such financial statements and permitting the Authority to incorporate the Accountants’ opinion and the financial statements in the Official Statement. Receipt by the Authority of the consent will be a condition precedent to the Closing. The consent must allow the Authority to rely on the information as of the date of the Official Statement not as of the date of such financial statements.

Section 11.08. Accountant’s Agreed Upon Procedures Letters. The Authority prefers to be an addressee on Accountant’s comfort letters to the extent that same are obtainable. The Applicants should be mindful of AICA Professional Standards, particularly Statements on Auditing Standards No. 72 and 76 concerning the provision of comfort letters. The Authority’s Counsel and Review Advisors are available to negotiate agreed-upon procedures letters with each of the Applicants and their respective Accountants.

Past experience indicates that Accountants should know of and agree to the requirements of parts G and H of this Section *before* an Application is made, *not* when the Bonds are ready for delivery.

Section 11.09. Out-of-Town Closings; Escrowed Documents. Out-of-town closings which require the presence of Directors must be requested at least 20 days prior to the Closing. All costs of the Closing (including travel, hotel, and meals for out-of-town closings) for any Director and the Authority’s Counsel will be borne by the Applicant or paid from the proceeds of the Bonds. Out-of-town closings may be held only with the Authority’s approval. Documents executed by the Authority’s Directors or officers will not be escrowed with parties other than representatives of the Authority prior to the Closing without the Authority’s approval.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Minimum Requirements. This Procedural Pamphlet will be considered to set forth minimum requirements and the Authority reserves the right to add additional requirements on a case-by-case basis. Likewise, the requirements herein stated pertain only to the Authority and are not exclusive. Other Persons involved in the issuance, sale, or purchase of the Bonds may make additional requirements as they deem appropriate.

Section 12.02. Location of Regular Meetings; Special Meetings. At present, unless indicated otherwise on the notice of meeting, all meetings of the Authority are held in the County Supervisor's Conference Room, 10th Floor, 301 West Jefferson, Phoenix, Arizona 85004. Regular meetings are scheduled for the second Tuesday of each month at 9:00 a.m., Mountain Standard Time (Phoenix Time). Special meetings can be held where circumstances require, but it is advisable to give at least 2 weeks' notice to the Authority so the Authority's Directors may be polled to determine if a quorum will be present.

Section 12.03. Taxes; Taxpayer Identification.

(a) Because the obligation of the Authority to pay rental taxes is unclear where the Authority acts as a lessor, such taxes must be collected by the Trustee pending determination of the issue. To avoid the issue, the Authority requests that the Legal Proceedings be drafted in such a way as not to raise the question of a landlord-tenant relationship between the Authority and the Applicant.

(b) Except for any withholding taxes the Authority may incur (the Authority has no employees at this time) ad valorem taxes (pursuant to Arizona Revised Statutes Section 35-741), the Authority deems itself exempt from federal and state tax as a political subdivision of the State and does not intend to file either federal or state income tax returns. However, the Authority has obtained an Employer Identification Number (86-0445263) since it is required on certain government information reports concerning the Bonds.

Section 12.04. Annual Assessments.

(a) **Applications submitted on or after March 10, 1998.** Each Applicant who submits an Application to the Authority pursuant to this Procedural Pamphlet for the issuance of the Authority's bonds and who succeeds in having the Authority issue such bonds thereby becomes a User and must agree to an annual assessment calculated in an annual amount up to 10 basis points on the outstanding principal amount of the Bonds related to such User, with such fee to be collected semi-annually by the Trustee.

(b) **Applications submitted after March 10, 1992 and before March 9, 1998.** Each Applicant who submitted an Application to the Authority pursuant to this Procedural Pamphlet for the issuance of the Authority's Bonds from March 10, 1992 to March 9, 1998, and who succeeded in having the Authority issue such Bonds, thereby became a User and may be assessed annually an amount up to 10 basis points of the outstanding principal amount of the Bonds as such User's assessment for the administrative expenses of the

Authority. The amount of each such annual assessment, up to the limit specified, shall be established at the Authority's sole and absolute discretion, and may vary from year to year. The amount of each such annual assessment may be billed quarterly, semi-annually, or annually, as the Authority, in its sole and absolute discretion, may determine. Annual assessments may continue against each User during the period any of the Bonds issued to finance or refinance the User's Project are outstanding. The Applicant acknowledges and agrees that pursuant to this Section 12.04, Users may be assessed more or less than a proportionate share of the administrative expenses of the Authority.

(c) The officers of the Authority may take any actions necessary to implement this Section 12.04.

Section 12.05. Office. Until the Authority establishes an office, all correspondence and Applications should be delivered to the Authority c/o Maricopa County, County Administration Office, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003, Attention: President.

