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ARIZONA CORPORATION COMMISSION

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SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2906
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July 17, 1996

Nancy Roetman Menzel, Esq.
Gray, Plant & Mooty
3400 City Center
33 South Sixth Street
Minneapolis, MN 55402-3796

RE: Myrtle Creek Building Authority Gross Revenue Bonds
A.R.S. §§ 44-1843(A)(1) and 44-1843(A)(6)

Dear Ms. Menzel:

On the basis of the facts set forth in your letter of May 22, 1996, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dee Ridell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:PHG
Attachment



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33 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402-3796

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CONSULTING OFFICE, BEIJING CHINA
3307A JING GUANG CENTRE, HU JIA LOU,
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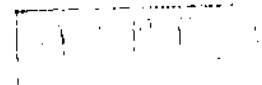
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Nancy Roetman Menzel
612 343-3900

May 22, 1996

Ms. Leslie Block
Associate General Counsel
Corporation Commission
Securities Division
1300 West Washington Street
Third Floor
Phoenix, Arizona 85007

VIA FEDERAL EXPRESS



MAY 23 '96

Re: Request for No-Action Letter regarding \$4,475,000 Myrtle Creek Building Authority Gross Revenue Bonds, Series 1996A (Myrtle Creek Golf Course Project) and \$415,000 Myrtle Creek Building Authority Taxable Gross Revenue Bonds, Series 1996B (Myrtle Creek Golf Course Project)

Dear Ms. Block:

As we discussed in our telephone conversation of May 21, 1996, this letter is submitted to supplement our letter dated May 17, 1996, requesting a no action letter regarding the availability of an exemption from registration pursuant to Section 44-1843(1) or Section 44-1843(6), or both such sections, of the Securities Act of Arizona (the "Act") for the above-referenced Bonds (the "Bonds"). A draft of the Preliminary Official Statement relating to the Bonds was enclosed with our May 17th letter as was our check in the amount of \$200 in payment of the applicable filing fee. The Underwriter is anxious to commence the offering and we would therefore appreciate a prompt response.

I. LEGAL ISSUES

1. Whether the Myrtle Creek Building Authority (the "Issuer") is an "agency or other instrumentality of the City of Myrtle Creek, Oregon, for purposes of the exemption set forth in Section 44-1843(1) of the Act.

2. Whether the Bonds are exempt from registration under the Act pursuant to 44-1843(6).

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II. THE ISSUER

The Issuer is a public benefit corporation and its sole member is the City. The purpose of the Issuer "is to provide for its member the lease, construction, operation and maintenance of Myrtle Creek Golf Course."

The United States Department of the Treasury has determined that the Issuer is exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code. The Issuer has covenanted not to carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code. As you know, Section 501(c)(3) describes organizations that are exempted from federal income taxation. It reads as follows:

Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment) or for the prevention of cruelty to children or animals, no part of the earnings of which inures to the benefit of any private shareholder or individual

A copy of the Determination Letter issued by the Internal Revenue Service was attached to our letter of May 17, 1996.

The language of Section 501(c)(3) is similar, but not identical to that in Section 44-1843(6) of the Act which exempts from the registration provisions of the Act:

Securities issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the earnings of which inures to the benefit of any private stockholder or individual

Issuer was established for the purpose of: (i) leasing certain real property (the "Leased Premises") from the City; (ii) issuing tax-exempt indebtedness and other indebtedness to finance the construction and equipping of an eighteen hole Golf Course on the Leased Premises (the "Project") and the payment of related expenses; and (iii) operating, and maintaining the Project.

The Issuer's "charitable purposes" include acting as a financing vehicle for the citizens of Myrtle Creek, Oregon, easing the administrative burden of the City in connection with the financing of municipal improvement projects such as the Myrtle Creek Golf Course

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and promoting the economic and social growth of the City's residents. In this, the Bonds are very similar to the bonds issued by the Kansas City Municipal Assistance Corporation, which received a no-action letter dated October 3, 1990, from your office. The Issuer will be operated exclusively for public purposes and no part of its net earnings will inure to the benefit of any private shareholder or individual. The Bonds should, therefore qualify for the exemption set forth in Section 4401843(6) of the Act.

III. THE BONDS

The Bonds are being issued by the Issuer, a nonprofit public benefit corporation organized under the Oregon Nonprofit Corporation Law, Title 7, Chapter 65, of the Oregon Revised Statutes. The Issuer has received a determination letter from the Internal Revenue Service that recognizes the Issuer as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and that is therefore exempt from income taxation under Section 501(a) of the Code. The Issuer was formed to provide for the acquisition, construction, operation, and maintenance of Myrtle Creek Golf Course (the "Project"). The Issuer will utilize the guidance of Revenue Ruling 63-20, 1963-1 C.B. 24 ("Ruling 63-20) to issue the Series 1996A Bonds as qualified 501(c)(3) bonds the interest on which is not includable in gross income for federal income tax purposes under Section 103(a) of the Code. In accordance with Ruling 63-20, the organization of the Issuer and the issuance of the Bonds have been approved by the City of Myrtle Creek, Oregon (the "City"), and upon the repayment of all Bonds of the Issuer, title to the facilities financed with such Bonds will be transferred to the City. Although approved by the City and issued on behalf of the City, the Bonds do not constitute a debt or indebtedness of the City.

The Bonds are being issued by the Issuer under the Indenture of Trust, dated as of May 1, 1996 (the "Indenture"), between the Issuer and First Interstate Bank of Oregon, N.A., as trustee (the "Trustee"). A portion of the proceeds derived by the Issuer from the sale of the Bonds will be applied to the construction, installation, furnishing, and equipping of the Project, an eighteen-hole golf course to be designated the Myrtle Creek Golf Course.

The Project will be constructed on land owned by the City and leased to the Issuer under the terms of the Ground Lease, dated as of May 1, 1996, (the "Ground Lease"), between the Issuer and the City. Most of the land on which the Project will be constructed (the "Leased Premises") is located within the boundaries of the City. The Ground Lease will not terminate prior to the payment in full of the principal of and interest on the Bonds. The Leased Premises will be improved with an irrigation system and settling pond (the "Irrigation System") to be constructed by the City and financed with the proceeds of bonds issued for the City by the State of Oregon and with the proceeds of a grant provided by the State of Oregon. The City will use the Irrigation System to dispose of treated effluent from its wastewater treatment plant. The treated effluent will be utilized to irrigate the Project.

The principal of, premium, if any, and interest on the Bonds are payable solely from the Gross Revenues of the Issuer deposited in the funds and accounts established and maintained under the Indenture. The Bonds are secured by a pledge and assignment by the Issuer to the Trustee of its right, title, and interest in certain properties constituting the Security under the Indenture. The Security includes a separate trust estate, the Parity Estate, that is pledged to the Trustee for the benefit of the Owners of the Series 1996A Bonds and the Series 1996B Bonds on an equal and ratable basis. The Parity Estate includes: (i) the Leasehold Mortgage, dated as of May 1, 1996 (the "Leasehold Mortgage"), from the Issuer to the Trustee, for the benefit of the Owners of the Bonds, with respect to the Issuer's interests in the Leased Premises; (ii) the Deed of Trust, dated as of May 1, 1996 (the "Deed of Trust"), from the City to the Trustee, for the benefit of the Owners of the Bonds, with respect to certain land owned by the City and located adjacent to the Project (the "City Land"); and (iii) a security interest in the funds of the Issuer in the Gross Revenues Fund held by the Issuer under the provisions, and subject to the limitations set forth in, the Indenture. The Security also includes, as separate trust estates, the Series A Trust Estate which includes a pledge of certain funds and accounts established with proceeds of the Series 1996A Bonds and the Series B Trust Estate which includes a pledge of certain funds and accounts established with proceeds of the Series 1996B Bonds. The Series A Trust Estate constitutes a separate security for the Owners of the Series 1996A Bonds and the Series B Trust Estate constitutes a separate security for the Owners of the Series 1996B Bonds.

IV. FACTUAL INFORMATION CONCERNING THE ISSUER AND ITS RELATIONSHIP WITH THE CITY

The Gross Revenue Bonds, Series 1996A (Myrtle Creek Golf Course Project) (the "Series 1996A Bonds"), and the Taxable Gross Revenue Bonds, Series 1996B (Myrtle Creek Golf Course Project) (the "Series 1996B Bonds"), offered hereby are limited obligations of the Issuer and do not constitute general obligations or a debt, liability, or pledge of the full faith and credit of the City of Myrtle Creek, Douglas County, the State of Oregon, or any political subdivision thereof. Neither the City of Myrtle Creek, Douglas County, the State of Oregon, nor any political subdivision thereof, shall be liable for payment of Bonds except from the funds or assets specifically pledged therefor. The Issuer has no taxing power.

The City Council of the City adopted a resolution approving the creation of the Issuer and approving the issuance of the Bonds by the Issuer for the purposes of financing the costs of the Project and agreeing to accept future unencumbered title to the Project at the time the Bonds are no longer outstanding. The City Council of the City has adopted a resolution approving the terms of issuance of the Bonds financing the Project costs and funding a reasonably required reserve fund, paying a portion of the interest on the Bonds during the construction of the Project, and paying certain costs associated with the issuance of the Bonds. The Board of Directors of the Issuer adopted a resolution authorizing the issuance and sale of the Bonds for the purposes of financing the costs of the Project, funding a

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reasonably required reserve fund, paying a portion of the interest on the Bonds during the construction of the Project, and paying certain costs associated with the issuance of the Bonds. The execution and delivery by the Issuer of this financing and the documents thereto, and the performance by the Issuer of its obligations under and with respect to this financing do not and will not require any additional authorization, consent, or approval of, or any ratification or exemption by, or any additional filing, registration, or qualification with any corporation, partnership, entity, governmental agency, or other person.

The Issuer is governed by a Board of Directors. The Board of Directors may be comprised of a maximum of seven Directors and a minimum of five Directors. The Board of Directors is presently comprised of seven Directors. The Directors serve one-year terms and are elected annually by the City, as the sole member of the Issuer, at the annual meeting of the Issuer.

Section 44-1843(1) of the Act provides an exemption from the registration requirements of the Act for: "Securities issued . . . by . . . any state . . . or by any political subdivision or of such state . . . or by any agency or instrumentality if one or more of any of the foregoing." Neither the Act nor the regulations promulgated thereunder provide guidance as to what constitutes an "agency" or instrumentality." As discussed in the Kansas City Municipal Assistance Corporation no-action letter referred to above, securities commissions in various states have formulated certain factors to consider when determining whether an entity is an "instrumentality." A copy of that letter is attached hereto for your convenience.

These factors include the statute or law under which the corporation is formed, the nonprofit nature of the corporation, that the net earnings do not inure to any private individual, that the political entity approved the formation, the directors and the proposed method of financing, that the political entity will be notified of meetings of the directors or members of the corporation. In this case, the formation of the issuer was approved by the City, the City is the sole member of the Issuer, the City elects all of the directors of the Issuer, and upon dissolution of the Issuer all of its assets will be distributed to the City.

V. DISCUSSION

The information provided above is intended to address the factors relevant to the determination of whether the exemptions from registration set forth in Section 44-1843(1) and Section 44-1843(6) of the Act are available for the Bonds. Based on the foregoing factual elements, we believe that the Issuer should be construed as an instrumentality or agent through which one or more of the functions of the City is carried out and the Issuer should be construed as an "agency or corporate or other instrumentality of the City for purposes of Section 44-1843(1)" of the Act. The issuer is also organized exclusively for charitable purposes and has operated solely for the benefit of the City. The bonds should

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also be exempt pursuant to Section 44-1843(6) because the Issuer is a non-profit organization organized exclusively for charitable purposes.

VI. CONCLUSION

The exemptions contained in Sections 44-1843(1) and 44-1843(6) are available with respect to the Bonds.

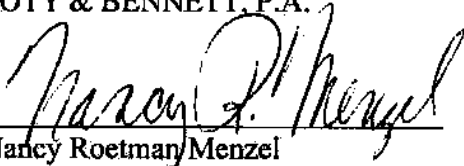
Also enclosed is a photocopy of this letter. Please acknowledge your receipt of this letter and the enclosures on the photocopy and return it to me in the enclosed self-addressed stamped envelope which is provided.

In the event the event the staff is not inclined to concur with our views, we respectfully request an opportunity to discuss the matter prior to any final decision.

If you have any questions or comments or require any additional information in connection with this request, please contact the undersigned.

Very truly yours,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By 
Nancy Roetman/Menzel

NRM/ktm
Enclosure
cc: John Utley

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