

RESOLUTION NO. 1636

A RESOLUTION OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, REGARDING THE FORMATION AND REINCORPORATION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF FLAGSTAFF.

WHEREAS, on April 15, 1980, pursuant to an approving resolution of the City Council of the City of Flagstaff adopted on April 15, 1980, The Industrial Development Authority of the City of Flagstaff, Arizona (the "Authority") was formed as a nonprofit corporation and as a political subdivision of the City of Flagstaff, all organized and existing under Title 9, Chapter 11, Arizona Revised Statutes (later renumbered as Title 35, Chapter 5, Arizona Revised Statutes) (the "IDA Act");

WHEREAS, the Articles of Incorporation of the Authority were filed with the Arizona Corporation Commission on April 18, 1980, for the purpose of providing a record of the establishment of the Authority, as required by the IDA Act, and for the precautionary purpose of complying with the general nonprofit corporation law set forth in Title 10, Chapter 5, Arizona Revised Statutes (the "General Nonprofit Corporation Act");

WHEREAS, on January 10, 1986, the Arizona Corporation Commission purported to revoke the filing of the Authority's Articles of Incorporation for failure to file an annual report, as is required for nonprofit corporations organized and existing under the General Nonprofit Corporation Act;

WHEREAS, the Authority has continued to operate as a nonprofit corporation and political subdivision of the City of Flagstaff organized and existing under the IDA Act since January 10, 1986, and, in such capacity, granted preliminary approval on November 20, 1987 (the "Official Action"), for the issuance of multifamily housing revenue bonds to finance the acquisition of land and the construction of a 200-unit multifamily residential rental project located on the west side of U. S. Highway 89-A, north of I-40 (the "Project"), received two allocations by the Director of the Arizona Department of Commerce of portions of the maximum volume of tax-exempt private activity bonds permitted to be issued in the State of Arizona in 1987 and 1989 (collectively, the "Allocation"), and the filing with the Internal Revenue Service of an election to carry the Allocation issued in 1987 forward for a period of up to three years (the "Carryforward Election");

WHEREAS, the City Council of the City of Flagstaff desires to confirm and ratify the actions of the Authority and the individuals acting as the Board of Directors thereof since January 10, 1986, including, without limitation, the Official Action, the receipt of the Allocations, and the Carryforward Election, to affirm the continued and uninterrupted existence of the Authority since April 15, 1980, as a nonprofit corporation and the political subdivision organized and existing under the IDA Act, and, as a precautionary measure, to approve the reincorporation of the Authority under the IDA Act and the General Nonprofit Corporation Act;

WHEREAS, a petition has been filed with the City Council of the City of Flagstaff by three qualified electors of the City requesting permission to form an Industrial Development Authority Board and to reincorporate the Authority; and

WHEREAS, the IDA Act and the General Nonprofit Corporation Act provide for the formation of Industrial Development Authorities and the formation of nonprofit corporations, respectively.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1: That this Council finds and determines that it is wise, expedient, necessary and advisable that the Authority of the City of Flagstaff, Arizona, be formed and reincorporated in accordance with and as provided in the application therefor.

SECTION 2: That, having made application to form and reincorporate the Authority, Dewey "Stretch" Penberthy, Arthur S. "Bud" Anderson, and Hazel Robinson be, and they are hereby, authorized to form and recreate the Authority and to proceed to reincorporate pursuant to and as prescribed by Arizona Revised Statutes and in accordance with the proposed form of Articles of Incorporation which are attached hereto as Exhibit "A".

SECTION 3: That the proposed form of Articles of Incorporation, attached hereto as Exhibit "A", are hereby approved.

SECTION 4: That this Council, as provided in the Articles of Incorporation and the IDA Act, hereby confirm and, to the extent necessary, appoints as members of the Board of Directors of the Authority, as formed and reincorporated, Dewey "Stretch" Penberthy, Arthur A. "Bud" Anderson, Hazel Robinson, Ray Lopp, and Jacqita Bailey, all of whom are qualified electors of the City of Flagstaff.

SECTION 5: That the above Directors are hereby divided into the following three groups:

Group 1 -	Arthur A. "Bud" Anderson
Group 2 -	Hazel Robinson Jacqita Bailey
Group 3 -	Dewey "Stretch" Penberthy Ray Lopp

The initial term of office for Group 1 is two years; for Group 2 is four years; and for Group 3 is six years. Thereafter the terms of all Directors shall be six years.

SECTION 6: That the name of the Authority, as formed and reincorporated, shall be "The Industrial Development Authority of the City of Flagstaff, Arizona."

SECTION 7: That the Authority, as formed and reincorporated, is the continuation of the Authority as established in 1980 as a nonprofit corporation and political subdivision organized and existing under the IDA Act, and that the approval of the formation and reincorporation of the Authority is undertaken as a precautionary measure solely in order to dispel any question with respect to the continued existence of the Authority.

SECTION 8: All funds held by the Authority and title to all property held by the Authority which may have vested in the City of Flagstaff solely as the result of the purported revocation by the Arizona Corporation Commission of the filing of the Articles of Incorporation of the Authority shall be assigned, transferred and conveyed to the Authority, as formed and reincorporated pursuant to this Resolution, such assignment to be effective immediately upon reincorporation of the Authority.

SECTION 9: That all actions of the Authority subsequent to January 10, 1986, including specifically, but without limitation, the Official Action, the receipt of the Allocations, and the Carryforward Election shall be, and are hereby ratified, adopted and confirmed as the act and deed of the Authority, acting on behalf of the City of Flagstaff, as of the date of such actions.

SECTION 10: That the Council hereby finds that this Resolution shall IMMEDIATELY become operative and in full force and effect from and after the passage by the Council, pursuant to A.R.S., Section 19-142, as an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City of Flagstaff for the reason that it is in the interests of the citizens of the City of Flagstaff that multifamily, low-cost housing be provided as expeditiously as possible with the best available financing.

PASSED AND ADOPTED by the Council and approved by the Mayor of the City of Flagstaff, this 30th day of October, 1989.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

October 27, 1989

Mayor Chris Bavasi
City of Flagstaff
211 West Aspen
Flagstaff, Arizona 86001

Re: Application for Re-Incorporation of
The Industrial Development Authority
of the City of Flagstaff as a Non-Profit
Corporation

Dear Mayor Bavasi:

The undersigned, being duly qualified electors residing within the City of Flagstaff, submit the attached proposed Articles of Incorporation for the re-incorporation of The Industrial Development Authority of the City of Flagstaff, Arizona, as a non-profit corporation.

Authority for formation of the Industrial Development Authority and application for incorporation was earlier approved by the Mayor and Flagstaff City Council on April 15, 1980, under Ordinance 1139. The Industrial Development Authority came into existence as a political subdivision of Arizona with the filing of its earlier Articles of Incorporation on April 18, 1980.

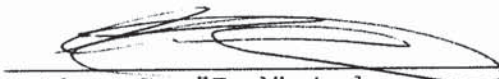
Yours very truly,



Dewey "Stretch" Penberthy



Hazel Robinson



Arthur G. "Bud" Anderson

ARTICLES OF INCORPORATION
OF
THE INDUSTRIAL DEVELOPMENT AUTHORITY OF
THE CITY OF FLAGSTAFF, ARIZONA
(A political subdivision of the State of Arizona)

KNOW ALL MEN BY THESE PRESENTS:

That, we the undersigned, whose names and addresses are hereinafter set forth, each of whom are electors of the City of Flagstaff, Arizona, have this day associated ourselves for the purpose of forming an Industrial Development Authority under the laws of the State of Arizona, and for that purpose do hereby adopt the following Articles of Incorporation:

ARTICLE I

The name of this corporation shall be THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF FLAGSTAFF, ARIZONA, and the location of its principal place of business shall be in the City of Flagstaff, Coconino County, Arizona, but the corporation may have offices within the State of Arizona as shall be fixed by the Board of Directors from time to time.

ARTICLE II

The name, residences and post office addresses of the incorporators, each of whom is a qualified elector of the City of Flagstaff, Arizona, and each of whom shall serve as directors until their successors are elected and qualify, are as follows:

<u>NAME</u>	<u>RESIDENCE</u>	<u>POST OFFICE ADDRESS</u>
Dewey Penberthy	5500 E. Mt. Pleasant Dr.	Flagstaff, AZ 86004
Arthur G. Anderson	2000 N. Rio de Flag,	Flagstaff, AZ 86004
Hazel Robinson	4195 N. St. Mortiz Way,	Flagstaff, AZ 86004

ARTICLE III

This Corporation shall serve a public purpose and shall perform an essential governmental function. The initial purposes for which this Corporation is organized and the affairs which this Corporation initially intends to conduct, are:

1. To acquire, own, construct, lease, sell and dispose of all kinds of properties.
2. To promote industry and develop trade by inducing manufacturing, industrial and commercial enterprises to locate and remain in the City of Flagstaff, Arizona;
3. To stimulate and encourage the production, development and use of the agricultural products and natural resources of the City of Flagstaff, Arizona.

4. To assist, financially and otherwise, in the rehabilitation, expansion and development of all kinds of businesses and industries in the City of Flagstaff, Arizona, which will reduce pollution, promote and assure job opportunities and promote and assure an improved standard of living and an increase in prosperity and health;

5. To do any and all things as provided by Title 35, Chapter 5, §§35-701 et seq., as amended, Arizona Revised Statutes, and Title 10, Chapter 5, §§10-1001, et seq., Arizona Revised Statutes.

ARTICLE IV

This Corporation is a political subdivision of the State of Arizona and, in addition to the other powers granted to such Corporation by law, the Corporation shall have those powers, together with all powers incidental thereto or necessary for the performance of those powers, as set forth in Title 35, Chapter 5 §§35-701 et. seq., and Title 10, Chapter 5, §§10-1001, et. seq., Arizona Revised Statutes, as such provisions may be amended from time to time.

ARTICLE V

The Corporation shall be a non-profit corporation and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual or corporation, except such reasonable compensation as may properly be paid for services rendered to the Corporation, and no dividends or other pecuniary profits may be declared for the benefit of any director or other individual, and no director or officer shall be entitled to participate for profit in any transaction with the Corporation except as hereinable provided. No part of the activities of this Corporation shall be devoted to carrying on propaganda for or otherwise attempting to influence legislation and this authority shall not participate in or intervene in any political campaign on behalf of any candidate for public office.

ARTICLE VI

The Corporation shall have a Board of Directors in which all powers of the Corporation shall be vested and which shall consist of any number of directors, not less than three nor more than nine, all of whom shall be qualified as provided by law. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties in the same manner as is provided for other state officers. No director shall be an officer or employee of the City of Flagstaff. No member of the Board shall have any financial interest in any project or lessee of the Corporation. All directors shall declare any conflict of interest as provided in §§38-501 et. seq., Arizona Revised Statutes, or any successor statutes.

The directors shall be appointed by the Council of the City of Flagstaff, and they shall be so appointed that they shall hold office for overlapping terms. At the time of the appointment of the first Board of Directors, the City Council of Flagstaff shall divide the directors into three groups containing as nearly equal whole numbers as possible. The first term of the directors included in the first group shall be two years, the first term of the directors included in the second group shall be four years, and the first term of the directors included in the third group shall be six years.

The affairs of the Corporation shall be conducted by the Board of Directors and such officers, including a president, vice president, treasurer, secretary and such other officers as the Board of Directors shall elect or appoint. The board of Directors shall have the power to adopt, amend and rescind by-laws and to appoint an executive committee with such powers as the Board may, by resolution, delegate to such committee.

Meetings held by the Board of Directors for any purpose whatsoever shall publically noticed and be open to the public.

ARTICLE VII

The initial Board of Directors shall consist of the initial incorporators (applicants) and the following additional members: Ray Lopp, 2024 N. Crescent Dr., Flagstaff, AZ 86001; and Jacqita Bailey, 515 N. San Francisco, Flagstaff, AZ 86001. They shall serve as Directors until their successors, named by the Council of the City of Flagstaff, are confirmed at the first meeting of the corporation following the naming of the new Board by the Council. The Council of the City of Flagstaff, Arizona, shall name a new Board of Directors, by resolution which shall set terms of each director in the manner provided by Article VI hereof.

ARTICLE VIII

The Corporation shall indemnify any and all of its incorporators, directors and officers against all expenses incurred by them and each of them, including, but not limited to, legal fees, judgments and penalties which may be incurred, rendered or levied in any legal action brought against any of them for or on account of any action or omission alleged to have been committed while acting as promoters or incorporators or while acting within the scope of employment as a director or officer of the Corporation. Whenever any director or officer shall report to the president of the Corporation or the chairman of the Board of Directors that he has incurred or may incur expenses, including, but not limited to, legal fees, judgments and penalties in a legal action brought or about to be brought against him for or on account of any action or omission alleged to have been committed by him while acting within the scope of his employment as a director or officer of the Corporation, the Board of Directors of the Corporation shall, at its next regular or at a special meeting held within a reasonable time thereafter,

determine in good faith whether, in regard to the matter involved in the action or contemplated action, such person acted, or failed to act, or refused to act wilfully, with gross negligence or with fraudulent or criminal intent. If the Board of Directors determines in good faith that such person did not act, fail to act, or refuse to act wilfully or with gross negligence or with fraudulent or criminal intent in regard to the matter involved in the action or contemplated action, indemnification shall be mandatory and shall be automatically extended as specified herein, provided, however, that the Corporation shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Corporation, at its own expense and through counsel of its own choosing, to defend him in the action.

The private property of the incorporators, officers and directors of the Corporation shall be exempt from liability for its debts and obligations.

ARTICLE IX

The City of Flagstaff shall not, in any event, be liable for the payment of the principal of, or interest on, any bonds of the Corporation, formed thereby or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Corporation, and none of the bonds of the Corporation or any of its agreements or obligations shall be construed to constitute an indebtedness or obligation of the City of Flagstaff or of the State of Arizona within the meaning of any constitutional or statutory provision whatsoever.

ARTICLE X

Pursuant to §§35-721 et seq., Arizona Revised Statutes, bonds issued under the provisions of Title 35, Chapter 5, Arizona Revised Statutes, as amended, shall be legal investments for all banks, trust companies and insurance companies organized and operating under the laws of this State.

ARTICLE XI

When the board of Directors of the Corporation, by resolution, shall determine that the purposes for which the Corporation was formed have been substantially complied with and that all bonds theretofore issued and all obligations theretofore incurred by the Corporation have been fully paid, the members of the board of Directors of the Corporation shall thereupon dissolve the Corporation in accordance with the provisions of Title 10 of the Arizona Revised Statutes.

ARTICLE XII

Daniel J. Stoops, of 222 E. Birch Avenue, Flagstaff, Arizona 86001, who has been a bona fide, continuous resident of the State of Arizona for more than three years, is hereby appointed the lawful statutory agent of this Corporation for and on behalf of said Corporation, to accept and acknowledge services of all necessary processes and for all purposes required by law. The board of Directors may, at their option, revoke such appointment and shall have the power to fill such vacancy.

ARTICLE XIII

The incorporators herein received permission to organize the Corporation pursuant to a Resolution of the Council of the City of Flagstaff, Arizona, duly adopted and approved by said Council on the _____ day of _____, _____, at a regular meeting of said Board.

IN WITNESS WHEREOF, we the undersigned, have signed our names this _____ day of October, 1989.

STATE OF ARIZONA)
) ss.
County of Coconino)

On this, the _____ day of October, 1989, before me, the undersigned Notary Public, personally appeared Dewey "Stretch" Penberthy, known to me to be the person whose name is subscribed to the above, and acknowledged that he executed the same for the purposes therein set forth.

Dewey Penberthy

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Coconino)

On this, the _____ day of October, 1989, before me, the undersigned Notary Public, personally appeared Arthur G. "Bud" Anderson, known to me to be the person whose name is subscribed to the above, and acknowledged that he executed the same for the purposes therein set forth.

Arthur G. Anderson

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Coconino)

On this, the _____ day of October, 1989, before me, the undersigned Notary Public, personally appeared Hazel Robinson, known to me to be the person whose name is subscribed to the above, and acknowledged that he executed the same for the purposes therein set forth.

Hazel Robinson

Notary Public

My Commission Expires:
