

**ECONOMIC
DEVELOPMENT
AUTHORITY
OF THE
COUNTY OF SPOTSYLVANIA, VIRGINIA**

**BOND FINANCING
PROGRAM**

**Tom Rumora
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Spotsylvania County Department of Economic Development
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Spotsylvania, VA 22553
540-507-7201**

ADOPTED November 15, 2012

ABOUT THE EDA

The Economic Development Authority of the County of Spotsylvania, Virginia (EDA) provides financing assistance to qualified businesses and organizations wishing to make an investment within the County of Spotsylvania. A seven-member body appointed by the Board of Supervisors for staggered four-year terms, the EDA was created by ordinance of the Board of Supervisors according to the Industrial Development and Revenue Bond Act (Chapter 49, Section 15.2 of the Code of Virginia). The EDA acts as a conduit, issuing bonds and lending proceeds to 501(c)(3) organizations, small manufacturers and others. The financial markets set interest rates on such bonds below comparable rates for taxable financings because bondholders can exclude interest on the bonds from their gross income.

The EDA's bond financing program is a proven success in enabling non-profit organizations to purchase real estate and construct and equip facilities in the County. Applicants include some of the most active corporate organizations in the County and generate significant tax revenues and jobs within the Spotsylvania. The EDA works closely with the County's Economic Development Department to promote the bond financing program, and all income generated by the EDA is dedicated to new and ongoing economic development efforts.

ELIGIBLE PROJECTS

Under applicable federal and Virginia law, a variety of projects can be financed with bonds issued by the EDA including the following:

- Headquarters and other facilities for 501(c)(3) organizations (other than primarily religious organizations)
- Medical facilities
- Elementary and secondary school facilities
- Pollution control facilities
- Higher education facilities
- Parking facilities
- Small manufacturing facilities

Working capital and certain interest payments on tax-exempt bonds often may also be included in the financing. It should be noted, however, that no portion of the proceeds of tax-exempt bonds may be used to provide any airplane, skybox or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises. In addition, proceeds of tax-exempt bonds issued for the benefit of non-profit 501(c)(3) organizations cannot be used in connection with a trade or business unrelated to the 501(c)(3) organization's exempt purpose. Certain other federal and state restrictions may apply in determining whether a particular project is eligible for financing through the EDA.

Under federal tax law, the refinancing of tax-exempt debt issued on or after August 16, 1986 is generally possible if the proceeds of the new tax-exempt debt are used immediately to pay off the old tax-exempt debt and certain other limitations are met. Because of ambiguities under Virginia law, however, the ability of an exempt organization to refinance existing debt will vary depending on the circumstances. In certain cases, the organization may be required to obtain the approval of a Virginia court before proceeding with the transaction.

MINIMUM SIZE OF A TAX-EXEMPT FINANCING

While the law imposes no minimum size on tax-exempt financings, the complexities involved in structuring and obtaining approvals for such financings can result in transaction costs which are higher than those for comparable taxable financings. These transaction costs may make it prohibitive to undertake financings of less than a certain size, since the advantage to the borrower of lower interest rates would be offset by the increased transaction costs. Generally, a bond financing is most efficient when the size of the financing is at least \$1-\$2 million. To reduce these higher transaction costs, it is often possible to combine present projects with projects to be financed within the next few years or to combine financings for an exempt organization and its affiliates in a single issue.

FINANCING ALTERNATIVES

The same options available to a borrower in a taxable financing may be used in structuring a tax-exempt financing. Interest rates may be fixed or variable repayment schedules can be arranged to meet the cash flow needs of the applicant. Ratings or various forms of credit enhancement may be employed to improve the interest rate. Issues relating to credit and security must also be considered in structuring the financing. For publicly sold bond issues, an underwriter is engaged to ensure that each of these matters is addressed in a way that will accommodate the exempt organization's desire to minimize its debt service and the constraints imposed by the financing while addressing bondholders' concerns with payment and security.

Bank Qualification. In general, banks and other financial institutions cannot purchase and hold tax-exempt bonds at an effective interest rate because their carrying costs allocable to those investments are not deductible. Under an exception to the general rule, banks may deduct 80% of their carrying costs allocable to "bank-qualified" tax-exempt obligations, which are subject to eligibility restrictions and dollar amount limitations. The advantages of bank-qualified debt are many. Bank qualified bonds generally carry a lower net interest cost than other tax-exempt obligations, issuance costs are generally lower than for publicly sold debt and such bonds can typically be issued more quickly than publicly sold debt.

HOW TO APPLY

As early as possible in the planning of the project, the applicant should contact the EDA for specific information on procedural considerations and to determine the information the EDA will need to evaluate the request. The Internal Revenue Code requirements to preserve the tax exempt status of the interest on the bonds are complex, and it is essential that applicants consult with legal counsel knowledgeable in the area of industrial development revenue bonds prior to submitting an application to the EDA. At this stage, it is also necessary for the applicant to approach potential lenders on a preliminary basis.

POLICY & PROCEDURAL GUIDELINES

The EDA has established the following policy and procedural guidelines governing its consideration of industrial revenue bond applications:

1. Projects will be considered for approval on a case-by-case basis.
2. The EDA charges the applicant administrative fees.
3. The EDA pays no costs, taxes, etc.; the applicant pays all expenses associated with the financing.

EDA FEES

The EDA administrative fees for a typical new money tax-exempt bond issue are:

Application fee of \$5,000
plus 1% of first \$1,000,000
plus ¾% of next \$4,000,000
plus ½% of the amount over \$5,000,000

Different fees apply for refunding issues, taxable debt in conjunction with tax-exempt issues and other actions and approvals of the EDA. A complete schedule of fees is attached as Exhibit A.

The EDA pays no costs, taxes, etc., and all legal fees and publication costs incurred by the EDA in processing the case or until the financing is abandoned are borne by the borrower.

The EDA's Application Form is attached hereto as Exhibit C.

GENERAL PROCEDURES

A tax exempt bond financing through the EDA typically follows the steps below, although each financing is unique and the procedures may vary depending on the individual circumstances.

1. Applicant decides to construct or renovate a facility within the County of Spotsylvania

(the “Project”).

2. Applicant consults with Bond Counsel who determines that the Project qualifies for financing under federal and state laws and that the interest on the Bonds will be exempt from state and federal income tax.
3. Applicant obtains a commitment to purchase or place the bonds from a bank or investment banking firm which structures credit requirements (collateral, insurance, ratings etc.)
4. Applicant completes and files an application requesting the EDA to issue its bonds in an amount estimated to cover the eligible costs of the Project. The Application Form is attached as Exhibit C.
5. A notice of public hearing is published.
6. The EDA holds a public hearing on the Project and, if the application is in order, adopts a resolution approving the application.
7. The Board of Supervisors meets and adopts a resolution approving the bond issue. Bond Counsel prepares bond documents and a final resolution authorizing the issuance of the bonds. The final resolution and bond documents are reviewed by all parties to the transaction and revised documents are circulated. All documents are finalized.
8. Financing documents are prepared and a final resolution authorizing the issuance of the bonds is adopted by the EDA.
9. All parties meet to execute the bond documents and close the bond issue. At closing, the bond proceeds are deposited in a special account to be requisitioned by the borrower to pay for costs of the Project.

NOTE: The Applicant agrees to make all payments of principal and interest on the bonds, and the EDA has no obligation to make payments on the bonds or to pay costs of the Project.

FOR MORE INFORMATION

Contact:	Michael W. Graff, Jr., General Counsel to the EDA McGuireWoods LLP 1750 Tysons Blvd., Suite 1800 McLean, Virginia 22102 703.712.5110 mgraff@mcguirewoods.com	Tom Rumora Director of Economic Development Spotsylvania County Department of Economic Development 9019 Old Battlefield Boulevard, Suite 310 Spotsylvania, VA 22553 540-507-7201 TRumora@spotsylvania.va.us
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EXHIBITS

- A. FEE SCHEDULE;**
- B. FORM BLANKET WAIVER AND INDEMNITY;**
- C. APPLICATION FORM;**
- D. FISCAL IMPACT STATEMENT; AND**
- E. EDA RULES AND PROCEDURES**

A. FEE SCHEDULE

Economic Development Authority of the County of Spotsylvania, Virginia **Standard Proposed Terms and Conditions for Revenue Bonds**

1. New Money Issuance
 - Application Fee \$ 5,000 +
 - Administrative Fee: 1% of 1st \$1M + \$10,000 +
 - ¾% of next \$4M + \$30,000
 - ½% of all higher \$ amounts (additive)
 - All costs
 - Blanket Waiver and Indemnity (Form attached as Exhibit B)

2. Refunding Issuance
 - Application Fee \$2,500 +
 - Administrative Fee: 15% of New Money fee above, not including New Money application fee (see above)
 - All costs
 - Blanket Waiver and Indemnity

3. Taxable New Money Issuance or Taxable Refunding Issuance (in Conjunction with Tax-Exempt Issuance)
 - Application Fee No additional application fee
 - Administrative Fee: 25% of New Money fee or Refunding fee above, as applicable, not including application fee (see above)
 - All costs
 - Blanket Waiver and Indemnity

4. Other Actions and Approvals involving financings/other issuances (including other EDAs)
 - Application Fee \$2,500 +
 - Same Administrative Fee as New Money or Refunding, as applicable (see above)
 - All costs
 - Blanket Waiver and Indemnity

5. Ministerial/Legal actions not involving any issuance or financing, however defined

- Application Fee \$2,500
- All costs
- Blanket Waiver and Indemnity
- Discretionary fee – waiver for non-EDA government entities, except where effect of action equates to New Money or Refunding

6. Spotsylvania County Bonds

No fees charged if application materials received 45 days prior to EDA meeting; Upon shorter notice, EDA may request the County pay an Expedited Service Fee in an amount to be determined at the time of submission

7. The EDA may, in its sole discretion, adjust or waive revenue bond fees at any time, or from time to time, on a case-by-case basis.

B. FORM BLANKET WAIVER AND INDEMNITY

[Entity] having had the opportunity for full diligence and consultation with [Entity]'s own legal counsel, and, for consideration of unquantifiable value to [Entity] so as to induce the Authority to take the actions provided for in the Resolution, [Entity] hereby agrees and covenants as follows:

1. [Entity] now and forever waives any claim against the Authority, its directors, officers, members, and agents, and the County of Spotsylvania, its officials, employees, and agents (each, for the purposes of this provision and the next, "Spotsylvania"), with respect to every direct and indirect actual, potential, and contingent liability, claim, charge, award, and judgment (each, for the purposes of this provision and the next, a "Claim") arising out of or related to the subject-matter of this resolution; and
2. [Entity] hereby promises, agrees, warrants, and covenants to fully and absolutely defend and indemnify Spotsylvania against any Claim arising out of or related to the subject-matter of this resolution.

For the purposes of the foregoing provision, [Entity] includes – and expressly so binds – all of [Entity]'s members, owners, creditors, partners, agents, administrators, heirs, successors, assigns, employees, trustees, receivers, escheators, subrogors and subrogees, howsoever they may appear.

C. APPLICATION FORM

**ECONOMIC DEVELOPMENT AUTHORITY OF
THE COUNTY OF SPOTSYLVANIA, VIRGINIA**

APPLICATION STATEMENT

1. Applicant
 - a. Legal name of applicant and state of incorporation or formation:
 - b. Address and location of principal office:
 - c. Telephone and telecopy numbers:
 - d. Names and addresses of officers or partners:
 - e. To whom correspondence should be directed:
 - f. Name and address of counsel for applicant:
 - g. Indicate name, state of incorporation and relationship of all direct or indirect parent companies of applicant.
2. Statement of benefits to the County of Spotsylvania and the Commonwealth of Virginia from the project

3. Identification and description of proposed project
 - a. General location of proposed project in the County of Spotsylvania.
 - b. Describe the types of facility which you are applying for financing. What manufacturing or other processes will be conducted at the project?
 - c. Describe the proposed arrangement to finance the cost of construction or acquisition of the project. Briefly detail a projected time schedule.
 - d. If the Applicant now owns the project site, indicate:
 - (1) date of purchase
 - (2) purchase price
 - (3) balance of existing mortgage
 - (4) holder or mortgage
 - e. If the Applicant is not now the owner of the project site, does the Applicant have an option to purchase the site and any buildings on the site? If yes, indicate:
 - (1) date option agreement signed with owner
 - (2) purchase price under option
 - (3) expiration date of option
 - f. Has the Applicant entered into a contract to purchase the site? If yes, indicate:
 - (1) date signed
 - (2) purchase price

(3) settlement date

- g. Present owner of the site of the project, and the relationship between the present legal owner and the applicant:
- h. Status of plans for the Project. Please indicate architect, engineer, general contractor and major subcontractors.
- i. Has construction work on this project begun? If yes, please indicate what work has been done to date.
- j. List principal items or categories of equipment to be acquired as part of the project:
- k. Has any of the above equipment been ordered or purchased? If yes, indicate:
- l. State the proposed estimated uses of bond proceeds:

Description of Cost	Estimated Amount (\$)
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- Land
- Building
- Equipment
- Engineering
- Architecture
- Interest (capitalized)
- Bond discount and cost of finance

Face amount of issue

- m. Have any of the above expenditures already been made by the Applicant? If yes, indicate particulars:
- n. Have any of the above expenditures been incurred but not paid by the Applicant? If yes, indicate particulars:

- o. Are costs of working capital, moving expenses, work in process, or stock in trade included in the proposed uses of bond proceeds?
- p. Will any of the funds to be borrowed through the Authority be used to repay or refinance an existing mortgage or outstanding loan?
- q. If any space in the project is to be leased to third parties, indicate total square footage of the project, amount to be leased to each tenant, and proposed use by each tenant.
- r. Type and amount of outstanding bonds. State the type and amount of outstanding bonds or other obligations, if any, on the present facilities or any other facilities of the Applicant. Include the amount of annual payments required and the year when the bonds will be paid off.
- s. Brief description of Applicant's existing facilities, if any. Indicate if the existing facilities are to be abandoned or will continue in use.
- t. Will the construction, occupation or use of the project involve the creation of any pollutants or other emissions, or the use or manufacture of any toxic or hazardous substances? Will operation of the project involve consumption or use of large amounts of electricity, water, gas or other services as products customarily furnished by utilities? Will construction or operation of the project have any impact upon local businesses or residents, such as emission of odors, traffic in and out of the project, or storage of large amounts of materials at the project site? Please provide particulars.

4. Financial

- a. Future financing plans other than this project:
- b. Description of present debt, guaranty, long term contracts, prior liens, and other contingent liabilities:
- c. Proposed immediate and long term capital expenditures:

- d. Commercial banking connections and for how long a period:
- e. Attach to Application the following financial statements for each of the preceding three (3) years.
 - (1) Statement of financial condition.
 - (2) Profit and Loss statement.
 - (3) Statement of surplus.

If the Applicant is a new or recently formed business entity, without recent financial statements, the Applicant should furnish the financial information required by the Application for each principal shareholder, partner or other principal of the Applicant. If the Applicant is a subsidiary corporation without its own financial statements, financial statements of the parent corporation or consolidated financial statements may be submitted in lieu of financial statements for the Applicant. If the obligations of the Applicant will be guaranteed by any person or business entity, then financial statements of such guarantor should also be included with the Application. Pro forma financial statements, if available, should be submitted with the Application. Since this Application will become a part of the public records of the Authority, in the event the Applicant does not desire financial records not otherwise available to the public to be included in the public record please so indicate so such records may be returned to the Applicant.

- f. Has the Applicant, any proposed guarantor, or any of their principal partners or shareholders ever declared bankruptcy or been involved in any bankruptcy or insolvency proceeding whether voluntary or involuntary? If so, describe particulars.
 - g. Has any underwriter, broker or investment banker been retained by Applicant in connection with this proposed bond issue? If so, who?
 - h. Please indicate the person or institution to whom the bonds will be sold or any persons or institutions which have indicated an interest in purchasing the bonds.
5. Miscellaneous
- a. Is the Applicant or any major shareholder or partner presently involved in any litigation, investigation or proceeding? If so, please describe.
 - b. Is the Applicant or any major shareholder or partner of the Applicant, or any other person working for the Applicant in this proposed financing subject to any order,

decree or judgment of any court or administrative or other governmental agency or body? If so, please describe.

- c. Is the Applicant, or any of its shareholders or partners, or any guarantor, or any other person representing Applicant in connection with this proposed financing, involved in any investigation, litigation or proceeding relating to the issuance or sale of securities or any applicable banking laws or regulations? Have any of the foregoing persons ever been involved in any such investigation, litigation or proceeding? If so, please describe in full.
- d. Is the Applicant subject to regulation (other than in the ordinary course of business) by any Federal or State administrative agencies or bodies? If so, please provide details.
- e. Please complete the attached Fiscal Impact Statement (see Exhibit D) to be furnished to the Board of Supervisors of the County of Spotsylvania.
- f. Please complete and sign the below-attached Applicant's Estoppel Certificate and Agreement.

6. Agreement to Pay Authority's Cost and Expenses and Estoppel Certificate

To induce the Economic Development Authority of the County of Spotsylvania to consider this Application and to adopt an inducement resolution agreeing to assist Applicant in the financing of the Project, Applicant, by submitting this Application to the Authority agrees:

- (1) To pay all fees, costs and expenses of the Authority, including any costs for publication of public hearing notices, and the fees and disbursements of the Authority's Counsel in connection with the authorization, issuance and sale of the bonds contemplated by this Application;
- (2) To comply with the Authority's Rules and Procedures, a copy of which has been received by the Applicant; and
- (3) To advise the Authority in writing of any material changes to the information contained in this Application.

The Authority has relied on the representations of the Applicant contained in this Application and has not independently verified the information contained in this Application, including the financial records and the Fiscal Impact Statement accompanying this Application. The Authority makes no representation as to the accuracy of the information supplied by the Applicant or the creditworthiness of the Applicant.

Legal Name of Applicant: _____

Signature: _____

Name: _____

Title: _____

Notes to Application

1. Applicants are referred to the Authority's Rules and Procedures for provisions governing the submission of this Application to the Authority.
2. Applications and all exhibits should be submitted to each Director of the Authority, the Authority's Secretary and Counsel and the Director of Economic Development of the County of Spotsylvania at least twenty-one (21) days before the meeting at which the Application is to be considered.
3. The appropriate application fee should be submitted to the Authority with the Application.
4. Questions concerning the qualification of a project or certain expenses of industrial development revenue bond financing or other legal questions relating to the issuance of bonds should be directed to the Authority's Counsel.

NOTICE TO APPLICANTS:

The Internal Revenue Code of 1986, as amended, has imposed a number of restrictions on tax-exempt revenue bond financing, including a limitation on the volume of certain private activity revenue bonds issued within any jurisdiction and restrictions on financing the acquisition of land or existing buildings. Should your application receive favorable consideration, the adoption of any resolution by the Authority or the Board of Supervisors of the County of Spotsylvania carries no assurance of or commitment for any allocation of private activity bond issue volume. By filing this application, you agree to assume the risk that the limited amount of permissible private activity revenue bond financings may not be available or allocated to your project.

D. FISCAL IMPACT STATEMENT

FISCAL IMPACT STATEMENT
FOR PROPOSED INDUSTRIAL REVENUE BOND FINANCING

Date:

To the Board of Supervisors of the County of Spotsylvania, Virginia*

Name of Applicant:

Facility:

1. Maximum amount of financing sought \$ _____
2. Estimated taxable value of the facility's real property to be constructed in the municipality \$ _____
3. Estimated real property tax per year using present tax rates \$ _____
4. Estimated personal property tax per year using present tax rates \$ _____
5. Estimated merchants' capital tax per year using present tax rates \$ _____
6. (a) Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality \$ _____
(b) Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality \$ _____
(c) Estimated dollar value per year of services that will be purchased from Virginia companies within the locality \$ _____
(d) Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality \$ _____
7. Estimated number of regular employees on year round basis _____
8. Average annual salary per employee \$ _____

Chairman, Economic Development
Authority of the County of Spotsylvania

If one or more of the above questions do not apply to the facility indicate by writing N/A (not applicable) on the appropriate line

* Information received by the Applicant, transmitted to the Board of Supervisors by the EDA Chairman, as required by statute.

E. RULES AND PROCEDURES

DEVELOPMENT AUTHORITY OF THE COUNTY OF SPOTSYLVANIA, VIRGINIA

Rules and Procedures

ARTICLE I

PURPOSE AND SCOPE

Section 1.1 Purpose. These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

Section 1.2 Scope. These Rules are supplementary to the Authority's Bylaws and the Act. In the event of any conflict between the Authority's Bylaws, the Act and these Rules, the provisions of the Bylaws and the Act shall prevail.

ARTICLE II

DEFINITIONS

Section 2.1 Definitions. As used in these rules and procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

“Act” shall mean the Industrial Development and Revenue Bond Act, Chapter 33, Title 15.1, Code of Virginia of 1950, as amended.

“Applicant” shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit the Authority has issued its Bonds, or who requests the Authority to take any action.

“Application” shall mean the Authority's form application for industrial development revenue bond financing as in effect from time to time.

“Authority” shall mean the Economic Development Authority of the County of Spotsylvania, Virginia, a political subdivision of the Commonwealth of Virginia.

“Bonds” shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

“Code” shall mean the Code of Virginia of 1950, as amended.

“Financing Documents” shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale of its Bonds.

“IRC” shall mean the Internal Revenue Code of 1954, as amended.

“Project” shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority’s Bonds.

“Rules” shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

ARTICLE III

GENERAL

Section 3.1 Copies to be Provided Applicants. A copy of these rules and procedures shall be furnished by the Authority’s Secretary to each prospective Applicant.

Section 3.2 Compliance with Rules and Procedures. Each Applicant shall comply with these rules and procedures in the submission of its Application or any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Documents. Failure to comply with these rules and procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents or any other matter to be brought before the Authority by or on behalf of any Applicant.

Section 3.3 Amendments. These rules and procedures may be changed from time to time by the Authority by the vote of a majority of its Directors present at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting. These rules and procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

Section 3.4 Preparation and Distribution of Agenda and Minutes.

(a) A preliminary agenda for the Authority’s meetings shall be prepared and distributed by the Authority’s Secretary no later than five days before the Authority’s scheduled meeting date. When action is to be taken with reference to a Project or the issuance of Bonds, the agenda shall contain a description of the type, nature and location

of the project, the name of the Applicant and the nature of the action to be taken by the Authority. The agenda may state that it is a preliminary agenda subject to change at or before the Authority's meeting.

(b) A copy of the agenda for the Authority's meeting shall be provided to the following: each officer and director of the Authority, and to each person, firm or organization which shall have submitted a written request to the Authority's Secretary that its name be placed on the mailing list for the agenda of the Authority's meetings, which request shall include the address of the person, firm or organization submitting a written request to receive such notice. Each person, firm or organization submitting a written request to receive copies of the Authority's agenda shall renew such request in writing every six months during the months of June and December for the next succeeding six month period. If any request is not so received, such name and address shall be deleted from the mailing list.

(c) Preliminary drafts of the minutes of the Authority's meeting shall, as soon as practicable following the meeting, be mailed or delivered to each officer and director of the Authority and the Authority's counsel. Each preliminary copy of the minutes so distributed shall be marked to indicate that it is a preliminary draft subject to additions or corrections at the Authority's next meeting. The date of approval of the Authority's minutes shall appear at the foot of the last page of the minutes and shall, when approved, be signed by the Chairman and Secretary of the Authority.

ARTICLE IV

APPLICATION PROCEDURES, FEES AND REQUIREMENTS

Section 4.1 Applications. Each Applicant shall submit a fully and accurately completed Application to each Director of the Authority, the Authority's Secretary and Counsel and the Director of Economic Development of the County of Spotsylvania, at least twenty-one (21) days before the Authority's meeting at which the Application is to be considered. Each Application shall include all requested exhibits. In the event all requested exhibits are not available or not to be made part of the public record, a statement of explanation will be attached to the Application. The Authority recommends that each Applicant seek the advice of the Director of Economic Development of the County of Spotsylvania, Virginia or the Authority's Counsel respecting completion of the Application before submitting it to the Authority.

Section 4.2 Application Fee; Administrative Fee. The Authority charges application fees and/or administrative fees for certain Bonds issued or assumed. The application fee is due and payable at the time of submission of an Application and the administrative fee is due and payable at closing. A schedule of the Authority's application and administrative fees and when such fees are due and payable may be obtained from the Authority's offices.

Section 4.3 Costs and Expenses. The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2)

Section 4.4 Reserved.

Section 4.5 Transcripts of Proceedings. Each Applicant receiving Bond financing through the Authority shall furnish to the Authority upon the sale and delivery of the Bonds, two complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

Section 4.6 Bond Validation Proceedings. The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the County of Spotsylvania, Virginia, pursuant to the requirements of the Code. The costs, expenses and fees incurred in connection with any bond validation proceeding required by the Authority, including attorneys' fees, shall be paid by the Applicant.

Section 4.7 Additional Information Required of Applicants.

(a) The Authority may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.

(b) The Authority may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action which it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.

(c) Since the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

Section 4.8 Notice of Public Hearing. The Applicant shall publish a notice of public hearing with respect to each Application for which a public hearing is required by the Code once a week for two successive weeks, to be published in a newspaper having general circulation in the County of Spotsylvania, Virginia and in such other newspapers as may be required. The notice shall be in a form approved by the Authority's Counsel

and Bond Counsel. The second publication shall be not less than six nor more than twenty-one days before the Authority's meeting at which the Application is to be considered. Persons who are interested in speaking at any public hearing held by the Authority are encouraged to submit their comments in writing. The Authority shall publish such additional notice or notices and hold such additional public hearings with respect to each Application as may be required by law or recommended by Counsel to the Authority.

Section 4.9 Projects Outside the County of Spotsylvania, Virginia. Any Application to finance a Project located outside the County of Spotsylvania, Virginia shall be accompanied by evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority. Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority. The Authority may also require additional evidence concerning the impact or effect of the Project on the area where it will be located, whether the Project has received appropriate local approvals or permits, and whether the Project is acceptable to the inhabitants where it will be located.

ARTICLE V

PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

Section 5.1 Inducement Resolutions. Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of two years unless specifically extended by the Authority.

Section 5.2 Payment of Authority Expenses. The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with:

- (a) the authorization, issuance and sale of the Authority's Bonds;
- (b) the ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) prepayment or redemption of the Authority's Bonds;
- (d) administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and

(e) Such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by the Code, determined as follows:

(1) All costs and fees relating to the annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and

(2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

Section 5.3 Indemnification of the Authority. Each Applicant shall agree to indemnify and save harmless the Authority and its officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

(a) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the Applicant;

(b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnitees;

(c) any judgments, penalties, fines, damages, assessments, indemnities or contributions; and

(d) the reasonable fees of attorneys, auditors, and consultants;

provided that the Damages arise out of:

(i) failure by the Applicant, or its officers, employees or agents, to comply with the terms of the Financing Documents and any agreements, covenants, obligations, or prohibitions set forth therein;

(ii) any action, suit, claim or demand contesting or affecting the title of the Project;

(iii) any breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim

that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;

(iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project; or

(v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnitee of any of their respective obligations thereunder.

Section 5.4 Bond Counsel Opinion Required. Before issuing and delivering any of its Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel licensed to practice law in Virginia and approved by the Authority stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under IRC §103 (or other applicable provision of law) and taxation by the Commonwealth of Virginia, and that the Bonds are exempt from registration requirements under applicable state and Federal securities laws.

Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds. All Financing Documents presented for approval by the Authority shall contain appropriate covenants of the Applicant designed to insure compliance with the requirements of IRC §103 to preserve the tax exempt status of interest on the Bonds, including without limitation, “arbitrage” requirements, capital expenditure limitations and reporting requirements.

Section 5.6 Payments in Lieu of Taxes. In event title to the Project is held by any person or entity not subject to real or personal property taxes, the Applicant and any user of the Project, unless specifically exempted by the Authority, shall enter into an agreement to pay all taxes, levies, assessments, charges or other impositions which may be levied by any taxing authority on the Project as if such Applicant or user held title to the Project or any portion thereof.

Section 5.7 Restriction on Advertising. The Applicant and any purchaser or underwriter of the Authority’s Bonds shall not publish any advertisement, tombstone or other information with respect to the Authority’s Bonds unless (a) such advertisement has been approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and (b) such advertisement contains the statement set forth below with respect to the limited nature of the obligations. Any bond purchase agreement entered into in connection with the Authority’s Bonds shall contain a covenant in substantially the

following form which shall be binding on the Applicant, any purchaser and any underwriter of such bonds:

The undersigned agree that no advertisement, tombstone or other information with respect to the Bonds shall be published in any newspaper or other publication unless such advertisement (a) is approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and (b) clearly states that the Bonds are limited obligations of the Authority payable solely from revenues and that neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County of Spotsylvania, Virginia, shall be obligated to pay the principal of or the interest or premium, if any, on the Bonds and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County of Spotsylvania, is pledged to payment of the Bonds.

ARTICLE VI

REPORTS

Section 6.1 Interim Reports by Applicants. Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than the last day of the second month after the adoption of an inducement resolution for the Applicant and every three months thereafter until the adoption of any Financing Documents by the Authority. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority, including specific descriptions of new or changed plans for the placement of the bonds and the security to be offered.

Section 6.2 Annual Reports of Applicants. Each Applicant, after the issuance and sale of the Authority's Bonds for the benefit of such Applicant, shall annually report to the Authority no later than June 30 the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the County of Spotsylvania, Virginia.

Section 6.3 Reports by Authority Chairman, Directors, etc. At each meeting of the Authority, the Chairman, each Director, the Secretary, the Treasurer and the Authority's Counsel shall report any action taken on behalf of the Authority since the last meeting, including receipt of reports required under Sections 4.7, 6.1 and 6.2.

ARTICLE VII

ENFORCEMENT

Section 7.1 Enforcement of Provisions. The Authority may refuse to consider or adopt any inducement resolutions, Financing Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these Rules.

Section 7.2 Repeal of Actions Previously Taken. The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three weeks before the date upon which such action is proposed to be taken.

Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

ARTICLE VIII

STATEMENTS OF POLICY

Section 8.1 Construction, Operation and Effect of Rules. These Rules are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents and other matters brought before the Authority. For good cause, application of these Rules may be modified and waived upon a case by case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these Rules shall, nevertheless, be fully effective as if taken in compliance with these Rules. It is, however, the policy of the Authority that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by the Authority to take any action requested.

Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant. The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade by inducing manufacturing, industrial, governmental, commercial and non-profit enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax exempt financing to promote the commerce and industry of the

Commonwealth of Virginia and the County of Spotsylvania, Virginia, and given the express prohibition against operating enterprises or Projects, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any Applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

Section 8.3 Security for Payment of Bonds. The Authority will require a showing that any issue of its Bonds is fully and adequately secured. If the Bonds are secured by a lien upon or security interest in the Project financed with the proceeds of such Bonds, the Authority may require an appraisal of the Project showing that it is valued in an amount sufficient to pay the outstanding principal amount of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the applicant. Such a refusal might result in embarrassment to or considerable financial expenses on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes “timely” depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority’s officers, directors and counsel.

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