



THE CITY OF  
**NOVATO**  
CALIFORNIA

75 Rowland Way, #200  
Novato, CA 94945-3232  
415/899-8900  
FAX 415/899-8213  
[www.novato.org](http://www.novato.org)

**OVERSIGHT BOARD**  
**TO THE SUCCESSOR AGENCY TO THE DISSOLVED**  
**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**  
**SPECIAL MEETING**  
to be held at  
**NOVATO CITY HALL**  
**COUNCIL CHAMBERS**  
**901 SHERMAN AVENUE**  
**APRIL 9, 2012**  
**4:00 P.M**

**AGENDA**

**Tony Elshout,**  
Citizen Appointee

**Michael Frank,**  
City Manager, City of  
Novato

**Al Harrison,**  
Vice President, College  
Operations, College of  
Marin

**Matthew Hymel,**  
County Administrator,  
Marin County

**Karen Maloney,**  
CFO, Novato Unified  
School District

**Stephen Marshall,**  
Senior Planner, City of  
Novato

**Mark Revere,**  
Fire Chief, Novato Fire  
District

**A. CALL TO ORDER**

**B. APPROVAL OF FINAL AGENDA**

**C. CONSENT CALENDAR**

No items are listed for this section.

**D. REGULAR CALENDAR**

1. INTRODUCTIONS OF OVERSIGHT BOARD MEMBERS

Consider hearing formal introductions of Oversight Board Members.

***Recommendation: Hear formal introductions.***

2. ELECTION OF CHAIR AND VICE CHAIR

Consider electing one member to serve as Chair and electing one member to serve as Vice Chair of the Oversight Board to the Successor Agency to the dissolved Novato Redevelopment Agency for one-year terms.

***Recommendation: Elect Chair and Vice Chair.***

3. **PUBLIC COMMENT** (on items within the purview of the Oversight Board and not listed on the agenda)

At this time, member of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the Oversight Board at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Board consideration. Upon being acknowledged by the Chair, please step forward and begin by stating and spelling your name.

4. ADOPTION OF BOARD RULES OF PARLIAMENTARY PROCEDURE

Consider adopting, by motion, Robert's Rules of Order, (Robert's Rules of Order Newly Revised, 11th ed., Da Capo Press, 2011), as the Oversight Board's rules of parliamentary procedure.

***Recommendation: Adopt Robert's Rules.***

5. ESTABLISHING DATE/TIME/LOCATION OF REGULAR MEETINGS

Consider adopting a resolution of the Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato establishing a regular meeting schedule for Oversight Board meetings.

***Recommendation: Adopt resolution.***

6. DESIGNATION OF CONTACT PERSON FOR DEPARTMENT OF FINANCE INQUIRIES

Consider designating Brian Cochran, Finance Manager for the City of Novato, as the official who shall serve as the contact person for Department of Finance inquiries regarding Oversight Board actions.

***Recommendation: Make designation.***

7. PUBLIC TRANSPARENCY OVERVIEW

- A. Overview of Brown Act
- B. Overview of Conflict of Interest provisions of the Political Reform Act

***Recommendation: Receive presentations and discuss, if appropriate.***

8. ADOPTION OF BOARD CONFLICT OF INTEREST CODE

Consider adopting a resolution of the Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato adopting a conflict of interest code for the Oversight Board.

***Recommendation: Adopt resolution.***

9. OVERSIGHT BOARD ORIENTATION

- A. Overview of former Redevelopment Agency of the City of Novato
- B. Overview of Oversight Board roles and responsibilities

***Recommendation: Receive presentations and discuss, if appropriate.***

10. APPROVAL OF ADMINISTRATIVE BUDGET FOR JANUARY 1, 2012 THROUGH JUNE 30, 2012

Consider adopting a resolution of the Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato approving the Successor Agency Administrative Budget for January 1, 2012 through June 30, 2012

***Recommendation: Adopt resolution.***

11. ADOPTION OF RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30, 2012

Adopt, by a resolution of the Oversight Board of the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato, a Recognized Obligation Payment Schedule pursuant to Health and Safety Code section 34177.

***Recommendation: Adopt the Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012.***

M. ADJOURNMENT

**AFFIDAVIT OF POSTING**

I, Sheri Hartz, certify that on April 5, 2012, I caused to be posted the agenda of the open session of the April 9, 2012 special meeting of the Oversight Board of the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato, California, on the City Community Service Board in the Police Department and on the City's website at [www.cityofnovato.org](http://www.cityofnovato.org).

/Sheri Hartz/  
Sheri Hartz, City Clerk

# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-1

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager  
Brian Cochran, Finance Manager

SUBJECT: INTRODUCTIONS

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
)www.ci.novato.ca.us

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### REQUEST

Consider hearing formal introductions of Oversight Board Members.

### RECOMMENDATION

Hear formal introductions.

### DISCUSSION

The Redevelopment Dissolution Act, AB 1x26, signed by the Governor in June 2011, was upheld by the California Supreme Court on December 29, 2011. The Court set the date of February 1, 2012, for dissolution of all California redevelopment agencies. The City of Novato has elected to serve as the Successor Agency to the Novato Redevelopment Agency.

The Dissolution Act requires that each successor agency have an Oversight Board composed of seven members appointed by specific governmental agencies. Each member of the Oversight Board serves at the pleasure of the entity that appointed such member. The appointees to the Oversight Board, listed alphabetically by last name, are as follows:

- Tony Elshout, Public Member  
(Appointed by Marin County Board of Supervisors)
- Michael Frank, City Manager, City of Novato  
Appointed by Novato City Council
- Al Harrison, Vice President of College Operations, College of Marin, Ignacio  
(Appointed by College of Marin; representing the community college district in the county)

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- Matthew Hymel, County Administrator, Marin County  
(Appointed by Marin County Board of Supervisors)
- Karen Maloney, CFO, Novato Unified School District  
(Appointed by Novato Unified School District)
- Stephen Marshall, Senior Planner, City of Novato  
(Appointed by the Novato City Council as the appointee from the employee organization representing former Novato Redevelopment Agency employees)
- Mark Revere, Fire Chief, Novato Fire District  
(Appointed by Novato Fire Protection District; representing the largest special district in the jurisdiction of the former redevelopment agency)

**FISCAL IMPACT**

None

**ATTACHMENTS**

None

# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-2

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency  
To the Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager

SUBJECT: ELECTION OF CHAIR AND VICE CHAIR

75 Rowland Way #200  
Novato, CA 94945-3232  
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### REQUEST

Consider electing one member to serve as Chair and electing one member to serve as Vice Chair of the Oversight Board to the Successor Agency to the dissolved Novato Redevelopment Agency for one-year terms.

### RECOMMENDATION

Elect Chair and Vice Chair.

### DISCUSSION

AB1x26, the Redevelopment Dissolution Act, requires each successor agency to have an Oversight Board composed of seven members. The Oversight Board must elect one of its members as Chair to preside over the Oversight Board meetings. It is also recommended that a Vice Chair be elected to preside over meetings in the absence of the Chair. Staff recommends that one-year terms be adopted.

### **Recommended Voting Procedure:**

A majority of the total membership of the Oversight Board constitutes a quorum (four members) for the transaction of business. Four (4) affirmative votes are required to approve any action taken by the Oversight Board. Given the lack of a Chair or Vice Chair, it is recommended that the Acting Secretary open and close nominations to the Oversight Board for the election of Chair. Votes will be cast for the nominee(s) by roll call vote. The nominee receiving at least four affirmative votes will be elected as Chair. The same process would be facilitated by the Chair for the election of a Vice Chair.

### FISCAL IMPACT

None

### ATTACHMENTS

None

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# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-4

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager

SUBJECT: ADOPTION OF BOARD RULES OF PARLIAMENTARY PROCEDURE

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### REQUEST

Consider adopting, by motion, Robert's Rules of Order (Robert's Rules of Order Newly Revised, 11th ed., Da Capo Press, 2011) as the Oversight Board's rules of parliamentary procedure.

### RECOMMENDATION

Adopt Robert's Rules.

### DISCUSSION

The Oversight Board to the Successor Agency to the dissolved Novato Redevelopment Agency has been appointed pursuant to Health and Safety Code Section 34179.

In addition to the Oversight Board's required compliance with the Ralph M. Brown Act, staff is recommending the Board, by motion, adopt Robert's Rules of Order as the governing parliamentary procedure for the Oversight Board. Although staff expects the Oversight Board to operate in a relatively informal manner, parliamentary rules are appropriate to guide the making of motions, taking votes and other Board procedures. For ease and simplicity, staff is recommending the Board refer to Robert's Rules for its parliamentary procedure. Staff has also attached a brief parliamentary procedures reference sheet to assist the Oversight Board.

### FISCAL IMPACT

None

### ATTACHMENTS

1. Parliamentary Procedure Reference Sheet

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## Parliamentary Procedure for Meetings

1 .

*Robert's Rules of Order* is the standard for facilitating discussions and group decision-making. Copies of the rules are available at most bookstores. Although they may seem long and involved, having an agreed-upon set of rules makes meetings run easier. *Robert's Rules* will help your group have better meetings, not make them more difficult. Your group is free to modify them or find another suitable process that encourages fairness and participation, unless your bylaws state otherwise.

Here are the basic elements of *Robert's Rules*, used by most organizations:

1. **Motion:** To introduce a new piece of business or propose a decision or action, a motion must be made by a group member ("I move that.....") A second motion must then also be made (raise your hand and say, "I second it.") After limited discussion the group then votes on the motion. A majority vote is required for the motion to pass (or quorum as specified in your bylaws.)
2. **Postpone Indefinitely:** This tactic is used to kill a motion. When passed, the motion cannot be reintroduced at that meeting. It may be brought up again at a later date. This is made as a motion ("I move to postpone indefinitely..."). A second is required. A majority vote is required to postpone the motion under consideration.
3. **Amend:** This is the process used to change a motion under consideration. Perhaps you like the idea proposed but not exactly as offered. Raise your hand and make the following motion: "I move to amend the motion on the floor." This also requires a second. After the motion to amend is seconded, a majority vote is needed to decide whether the amendment is accepted. Then a vote is taken on the amended motion. In some organizations, a "friendly amendment" is made. If the person who made the original motion agrees with the suggested changes, the amended motion may be voted on without a separate vote to approve the amendment.
4. **Commit:** This is used to place a motion in committee. It requires a second. A majority vote must rule to carry it. At the next meeting the committee is required to prepare a report on the motion committed. If an appropriate committee exists, the motion goes to that committee. If not, a new committee is established.
5. **Question:** To end a debate immediately, the question is called (say "I call the question") and needs a second. A vote is held immediately (no further discussion is allowed). A two-thirds vote is required for passage. If it is passed, the motion on the floor is voted on immediately.
6. **Table:** To table a discussion is to lay aside the business at hand in such a manner that it will be considered later in the meeting or at another time ("I make a motion to table this discussion until the next meeting. In the meantime, we will get more information so we can better discuss the issue.") A second is needed and a majority vote required to table the item being discussed.
7. **Adjourn:** A motion is made to end the meeting. A second motion is required. A majority vote is then required for the meeting to be adjourned (ended).

**Note:** If more than one motion is proposed, the most recent takes precedence over the ones preceding it. For example if #6, a motion to table the discussion, is proposed, it must be voted on before #3, a motion to amend, can be decided.

In a smaller meeting, like a committee or board meeting, often only four motions are used:

- To introduce (motion.)
- To change a motion (amend.)
- To adopt (accept a report without discussion.)
- To adjourn (end the meeting.)

Remember, these processes are designed to ensure that everyone has a chance to participate and to share ideas in an orderly manner. Parliamentary procedure should not be used to prevent discussion of important issues.

Board and committee chairpersons and other leaders may want to get some training in meeting facilitation and in using parliamentary procedure. Additional information on meeting processes, dealing with difficult people, and using *Robert's Rules* is available from district office staff and community resources such as the League of Women Voters, United Way and other technical assistance providers. Parliamentary Procedure at a Glance, by O. Garfield Jones, is an excellent and useful guide for neighborhood association chairs.

## Tips in Parliamentary Procedure

The following summary will help you determine when to use the actions described in *Robert's Rules*.

- **A main motion must be moved, seconded, and stated by the chair before it can be discussed.**
- **If you want to move, second, or speak to a motion,** *stand and address the chair.*
- **If you approve the motion as is,** *vote for it.*
- **If you disapprove the motion,** *vote against it.*
- **If you approve the idea of the motion but want to change it,** *amend it or submit a substitute for it.*
- **If you want advice or information to help you make your decision,** *move to refer the motion to an appropriate quorum or committee with instructions to report back.*
- **If you feel they can handle it better than the assembly,** *move to refer the motion to a quorum or committee with power to act.*
- **If you feel that there the pending question(s) should be delayed so more urgent business can be considered,** *move to lay the motion on the table.*
- **If you want time to think the motion over,** *move that consideration be deferred to a certain time.*
- **If you think that further discussion is unnecessary,** *move the previous question.*
- **If you think that the assembly should give further consideration to a motion referred to a quorum or committee,** *move the motion be recalled.*
- **If you think that the assembly should give further consideration to a matter already voted upon,** *move that it be reconsidered.*
- **If you do not agree with a decision rendered by the chair,** *appeal the decision to the assembly.*
- **If you think that a matter introduced is not germane to the matter at hand,** *a point of order may be raised.*
- **If you think that too much time is being consumed by speakers,** *you can move a time limit on such speeches.*
- **If a motion has several parts, and you wish to vote differently on these parts,** *move to divide the motion.*

## PARLIAMENTARY PROCEDURE AT A GLANCE

TO DO THIS	YOU SAY THIS	MAY YOU INTERRUPT SPEAKER	MUST YOU BE SECONDED	IS MOTION DEBATABLE	WHAT VOTE REQUIRED
Adjourn meeting*	I move that we adjourn	No	Yes	No	Majority
Recess meeting	I move that we recess until...	No	Yes	No	Majority
Complain about noise, room temperature, etc.*	Point of privilege	Yes	No	No	No vote
Suspend further consideration of something*	I move we table it	No	Yes	No	Majority
End debate	I move the previous question	No	Yes	No	2/3 vote
Postpone consideration of something	I move we postpone this matter until...	No	Yes	Yes	Majority
Have something studied further	I move we refer this matter to committee	No	Yes	Yes	Majority
Amend a motion	I move this motion be amended by...	No	Yes	Yes	Majority
Introduce business (a primary motion)	I move that...	No	Yes	Yes	Majority
Object to procedure or personal affront*	Point of order	Yes	No	No	No vote, Chair decides
Request information	Point of information	Yes	No	No	No vote
Ask for actual count to verify voice vote	I call for a division of the house	No	No	No	No vote
Object consideration of undiplomatic vote*	I object to consideration of this question	Yes	No	No	2/3 vote
Take up a matter previously tabled*	I move to take from the table...	No	Yes	No	Majority
Reconsider something already disposed of*	I move we reconsider our action relative to...	Yes	Yes	Yes	Majority
Consider something already out of its schedule*	I move we suspend the rules and consider	No	Yes	No	2/3 vote
Vote on a ruling by the Chair	I appeal the Chair's decision	Yes	Yes	Yes	Majority

\*Not amendable

## PARLIAMENTARY PROCEDURE AT A GLANCE

		Debatable	Amendable	Can Be Reconsidered	Requires 2/3 Vote
Privileged Motions	Fix Time at Which to Adjourn	No	Yes	No	No
	Adjourn	No	No	Yes	No
	Question of Privilege	No	Yes	Yes	No
	Call for Order of Day	No	No	Yes	No
Incidental Motions	Appeal	Yes	No	Yes	No
	Objection to Consideration of a Question	No	No	Yes	Yes
	Point of Information	No	No	No	No
	Point of Order	No	No	No	No
	Read Papers	No	No	Yes	No
	Suspend the Rules	No	No	No	Yes
	Withdraw a Motion	No	No	Yes	No
Subsidiary Motions	Lay on the Table	No	No	Yes	No
	The Previous Question (close debate)	No	No	Yes	Yes
	Limit or Extend Debate	No	Yes	Yes	Yes
	Postpone to a Definite Time	Yes	Yes	Yes	No
	Refer to Committee	Yes	Yes	Yes	No
	Amend the Amendment	Yes	No	No	No
	Amendment	Yes	Yes	Yes	No
	Postpone Indefinitely	Yes	No	Yes	No
Main Motion	Main or Procedural Motion	Yes	Yes	Yes	No

This table presents the motions in order of precedence. Each motion takes precedence over (i.e. can be considered ahead of) the motions listed below it. No motion can supersede (i.e. be considered before) any of the motions listed above it.

**PLEASE NOTE:** many organizations use only the Main Motion and Subsidiary Motions, handling other matters on an informal basis.

## **IN THE MEETING**

### ***TO INTRODUCE A MOTION:***

Stand when no one else has the floor.

Address the Chair by the proper title.

Wait until the chair recognizes you.

- Now that you have the floor and can proceed with your motion say "I move that...", state your motion clearly and sit down.
- Another member may second your motion. A second merely implies that the seconder agrees that the motion should come before the assembly and not that he/she is in favor of the motion.
- If there is no second, the Chair says, "The motion is not before you at this time." The motion is not lost, as there has been no vote taken.
- If there is a second, the Chair states the question by saying "It has been moved and seconded that ... (state the motion). . ., is there any discussion?"

### ***DEBATE OR DISCUSSING THE MOTION:***

- The member who made the motion is entitled to speak first.
- Every member has the right to speak in debate.
- The Chair should alternate between those "for" the motion and those "against" the motion.
- The discussion should be related to the pending motion.
- Avoid using a person's name in debate.
- All questions should be directed to the Chair.
- Unless there is a special rule providing otherwise, a member is limited to speak once to a motion.
- Asking a question or a brief suggestion is not counted in debate.
- A person may speak a second time in debate with the assembly's permission.

### ***VOTING ON A MOTION:***

- Before a vote is taken, the Chair puts the question by saying "Those in favor of the motion that ... (repeat the motion)... say "Aye." Those opposed say "No." Wait, then say "The motion is carried," or "The motion is lost."
- Some motions require a 2/3 vote. A 2/3 vote is obtained by standing
- If a member is in doubt about the vote, he may call out "division." A division is a demand for a standing vote.
- A majority vote is more than half of the votes cast by persons legally entitled to vote.
- A 2/3 vote means at least 2/3 of the votes cast by persons legally entitled to vote.
- A tie vote is a lost vote, since it is not a majority.

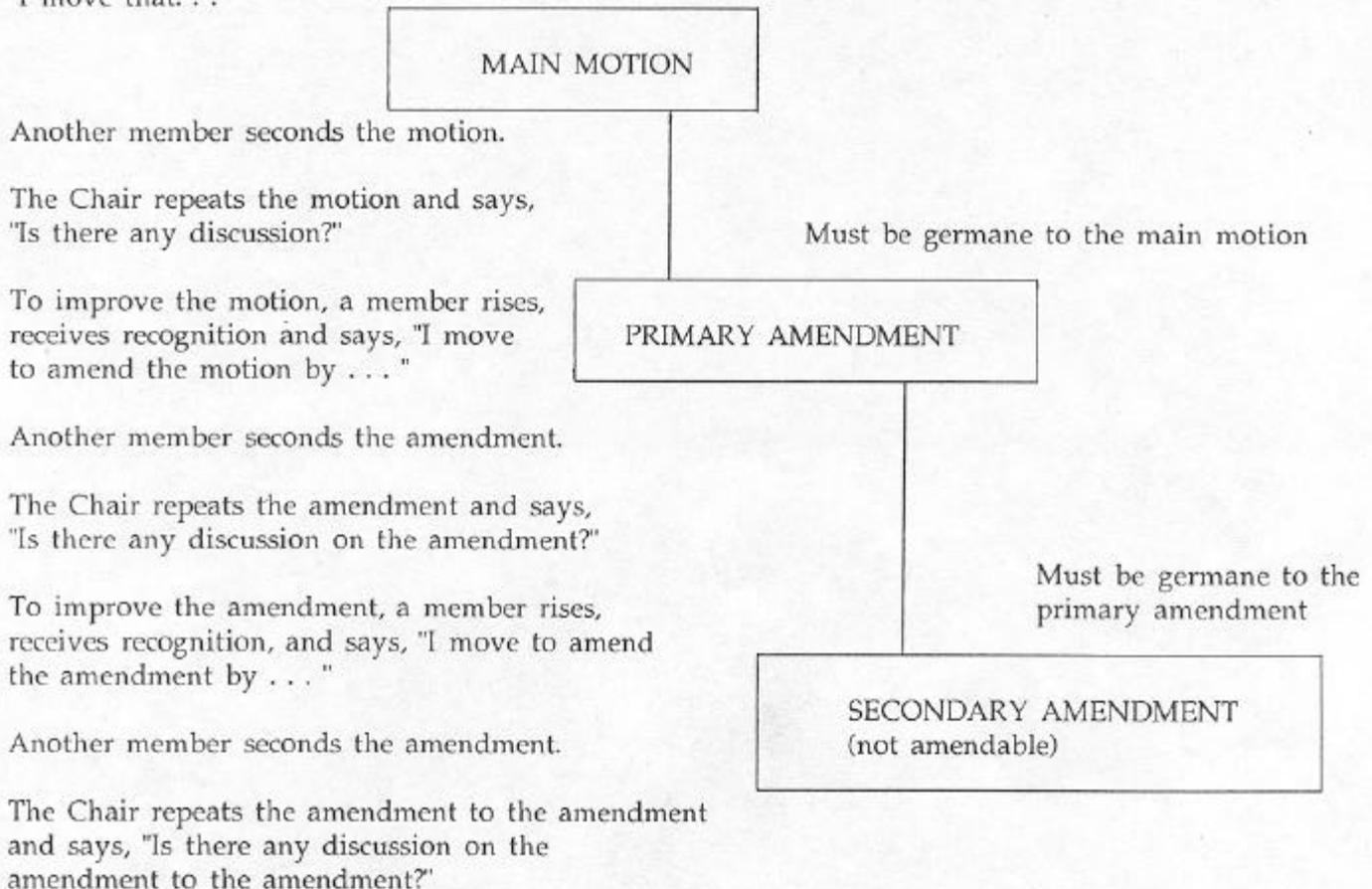
# AMENDMENTS ILLUSTRATED

Any main motion or resolution may be amended by:

1. Adding at the end
2. Striking out a word or words
3. Inserting a word or words
4. Striking out and inserting a word or words
5. Substitution

A member rises, addresses the chair, receives recognition, and states the motion:

"I move that . . ."



- When discussion ceases, the Chair says, "Those in favor of the amendment to the amendment say 'Aye.' Those opposed say 'No.'"
- If the vote was in the affirmative, the amendment is included in the primary amendment. The Chair then says, "Is there any discussion on the amended amendment?"
- If there is no discussion, a vote is taken on the amended amendment. If the vote in the affirmative, the amendment is included in the main motion. The chair then says, "Is there any discussion on the amended motion?"
- At this place, the motion can again be amended.
- If there is no further discussion, a vote is taken on the amended motion.
- Even though the amendments carried in the affirmative, the main motion as amended can be defeated.

# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-5

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager

SUBJECT: ESTABLISHING DATE/TIME/LOCATION OF REGULAR MEETINGS

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
[www.ci.novato.ca.us](http://www.ci.novato.ca.us)

### REQUEST

Consider adopting a resolution of the Oversight Board to the Successor Agency to the Dissolved Novato Redevelopment Agency establishing a regular meeting schedule for Oversight Board meetings.

### RECOMMENDATION

Adopt resolution.

### DISCUSSION

The Redevelopment Dissolution Act, AB 1x26, signed by the Governor in June 2011, was upheld by the California Supreme Court on December 29, 2011. The Court set the date of February 1, 2012, for dissolution of all California redevelopment agencies. The City has elected to serve as the Successor Agency to the dissolved Novato Redevelopment Agency.

The Dissolution Act requires that each successor agency have an Oversight Board composed of seven members appointed by specific governmental agencies.

The Oversight Board is subject to the Ralph M. Brown Act, California Public Records Act, and the Political Reform Act. For the Oversight Board to operate in accordance with the Brown Act, including public noticing requirements, it will need to establish a regular meeting schedule. Meetings are to be held within the City of Novato. Meetings are to be held within the City of Novato.

Therefore, staff is recommending that regular meetings of the Oversight Board be established. Staff has prepared the resolution and left blanks in order to allow the Board to finalize the schedule when they meet as a group. Board members are advised to bring their calendars to the

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meeting to assist in determining a regular meeting time. The recommended meeting location is the City Council Chambers, 901 Sherman Avenue, Novato, California.

Staff does anticipate that from time to time, it will be necessary to schedule a special meeting in order to meet the time requirements as outlined in the state legislation. The attached resolution provides staff with the authority to call and schedule a special meeting as required.

**FISCAL IMPACT**

None

**ATTACHMENTS**

1. Resolution

## OVERSIGHT BOARD ACTION

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE OVERSIGHT BOARD TO THE  
SUCCESSOR AGENCY TO THE  
DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF NOVATO  
ESTABLISHING A REGULAR MEETING SCHEDULE  
FOR OVERSIGHT BOARD MEETINGS

WHEREAS, the Oversight Board to the Successor Agency to the dissolved Redevelopment Agency of the City of Novato has been appointed pursuant to the provisions of Health & Safety Code Section 34179; and,

WHEREAS, the Oversight Board is deemed a local entity for purposes of the Ralph M. Brown Act, and must conduct its business in accordance with the Brown Act; and,

WHEREAS, the Oversight Board has met and conferred to determine a day, time and location for regular meetings of the Oversight Board.

NOW, THEREFORE, BE IT RESOLVED, by the Oversight Board as follows:

SECTION 1. All meetings of the Oversight Board shall be held in accordance with the Ralph M. Brown Act.

SECTION 2. The regular meetings of the Oversight Board shall be held on the \_\_\_\_\_ of each month at \_\_\_\_ p.m. The location of the meetings shall be at the Novato Council Chambers, 901 Sherman Avenue, Novato, California.

SECTION 3. Any regular meeting may be adjourned to a date, time and place and when so adjourned shall be considered a regular meeting. Meetings may be adjourned by the presiding officer or by the board secretary if a quorum is not present.

SECTION 4. Special meetings may be called by the Chair or by four (4) board members, and notice thereof shall be provided in accordance with the Ralph M. Brown Act.

\* \* \* \* \*

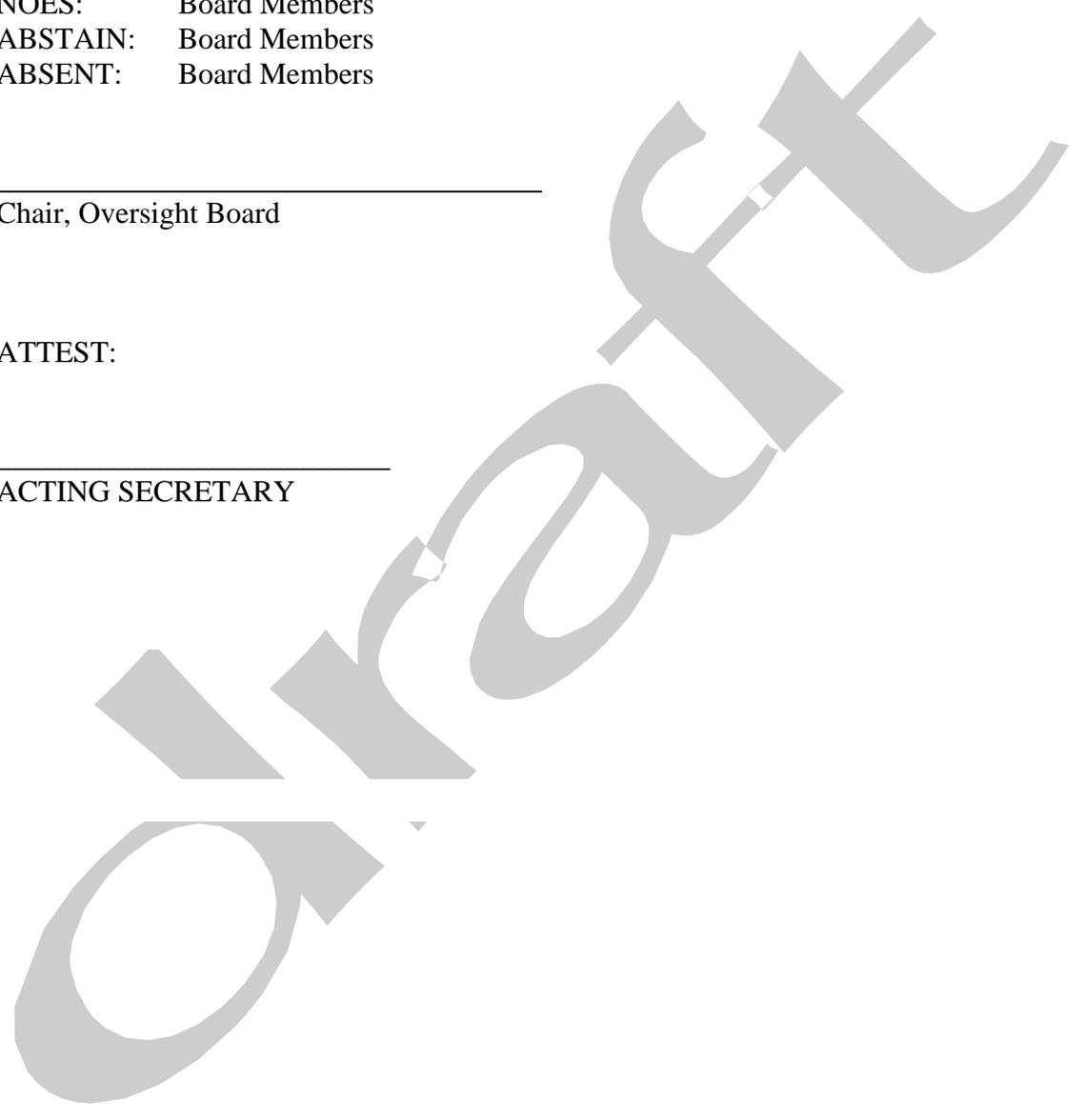
I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Oversight Board of the City of Novato, Marin County, California, at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, by the following vote, to wit:

AYES: Board Members  
NOES: Board Members  
ABSTAIN: Board Members  
ABSENT: Board Members

\_\_\_\_\_  
Chair, Oversight Board

ATTEST:

\_\_\_\_\_  
ACTING SECRETARY



# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-6

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager

SUBJECT: DESIGNATION OF CONTACT PERSON FOR DEPARTMENT OF FINANCE  
INQUIRIES

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
[www.ci.novato.ca.us](http://www.ci.novato.ca.us)

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### REQUEST

Consider designating Brian Cochran, Finance Manager for the City of Novato, as the official who shall serve as the contact person for Department of Finance inquiries regarding Oversight Board actions.

### RECOMMENDATION

Make designation.

### DISCUSSION

California Health and Safety Code Section 34179 requires that all meetings of the Oversight Board be noticed and held in accordance with the Ralph M. Brown Act, and that agendas and proposed actions of the Oversight Board be posted on the Successor Agency's website for public review. Health and Safety Code Section 34179 provides that the Department of Finance (DOF) may review Oversight Board actions, and as such, all board actions are not effective for three business days, pending review by the DOF. If the DOF exercises its right to review the action, it then has ten days to approve the action or return it to the Oversight Board for reconsideration. The Oversight Board's modified action does not become effective until approved by the DOF.

Health and Safety Code Section 34179 requires the Oversight Board to formally designate an official for the purpose of communicating with the DOF regarding Oversight Board actions. Staff recommends that Brian Cochran, Finance Manager for the City of Novato, be designated as the contact person for the Oversight Board. Once the Oversight Board designates an official, staff will transmit the official's contact information to the DOF.

### FISCAL IMPACT

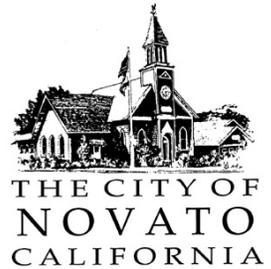
None

### ATTACHMENTS

None

Novato City Council Agenda Staff Report Date: _____ File No. _____
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# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-8

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager

SUBJECT: ADOPTION OF A BOARD CONFLICT OF INTEREST CODE

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
)www.ci.novato.ca.us

### REQUEST

Consider adopting a resolution of the Oversight Board to the Successor Agency to the Dissolved Novato Redevelopment Agency adopting a conflict of interest code for the Oversight Board.

### RECOMMENDATION

Adopt resolution.

### DISCUSSION

The Redevelopment Dissolution Act, AB 1x26, signed by the Governor in June 2011, was upheld by the California Supreme Court on December 29, 2011. The Court set the date of February 1, 2012, for dissolution of all California redevelopment agencies. The City of Novato has elected to serve as the Successor Agency to the dissolved Novato Redevelopment Agency.

The Dissolution Act requires that each successor agency have an Oversight Board composed of seven members appointed by specific governmental agencies. The Oversight Board is subject to the Political Reform Act. For the Oversight Board to operate in accordance with the Political Reform Act and regulations promulgated thereunder by the Fair Political Practices Commission (“FPPC”), it will need to adopt a conflict of interest code.

Staff is recommending the Oversight Board adopt a resolution which adopts the FPPC model conflict of interest code by reference. The model code requires inclusion of the designated positions subject to the code and a list of disclosure categories. Under the Political Reform Act and regulations promulgated by the FPPC, public officials who are designated by a conflict of interest code must file, with the relevant official (here, the City Clerk), an assuming office and annual statement of economic interests (called Form 700’s). In these statements, each covered public official is required to report and disclose specified types of economic interests s/he may enjoy.

Novato City Council Agenda Staff Report Date: _____ File No. _____
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The attached resolution proposes the designated positions be the Oversight Board members and that the reporting obligation of each Board member be in all disclosure categories that are applicable since Oversight Board members will be making or participating in the making of decisions which *may* foreseeably have a material effect on the financial interests of one or more Board members. As such, Oversight Board members will need to disclose, among other things, the amounts and sources of income during the previous 12 month period (including gifts, loans, and travel payments), and investment interests (e.g., stocks and non-municipal bonds), business positions, interests in real property located within the City and within two miles of the City, and interests in businesses doing business within the city. There are many economic interests that are governed by this reporting requirement (and many disclosure exemptions), and the FPPC has published pamphlets and guidance materials which are available for the Board members' use. Successor Agency staff are willing to provide limited assistance in helping Board members' complete these statements, but it is strongly recommended that Board members consult with FPPC staff which are much more familiar with the applicable requirements.

### **FISCAL IMPACT**

None

### **ATTACHMENTS**

1. Resolution
2. Section 18730 of Title 2 of the California Code of Regulations

OVERSIGHT BOARD ACTION

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF NOVATO ADOPTING A CONFLICT OF INTEREST CODE FOR THE OVERSIGHT BOARD

WHEREAS, the Oversight Board to the Successor Agency to the dissolved Redevelopment Agency of the City of Novato has been appointed pursuant to the provisions of Health & Safety Code Section 34179; and

WHEREAS, the Oversight Board is deemed a local entity for purposes of the Political Reform Act; and

WHEREAS, pursuant to the Political Reform Act and regulations promulgated thereunder by the Fair Political Practices Commission (“FPPC”), a newly established local entity is required to adopt a conflict of interest code; and

WHEREAS, the Oversight Board finds and determines that it is appropriate to adopt as its conflict of interest code the model conflict of interest code promulgated by the FPPC as set forth in this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

SECTION 1. Pursuant to the Political Reform Act of 1974, Government Code Section 87300 et seq., and Section 18730 of Title 2 of the California Code of Regulations, the Board adopts the model conflict of interest code promulgated by the Fair Political Practices Commission of the State of California as set forth in Section 18730 of Title 2 of the California Code of Regulations, which model conflict of interest code is incorporated herein by reference, and which, together with the list of designated positions and the disclosure categories applicable to each designated position as set forth in Sections 3 and 5 of this Resolution, collectively constitutes the Board’s conflict of interest code. As the model conflict of interest code set forth in Section 18730 of Title 2 of the California Code of Regulations is amended from time to time by State law, regulatory action of the Fair Political Practices Commission, or judicial determination, the portion of the Board’s conflict of interest code comprising the model conflict of interest code shall be deemed automatically amended without further action to incorporate by reference all such amendments to the model conflict of interest code so as to remain in compliance therewith. Nothing in this Resolution shall supersede the independent applicability of Government Code Section 87200.

SECTION 2. The definitions contained in the Political Reform Act of 1974 and in the regulations of the Fair Political Practices Commission, and any amendments to either of the foregoing, are incorporated by reference into this conflict of interest code.

SECTION 3. The following are the designated Board positions, the holders of which shall be required to file statements of economic interests: Oversight Board members.

SECTION 4. The code reviewing body for this conflict of interest code shall be the City of Novato. This conflict of interest code shall be promptly submitted after its adoption to the City Clerk of the City of Novato. Statements of economic interests shall be filed by Oversight Boardmembers with the Novato City Clerk.

SECTION 5. The Board finds and determines that the persons holding the positions set forth in Section 3 make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

SECTION 6. Each person holding a designated position set forth in Section 3 shall report in every disclosure category set forth in the statement of economic interests promulgated by the FPPC to the extent such category is applicable to such person pursuant to the rules and regulations of the FPPC. The disclosure categories as promulgated by the FPPC may be amended from time to time and such amendments shall not require an amendment to this code or Resolution.

SECTION 7. Sections 3 and 6 of this Resolution constitute the Appendix referred to in subdivision (b)(2) of Section 18730 of Title 2 of the California Code of Regulations.

SECTION 8. Nothing contained in this Resolution is intended to modify or abridge the provisions of the Political Reform Act of 1974, Government Code Section 87000 et seq., or FPPC the regulations, Title 2 California Code of Regulations including Sections 18700 et seq. The provisions of this Resolution are additional to the Political Reform Act and FPPC Regulations. This Resolution shall be interpreted in a manner consistent with the Political Reform Act and FPPC regulations. In the event of any inconsistency between the provisions of this Resolution, on the one hand, and the Political Reform Act and/or the FPPC regulations, on the other hand, the provisions of the Political Reform Act and FPPC regulations shall govern.

SECTION 9. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Resolution. The Board hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

\* \* \* \* \*

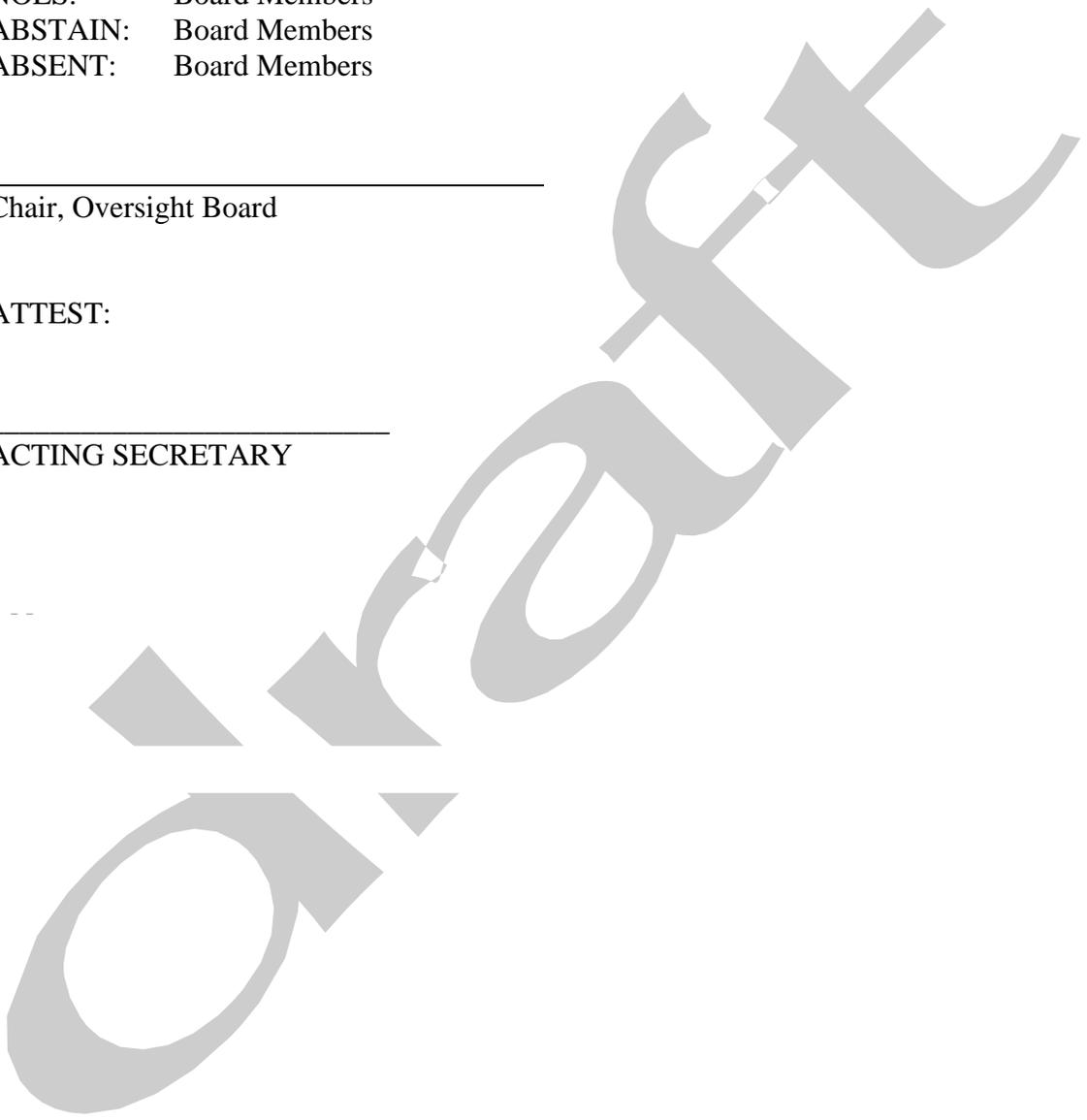
I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Oversight Board of the City of Novato, Marin County, California, at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, by the following vote, to wit:

AYES: Board Members  
NOES: Board Members  
ABSTAIN: Board Members  
ABSENT: Board Members

\_\_\_\_\_  
Chair, Oversight Board

ATTEST:

\_\_\_\_\_  
ACTING SECRETARY





(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.) 2.

§ 18730. Provisions of Conflict-of-Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict-of-interest code within the meaning of Section 87300 or the amendment of a conflict-of-interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict-of-interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict-of-interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict-of-interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict-of-interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict-of-interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.<sup>1</sup>

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories

are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict-of-interest code.<sup>2</sup>

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making

of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the

previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property<sup>3</sup> is required to be reported,<sup>4</sup> the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,<sup>5</sup> the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,<sup>6</sup> the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$420.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$420 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.

2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she

vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

- a. The date the loan was made.

b. The date the last payment of \$100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect,

distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$420 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

#### (9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

#### (9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any

governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

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<sup>1</sup>Designated employees who are required to file statements of economic interests under any other agency's conflict-of-interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

<sup>2</sup>See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

<sup>3</sup>For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

<sup>4</sup>Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

<sup>5</sup>A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

<sup>6</sup>Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In

addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

## HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14).  
Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).

11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
19. Editorial correction of subsection (a) (Register 98, No. 47).
20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative

5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).
28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).
29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).
30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).
31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-9

## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Jeff Walter, City Attorney  
Cathy Capriola, Assistant City Manager  
Brian Cochran, Finance Manager

SUBJECT: ORIENTATION OF OVERSIGHT BOARD MEMBERS

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75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
www.ci.novato.ca.us

### REQUEST

Receive presentations and discuss, if appropriate.

### RECOMMENDATION

Receive presentations and discuss, if appropriate.

### DISCUSSION

The Successor Agency staff will provide a brief orientation to Oversight Board members covering the following topics:

- a. Overview of Oversight Board Role and Responsibilities; and,
- b. Overview of former Novato Redevelopment Agency.
- c.

Attached is a memorandum from Rutan & Tucker, LLP, which serves as special legal counsel to the City of Novato including in the City's capacity as Successor Agency to the dissolved Redevelopment Agency of the City of Novato, providing an overview of the Oversight Board's legal status and role.

In addition, staff will make a presentation on background information on the dissolved redevelopment agency.

### FISCAL IMPACT

None

### ATTACHMENTS

1. Memorandum from Rutan and Tucker, LLP, Overview of Oversight Board Legal Status and Role

Novato City Council Agenda Staff Report Date: _____ File No. _____
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D-9

1.

# MEMORANDUM

**TO:** Michael Frank, City Manager, City of Novato

**FROM:** Dan Slater, Rutan & Tucker, LLP, Special Counsel to City of Novato  
As Successor Agency to Dissolved Redevelopment Agency of the City of Novato

**DATE:** April 2, 2012

**RE:** Overview of the Legal Status and Role of the Oversight Board

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## EXECUTIVE SUMMARY

The Redevelopment Dissolution Act, contained in Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature (“AB 1x26”), which was signed by the Governor in June 2011, was upheld by the California Supreme Court on December 29, 2011. The Court set the date of February 1, 2012, for dissolution of all California redevelopment agencies. The City of Novato (“City”) has elected to serve as the Successor Agency (“Successor Agency”) to the dissolved Redevelopment Agency of the City of Novato (“RDA”).

The Dissolution Act requires that each successor agency have an Oversight Board. For your reference, attached is California Health and Safety Code sections 34179 through 34181, which regulate the formation and composition of oversight boards, the public meeting process, and fiduciary responsibilities of oversight boards.

This Memorandum is being provided to you in our capacity as Special Counsel to the City of Novato as Successor Agency, and is for informational purposes only. No legal advice is being given to, or shall be deemed to be given to, the Oversight Board from this Memorandum.

## ANALYSIS

The following are the key components of AB 1x26 with respect to the legal status and role of the Oversight Board:

- Oversight Boards are deemed a local governmental entity for purposes of the Brown Act (Government Code section 54950 *et seq.*), Political Reform Act (Government Code section 81000 *et seq.*), and Public Records Act (Government Code section 6250 *et seq.*).
- All notices (including agendas) required by law for proposed Oversight Board actions are to be posted on the Successor Agency’s website.

- A majority of the total membership of the Oversight Board (i.e., 4 members) shall constitute a quorum for the transaction of business.
- A majority of the total membership of the Oversight Board (i.e., 4 members) is required for the Oversight Board to take action.
- Oversight Board members have personal immunity from suit for their actions taken within the scope of their responsibilities as Oversight Board members.
- Oversight Board members receive no compensation or reimbursement for expenses for service on the Oversight Board.
- Oversight Board members serve at the pleasure of the entity that made the appointment.
- Oversight Board members may serve on up to five (5) Oversight Boards.
- Notwithstanding Section 1099 of the Government Code, or any other law, any individual may simultaneously be appointed to an oversight board and hold an office in a city, county, city and county, special district, school district, or community college district.
- The Successor Agency serves as the staff for the Oversight Board and Oversight Board may direct the staff of the Successor Agency to perform work in furtherance of the Oversight Board's duties and responsibilities. The cost for noticing and holding Oversight Board meetings are to be borne by the Successor Agency and may be included in the Successor Agency's administrative budget.
- The Oversight Board must report the names of Chair and Vice Chair to the Department of Finance ("DOF") by May 1, 2012. The reporting will be done by Successor Agency staff.
- DOF may review the actions/decisions of the Oversight Board.
- All Oversight Board actions shall not be effective for three (3) business days, pending a request for review by the DOF. In the event DOF requests review of a given Oversight Board action/decision, the DOF shall have ten (10) calendar days from the date of its request to approve the action or reject it and return it to the Oversight Board for reconsideration and re-submittal to DOF. The modified Oversight Board action shall not be effective until approved by DOF.
- The Oversight Board terminates the earlier of (i) when all of the indebtedness of the former redevelopment agency has been repaid, or (ii) July 1, 2016.

- If outstanding indebtedness of the former redevelopment agency still needs to be repaid as of July 1, 2016, on that date the existing Oversight Board terminates and a new Oversight Board takes over. As of that date there is one Oversight Board for all of the Successor Agencies within a county. The members of that replacement Oversight Board are: (1) one member appointed by the county board of supervisors; (2) one member appointed by the city selection committee; (3) one member appointed by the independent special district selection committee; (4) one member appointed by the county superintendent of education; (5) one member appointed by the Chancellor the California Community Colleges; (6) one member of the public appointed by the county board of supervisors; and (7) one member appointed by the recognized employee organization representing the largest number of successor agency employees in the county.
- The Oversight Board has a fiduciary responsibility to holders of enforceable obligations and to the taxing entities that benefit from distributions of property tax and other revenues pursuant to Health and Safety Code Section 34188 (distribution from the Redevelopment Property Tax Trust Fund).
- The Oversight Board must approve Successor Agency actions set forth in Health and Safety Code Section 34180 (see Attachment).
- The Oversight Board is to direct the Successor Agency to perform the functions set forth in Health and Safety Code Section 34181 (see Attachment).

ATTACHMENT:

Health and Safety Code Sections 34179-34181.

\* \* \*

## **HEALTH AND SAFETY CODE SECTIONS 34179-34181**

34179. (a) Each successor agency shall have an oversight board composed of seven members. The members shall elect one of their members as the chairperson and shall report the name of the chairperson and other members to the Department of Finance on or before May 1, 2012.

Members shall be selected as follows:

- (1) One member appointed by the county board of supervisors.
- (2) One member appointed by the mayor for the city that formed the redevelopment agency.
- (3) One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is of the type of special district that is eligible to receive property tax revenues pursuant to Section 34188.
- (4) One member appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.
- (5) One member appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.
- (6) One member of the public appointed by the county board of supervisors.
- (7) One member representing the employees of the former redevelopment agency appointed by the mayor or chair of the board of supervisors, as the case may be, from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time.
- (8) If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency may select one member. If there are no cities with territory in a project area of the redevelopment agency, the county superintendent of education may appoint an additional member to represent the public.
- (9) If there are no special districts of the type that are eligible to receive property tax pursuant to Section 34188, within the territorial jurisdiction of the former redevelopment agency, then the county may appoint one member to represent the public.
- (10) Where a redevelopment agency was formed by an entity that is both a charter city and a county, the oversight board shall be composed of seven members selected as follows: three members appointed by the mayor of the city, where such appointment is subject to confirmation by the county board of supervisors, one member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is the type of special district that is eligible to receive property tax revenues pursuant to Section 34188, one member appointed by the county superintendent of education to represent schools, one member appointed by the Chancellor of the California Community Colleges to represent community college districts, and one member representing employees of the former redevelopment agency appointed by the mayor of the city where such an appointment is subject to confirmation by the county board of supervisors, to represent the largest number of former redevelopment agency employees employed by the successor agency at that time.

(b) The Governor may appoint individuals to fill any oversight board member position described in subdivision (a) that has not been filled by May 15, 2012, or any member position that remains vacant for more than 60 days.

(c) The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities under this part. The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.

(d) Oversight board members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as oversight board members.

(e) A majority of the total membership of the oversight board shall constitute a quorum for the transaction of business. A majority vote of the total membership of the oversight board is required for the oversight board to take action. The oversight board shall be deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974.

(f) All notices required by law for proposed oversight board actions shall also be posted on the successor agency's Internet Web site or the oversight board's Internet Web site.

(g) Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.

(h) The Department of Finance may review an oversight board action taken pursuant to the act adding this part. As such, all oversight board actions shall not be effective for three business days, pending a request for review by the department. Each oversight board shall designate an official to whom the department may make such requests and who shall provide the department with the telephone number and e-mail contact information for the purpose of communicating with the department pursuant to this subdivision. In the event that the department requests a review of a given oversight board action, it shall have 10 days from the date of its request to approve the oversight board action or return it to the oversight board for reconsideration and such oversight board action shall not be effective until approved by the department. In the event that the department returns the oversight board action to the oversight board for reconsideration, the oversight board shall resubmit the modified action for department approval and the modified oversight board action shall not become effective until approved by the department.

(i) Oversight boards shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188. Further, the provisions of Division 4 (commencing with Section 1000) of the Government Code shall apply to oversight boards. Notwithstanding Section 1099 of the Government Code, or any other law, any individual may simultaneously be appointed to up to five oversight boards and may hold an office in a city, county, city and county, special district, school district, or community college district.

(j) Commencing on and after July 1, 2016, in each county where more than one oversight board was created by operation of the act adding this part, there shall be only one oversight board appointed as follows:

- (1) One member may be appointed by the county board of supervisors.
- (2) One member may be appointed by the city selection committee established pursuant to Section 50270 of the Government Code. In a city and county, the mayor may appoint one member.
- (3) One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.
- (4) One member may be appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.
- (5) One member may be appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.
- (6) One member of the public may be appointed by the county board of supervisors.
- (7) One member may be appointed by the recognized employee organization representing the largest number of successor agency employees in the county.
- (k) The Governor may appoint individuals to fill any oversight board member position described in subdivision (j) that has not been filled by July 15, 2016, or any member position that remains vacant for more than 60 days.
- (l) Commencing on and after July 1, 2016, in each county where only one oversight board was created by operation of the act adding this part, then there will be no change to the composition of that oversight board as a result of the operation of subdivision (b).
- (m) Any oversight board for a given successor agency shall cease to exist when all of the indebtedness of the dissolved redevelopment agency has been repaid.

34180. All of the following successor agency actions shall first be approved by the oversight board:

- (a) The establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of this part.
- (b) Refunding of outstanding bonds or other debt of the former redevelopment agency by successor agencies in order to provide for savings or to finance debt service spikes; provided, however, that no additional debt is created and debt service is not accelerated.
- (c) Setting aside of amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.
- (d) Merging of project areas.
- (e) Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, where assistance is conditioned upon the provision of matching funds, by the successor entity as successor to the former redevelopment agency, in an amount greater than 5 percent.
- (f) (1) If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must

reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained.

(2) If no other agreement is reached on valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by the county assessor.

(g) Establishment of the Recognized Obligation Payment Schedule.

(h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding.

(i) A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues pursuant to subdivision (b) of Section 34178.

34181. The oversight board shall direct the successor agency to do all of the following:

(a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value.

(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

(c) Transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176.

(d) Terminate any agreement, between the dissolved redevelopment agency and any public entity located in the same county, obligating the redevelopment agency to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the oversight board has found that early termination would be in the best interests of the taxing entities.

(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of such agreements where it finds that amendments or early termination would be in the best interests of the taxing entities.

# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



## STAFF REPORT

D-10

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the Successor Agency to the  
Dissolved Redevelopment Agency of the City of Novato

FROM: Cathy Capriola, Assistant City Manager  
Brian Cochran, Finance Manager

SUBJECT: APPROVAL OF ADMINISTRATIVE BUDGET FOR FEBRUARY 1, 2012  
THROUGH JUNE 30, 2012

75 Rowland Way #200  
Novato, CA 94945-3232  
(415) 899-8900  
FAX (415) 899-8213  
www.ci.novato.ca.us

### REQUEST

Consider adopting a Resolution of the Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato approving the Successor Agency Administrative Budget for February 1, 2012 through June 30, 2012

### RECOMMENDATION

Adopt the proposed Administrative Budget.

### DISCUSSION

On December 29, 2011, the California Supreme Court upheld Assembly Bill x1 26 (the Dissolution Act) and directed that all redevelopment agencies in the state be dissolved effective February 1, 2012. On January 10, 2012, the City Council of the City of Novato elected to become the Successor Agency to the Novato Redevelopment Agency. As the Successor Agency, the City is responsible for winding down the affairs of the former redevelopment agency, with certain actions subject to the approval of an Oversight Board. The Successor Agency is entitled to an Administrative Cost Allowance to compensate it for the costs of winding down the former redevelopment agency.

The Successor Agency, which became operative on February 1, 2012, is responsible for the administrative functions needed to wind down the affairs of the former Novato Redevelopment Agency. These functions include making payments on and performing obligations related to enforceable obligations, preparing administrative budgets, and preparing Recognized Obligation Payment Schedules every six months. The Successor Agency's responsibilities of implementing

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and ensuring compliance with the Dissolution Act will be performed by City staff, consultants and legal counsel, who combined, provide support to the Successor Agency.

The Dissolution Act provides the Successor Agency with an Administrative Cost Allowance to reimburse its costs to wind down the affairs of the dissolved redevelopment agency. Reimbursement will be made from property tax revenues, not to exceed 5% of the property tax allocated to the Successor Agency for fiscal year 2011-12. In future years, the allowance will be up to 3% of the property taxes allocated to the Successor Agency. In any fiscal year, the minimum Allowance will not be less than \$250,000, provided sufficient property tax revenues are available.

Based on an estimated property tax amount allocated to the Successor Agency in 2011-12 of \$6,000,000, the Administrative Cost Allowance in 2011-12 would be approximately \$300,000. In future years, staff estimates that Novato will be eligible for the minimum Allowance of \$250,000. Note that since the Successor Agency is only in operation for the final five months of fiscal year 2011-12, staff has pro-rated the budget amount accordingly (this proration is also reflected on the Recognized Obligation Payment Schedule).

The Successor Agency is required to submit a proposed administrative budget to the Oversight Board for approval for each upcoming six-month fiscal period. The proposed Budget for January through June presented for Oversight Board approval includes staffing costs for City employees carrying out the dissolution functions, and estimated costs for legal services, independent audit fees, and operations supplies and business expenses. All administrative costs are being initially funded by the City of Novato General Fund, but are being accounted for separately from other City functions. It is anticipated the administrative costs will be reimbursed by the Administrative Cost Allowance. A Reimbursement and Operating Agreement formally documenting this arrangement will be presented to the Oversight Board for approval at the next meeting.

### **FISCAL IMPACT**

Approval of the proposed administrative budgets by the Oversight Board allows the County Auditor-Controller to distribute property tax revenues to the Successor Agency for the administrative costs of winding down the dissolved Novato Redevelopment Agency. Estimated administrative costs for February through June are \$130,290 and the estimated Administrative Cost Allowance (assuming a five-month proration) would be \$125,000.

### **ALTERNATIVES**

Take no action at this time; direct staff as to action requested.

### **ATTACHMENTS**

1. Proposed Administrative Budget
2. Resolution

<b>Personnel Costs</b>					
<u>Position</u>	<u>FTE</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total \$\$</u>	<u>Duties / Comments</u>
City Manager	0.15	27,900	14,398	42,298	- Overall policy direction and executive leadership - Interaction with and education of oversight board members
Assistant City Manager	0.2	30,233	13,869	44,102	- Primary staff liaison to oversight board - Executive level leadership and analysis on specific oversight board agenda items - Negotiation of any outside agreements on behalf of successor agency / oversight board
Finance Manager	0.2	24,434	8,676	33,110	- Preparation of each six-month ROPS - Oversight of all bond covenants and requirements - Preparation and submittal of annual continuing disclosure documents for all bond issues - Interaction with rating agencies and bond insurers as needed - Analysis of re-funding opportunities
Accounting Supervisor	0.2	19,692	6,616	26,308	- All professional accounting work associated with successor agency activities, assets, liabilities, and debts - Preparation for and oversight of the annual audit process - Annual budget process for successor agency-related expenditures
Management Analyst	0.2	15,450	5,314	20,765	- Coordination with oversight board members on meeting times / schedules - Posting of meeting agendas and minutes - Taking of minutes at all oversight board meetings - Maintenance of the successor agency website
City Clerk	0.1	10,367	5,089	15,456	- Official record-keeping for all successor agency and oversight board actions
<b>TOTAL</b>	<b>1.1</b>	<b>128,076</b>	<b>53,963</b>	<b>182,039</b>	

<b>Contracts / Supplies / Materials</b>		
Legal Counsel	37,740	- General counsel services - Brown Act, litigation, negotiations, etc - Specialized RDA law services - Legal counsel on RDA law, analysis of new legislation, etc
Audit Contract	8,444	- Provision of annual audit services to issue required financial statements
Continuing Disclosure Consultant	3,000	- Specialized contract services to gather required information for annual continuing disclosures
Printing / Publications	5,000	- Noticing of agendas / agenda packets; printing of agendas, notices, agenda packets, etc.
Office Supplies	5,000	- General office supplies and equipment
Meetings / Training / Memberships	6,000	- CRA membership, successor agency training
General admin overhead	65,473	- City of Novato HR, IT, office space, insurance services, etc.
Amortization of CalPERS unfunded liability for RDA	ROPS	To be added as separate obligations in the Recognized Obligation Payment Schedule.
Amortization of unfunded liability for OPEB	ROPS	To be added as separate obligations in the Recognized Obligation Payment Schedule.
Portion of Pension Obligation Bonds for former RDA employees	ROPS	To be added as separate obligations in the Recognized Obligation Payment Schedule.
<b>TOTAL</b>	<b>130,657</b>	

**Grand Total Successor Agency Administrative Budget 312,696**

**Prorated amount for February - June 2012 130,290**



OVERSIGHT BOARD ACTION

2.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF NOVATO APPROVING THE SUCCESSOR AGENCY ADMINISTRATIVE BUDGET FOR JANUARY 1, 2012 THROUGH JUNE 30, 2012

WHEREAS, the Oversight Board to the Successor Agency to the dissolved Redevelopment Agency of the City of Novato has been appointed pursuant to the provisions of Health & Safety Code Section 34179; and

WHEREAS, Health and Safety Code Section 341770(1) requires Oversight Board approval for the Successor Agency Administrative Cost Budget for each six month fiscal period; and

WHEREAS, the city staff has prepared an Administrative Cost Budget outlining funds required;

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

SECTION 1. The Oversight Board, at its special meeting of April 9, 2012, reviewed and considered the Administrative Cost Budget for January 1, 2012 through June 30, 2012 presented by the Successor Agency.

SECTION 2. The Administrative Cost Budget, as set forth in Exhibit "A" attached hereto and by this reference incorporated herein, is hereby approved by the Oversight Board.

SECTION 3. The adoption of this Resolution by the Oversight Board shall not impair the right of the Successor Agency to assert any claim or pursue any legal action challenging the constitutionality of Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature ("AB 1x26") or challenging any determination by the State of California or any office, department or agency thereof with respect to the Administrative Cost Budget approved hereby.

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Oversight Board of the City of Novato, Marin County, California, at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, by the following vote, to wit:

- AYES: Board Members
- NOES: Board Members
- ABSTAIN: Board Members
- ABSENT: Board Members

\_\_\_\_\_  
Chair, Oversight Board

ATTEST:

\_\_\_\_\_  
ACTING SECRETARY

# Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato



D-11

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## STAFF REPORT

### MEETING

DATE: April 9, 2012

TO: Oversight Board to the to the Successor Agency to the  
Dissolved City of Novato Redevelopment Agency

FROM: Brian Cochran, Finance Manager

SUBJECT: ADOPTION OF RECOGNIZED OBLIGATION PAYMENT SCHEDULE  
FOR THE PERIOD OF JANUARY 1, 2012 THROUGH JUNE 30, 2012

---

## REQUEST

Adopt, by a resolution of the Oversight Board of the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato, a Recognized Obligation Payment Schedule pursuant to Health and Safety Code section 34177.

## RECOMMENDATION

Staff recommends that the Oversight Board of the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato adopt the Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012.

## DISCUSSION

On December 29, 2011, the California Supreme Court (Court) upheld Assembly Bill x1 26 (the Dissolution Act) and directed that all redevelopment agencies in the state be dissolved effective February 1, 2012. On January 10, 2012, the City Council of the City of Novato elected to become the Successor Agency to the Redevelopment Agency of the City of Novato. As the Successor Agency, the City will wind down the affairs of the former redevelopment agency, with certain actions subject to the approval of an Oversight Board.

The Successor Agency is responsible for the continued payment of enforceable obligations of the dissolved Redevelopment Agency of the City of Novato. The Successor Agency must prepare a Recognized Obligation Payment Schedule (ROPS), which sets forth the payment amounts and due dates of payments required under enforceable obligations for each six-month fiscal period. The Oversight Board is required to review and approve each ROPS. Actions of the Oversight

Novato City Council Agenda Staff Report Date: _____ File No. _____
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Board are not effective for three business days to allow the State Department of Finance to determine whether it would like to review an Oversight Board action. If the Department of Finance requests a review of an action, it has ten calendar days from the date of its request to either approve the Oversight Board action or return it to the Oversight Board for reconsideration.

Once approved and certified, the County Auditor-Controller will use the ROPS as the basis for distributing property taxes to the Successor Agency for the payment of enforceable obligations. The County plans to have the certification complete by its statutory deadline of July 1, 2012. Due to inconsistent dates in the law resulting from the Court's ruling, the initial ROPS (Attachment 1) must be submitted to the State Department of Finance and State Controller by April 15, 2012.

The Dissolution Act calls for the County Auditor-Controller to distribute funds for the payments on the approved initial ROPS to Successor Agencies on May 16, 2012. Because the Marin County Department of Finance distributed Novato's usual tax increment payment on December 15, 2011, it has indicated that it will not be making the May 16<sup>th</sup> payment. Property taxes for the payment of July through December 2012 enforceable obligations are to be distributed to the Successor Agency on June 1, 2012. To meet these timeframes, the Department of Finance has requested the Payment Schedule covering July - December 2012 be submitted by May 11, 2012. The July through December Payment Schedule is similar to the initial Payment Schedule, with only the monthly cash flows updated.

#### *Successor Agency Approval of Initial ROPS*

The City Council of the City of Novato as Successor Agency to the dissolved Redevelopment Agency of the City of Novato approved the initial Recognized Obligation Payment Schedule, which covers the period January 1, 2012 through June 30, 2012, at its February 28, 2012 meeting. The Recognized Obligation Payment Schedule for July 1, 2012 through December 31, 2012, is scheduled to be presented to the City Council as Successor Agency at the City Council's April 24, 2012 meeting. Any action taken at that meeting will be reported to the Oversight Board at the Board's next meeting.

#### *Obligations Included on the ROPS*

The approved ROPS sets forth the enforceable obligations that the Successor Agency is authorized to perform and otherwise discharge through the payment of tax increment revenues during the life of each enforceable obligation. For example, with respect to bonds that have been previously issued by the City's former redevelopment agency, the bondholders are entitled to interest and principle payments during and at the end, respectively, of the life of the bonds. Those amounts are paid from tax increment (real property taxes) which must be collected and disbursed to the bondholders for the life of the bonds.

Enforceable obligations that can be included in the ROPS include:

1. Bonds;
2. Loans, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms;

3. Payments required by the federal government, the state, payments associated with employees, pensions, pension obligation bond debt, and unemployment payments;
4. Judgments or settlements entered by a competent court of law or binding arbitration decisions against the former redevelopment agency;
5. Legally binding and enforceable agreements and contracts; and
6. Contracts or agreements necessary for the continued administration or operation of the Successor Agency (e.g. office space, materials, supplies, insurance costs, payroll, etc).

The ROPS must exclude pass-through payments to be made by the county after dissolution of the Agency. Pass-through agreements no longer appear on the ROPS, since these payments to other entities will be paid directly by the Auditor-Controller out of the available property tax.

*Items on Novato’s ROPS*

The enforceable obligations included on Novato’s ROPS are summarized below. Attachment 3 includes a complete copy of each contract/agreement.

## **AGREEMENT SUMMARY**

### **PRIOR NOVATO REDEVELOPMENT AGENCY**

<b>Indenture of Trust – 2005 Bonds</b>	
<i>Date:</i>	February 1, 2005
<i>Amount:</i>	\$24,835,000 (original principal)
<i>Parties:</i>	Redevelopment Agency of the City of Novato (Agency) U.S. Bank National Association (Trustee)
<p>This agreement establishes the terms of the tax-exempt Series 2005 bonds. The \$24,835,000 bond issue was used to construct affordable housing at Hamilton. The Indenture of Trust sets out the terms under which the bonds were issued and payments on the bonds are received.</p> <p>Maturity dates range from 2005 (\$460,000 at 2.5% interest) to 2034 (\$4,140,000 at 4.5% interest).</p>	
<b>Indenture of Trust – 2005 Series A Bonds</b>	
<i>Date:</i>	February 1, 2005
<i>Amount:</i>	\$9,520,000 (original principal)
<i>Parties:</i>	Redevelopment Agency of the City of Novato (Agency) U.S. Bank National Association (Trustee)
<p>This Indenture is a second bond issue under the original 2005 Indenture of Trust. Under redevelopment law, 20% of tax increment revenues must be set aside in a Low and Moderate Income Housing Fund used to increase the supply of low and moderate income housing. This \$9,520,000 bond issue was used to fund this 20% affordable housing set-aside for the Hamilton Redevelopment Project.</p>	

Maturity dates range from 2005 (\$100,000 at 4.5% interest) to 2034 (\$1,150,000 at 4.875% interest).

**First Supplemental Indenture of Trust – 2011 Tax Allocation Bonds**

<i>Date:</i>	March 1, 2011
<i>Amount:</i>	\$17,000,000 (original principal)
<i>Parties:</i>	Redevelopment Agency of the City of Novato (Agency) U.S. Bank National Association (Trustee)

These bonds were issued in order to pay back the City of Novato General Fund for money that was loaned to the Redevelopment Agency throughout the lifetime of the Agency. The \$17,000,000 in tax-exempt bonds was issued as Parity Debt under the terms of the 2005 Indenture of Trust.

The maturity dates range from 2012 (\$250,000 at 2% interest) to 2040 (\$13,160,000 at 6.75% interest).

**Vintage Oaks Owner Participation Agreement (OPA)**

<i>Date:</i>	January 17, 1991
<i>Amount:</i>	\$9,000,000 (estimated total payment)
<i>Parties:</i>	HNH Associates (Participant) Redevelopment Agency of the City of Novato (Agency)

HNH Associates is a development company and it owns the real property in the Vintage Oaks Project Area. HNH’s agreement with the former Redevelopment Agency (“Agency”) allows for the development of the Vintage Oaks site as part of the Redevelopment project and under the terms of the Precise Development Plan.

HNH Associates provided \$6,000,000 to the Agency for the development of off-site community facilities (such as improvements to the Rowland Blvd – 101 interchange, improvements to Vintage Way, various drainage improvements, etc). The agreement obligates the Agency to make annual payments to HNH Associates, up to a total of \$9,000,000. These payments come from the Property Tax Increment and from the lease payments made by the City for the use of the community facilities.

**CIEDB Loan Agreement**

<i>Date:</i>	December 17, 2001
<i>Amount:</i>	\$3,700,000 (original principal)
<i>Parties:</i>	California Infrastructure and Economic Development Bank (CIEDB) Redevelopment Agency of City of Novato (Borrower)

This is an agreement for the Agency to borrow \$3,700,000 from the CIEDB for the Grant Avenue Improvement Project. The term of the loan is 30 years from December 17, 2002 and the interest rate is 3.39% annually.

**Novato Human Needs Center Community Services Agreement**

<i>Date:</i>	August 2, 2001
<i>Amount:</i>	\$105,000 (annual payment)
<i>Parties:</i>	Novato Human Needs Center (Contractor) Redevelopment Agency of the City of Novato (Agency)
<p>This is an agreement for the Contractor to provide outreach, client case management, direct rental assistance, and other social services to Novato residents. The initial contract was for \$105,000 for one year of service.</p> <p>The agreement has been extended and amended from time to time, including the latest amendment which was signed on March 9, 2011. Under this amendment the payment to Novato Human Needs increases by the CPI change beginning in fiscal year 2012. In addition, the contract will renew every fiscal year for the next 10 years, starting in fiscal year 2011/2012</p>	
<b>MERJE – Wayfinding – Consultant Services Agreement</b>	
<i>Date:</i>	June 29 <sup>th</sup> , 2010
<i>Amount:</i>	\$460,800 (total contract value)
<i>Parties:</i>	MERJE (Contractor) Redevelopment Agency of the City of Novato (Agency)
<p>This agreement is with the consulting firm MERJE for planning and design work for a wayfinding signage program for Downtown Novato. This project is currently in progress and the Design Review Commission held a workshop on the revised signage on April 4, 2012.</p> <p>This agreement was amended March 9, 2011, raising the maximum total fee to \$460,800. The contract will end when services listed in the contract are successfully completed.</p>	
<b>Berkeley MicroDesign – Housing Database System – Consultant Services Agreement</b>	
<i>Date:</i>	May 31, 2007
<i>Amount:</i>	\$50,400 (total contract value)
<i>Parties:</i>	Berkeley MicroDesign Redevelopment Agency of the City of Novato
<p>This contract is for maintenance, upgrades, and training on the Housing Database System. The consultant’s hourly rate is \$110 and the original contract provided a maximum total payment of \$12,600. The most recent amendment to the contract, signed June 13, 2011, provides a maximum contract total of \$54,000 and changes the ending date to June 30, 2012.</p>	
<b>TSG Networks – Housing Database System – Consultant Services Agreement</b>	
<i>Date:</i>	Unknown
<i>Amount:</i>	\$13,188 (ROPS amount)
<i>Parties:</i>	TSG Networks Redevelopment Agency of the City of Novato
<p>This contract is for infrastructure hosting, maintenance and upgrades to the Housing Database System. The contract is \$13,188 per year or monthly amount of \$1,099.</p>	

A copy of this contract will be provided on Monday.

**Tattersall Advisory – Appraisal of Hamilton Hospital – Consultant Services Agreement**

<i>Date:</i>	February 10 <sup>th</sup> , 2009
<i>Amount:</i>	\$4,900 (total contract value)
<i>Parties:</i>	David Tattersall & Co. (Contractor) Redevelopment Agency of the City of Novato (Agency)

The contractor provided an appraisal for the Novato Hospital at 7546 Redwood Boulevard for a one-time project fee of \$4,900.

**Novato Library and Flood District Memorandum of Understanding (MOU)**

<i>Date:</i>	June 22, 1999
<i>Amount:</i>	\$237,243.89 (existing fund balance)
<i>Parties:</i>	Marin County Free Library District (Library District) Marin County Flood Control and Water Conservation District (Flood Control District) Redevelopment Agency of the City of Novato (Agency)

This agreement provides Tax Increment Funding to the County Water District and the Novato Branch of the County Library. The agreement states that the Agency will deposit the amount of Net Tax Increment attributable to the Flood Control District into a Flood Control Account. This money will be spent on capital costs for improving flood control to benefit the Redevelopment Project Area. The current balance in the Flood Control District account is \$158,844.

The County Library’s Novato branch is located directly outside of the Redevelopment Project Area and provides benefit to the Project Area’s occupants. The MOU states that the Agency will deposit the amount of Net Tax Increment received attributable to the Library District into a County Library Account until the total reaches \$100,000 – the funds are to be used to construct eligible improvements to the Library. The fund did reach its maximum, and some has been spent to date, leaving a current balance of \$78,399.89.

**FISCAL IMPACT**

Approving the ROPS allows the Successor Agency to receive property tax revenues as needed to pay the listed enforceable obligations.

**ATTACHMENTS**

1. Recognized Obligation Payment Schedule
2. Resolution of the Oversight Board to the Successor Agency to the Dissolved Redevelopment Agency of the City of Novato approving and adopting the schedule
3. Agreements and Contracts for Enforceable Obligations on the ROPS

**DRAFT RECOGNIZED OBLIGATION PAYMENT SCHEDULE**  
Per AB 26 - Section 34177 (\*)

	Project Name / Debt Obligation	Payee	Description	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2011-2012**	*** Funding Source	Payments by month (all amounts estimated)						
								Jan 2012	Feb 2012	Mar 2012	Apr 2012	May 2012	Jun 2012	Total
1)	2005 Tax Allocation Bonds	US Bank	Bonds issued to fund housing proj.	Merged	35,135,503.17	1,462,490.63	RPTTF	0.00	449,062.50	0.00	0.00	0.00	0.00	\$ 449,062.50
2)	2005A Tax Allocation Housing Bonds	US Bank	Bonds issued to fund housing proj.	Merged	14,231,237.58	588,497.50	RPTTF	0.00	187,542.50	0.00	0.00	0.00	0.00	\$ 187,542.50
3)	2011 Tax Allocation Bonds	US Bank	Bonds issued to repay City loans	Merged	42,868,993.53	1,017,336.31	RPTTF	0.00	543,384.38	0.00	0.00	0.00	0.00	\$ 543,384.38
4)	Vintage Oaks Owner Particip. Agrmt	Bank of America	OPA for infrastructure improvements	Merged	2,400,000.00	800,000.00	RPTTF	400,000.00	0.00	0.00	0.00	0.00	400,000.00	\$ 800,000.00
5)	CIEDB Loan	Wells Fargo MN, N.A.	Downtown streetscape work	Merged	4,340,772.73	206,703.45	RPTTF	154,669.58	0.00	0.00	0.00	0.00	0.00	\$ 154,669.58
6)	Contract - Novato Human Needs	Novato Human Needs	Homeless services	Merged	1,050,000.00	105,000.00	RPTTF	26,250.00	0.00	0.00	26,250.00	0.00	0.00	\$ 52,500.00
7)	Contract - Wayfinding	Merje Environmental	Downtown signage program	Merged	460,800.00	418,800.00	RPTTF	0.00	0.00	353,400.00	0.00	0.00	0.00	\$ 353,400.00
8)	Contract - IT Services	Berkeley Microdesign	Housing Server Support	Merged	50,400.00	16,800.00	RPTTF	1,400.00	1,400.00	1,400.00	1,400.00	1,400.00	1,400.00	\$ 8,400.00
9)	Contract - IT Services	TSG Networks	Housing Server Support	Merged	13,188.00	13,188.00	RPTTF	1,099.00	1,099.00	1,099.00	1,099.00	1,099.00	1,099.00	\$ 6,594.00
10)	Contract - Appraisal Services	Tattersall Advisory	Appraisal of Hamilton Hospital	Merged	3,850.00	3,850.00	RPTTF	0.00	0.00	0.00	0.00	0.00	3,850.00	\$ 3,850.00
11)	Library District MOU	Marin Co. Public Lib. District	Payment of Existing MOU Fund Balance	Merged	78,399.89	78,399.89	Reserves	0.00	0.00	0.00	0.00	0.00	78,399.89	\$ 78,399.89
12)	Flood District MOU	Marin Co. Flood Cont. Dist.	Payment of Existing MOU Fund Balance	Merged	158,844.00	158,844.00	Reserves	0.00	0.00	0.00	0.00	0.00	158,844.00	\$ 158,844.00
13)	Successor Agency Administration	City of Novato as Succ. Ag.	Admin costs: staff, audit, legal, office space, etc.	Merged	7,500,000.00	125,000.00	Admin	0.00	25,000.00	25,000.00	25,000.00	25,000.00	25,000.00	\$ 125,000.00
14)														\$ -
15)														\$ -
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26)														\$ -
27)														\$ -
28)														\$ -
<b>Totals - This Page (RPTIF Funding)</b>					<b>\$ 108,291,988.90</b>	<b>\$ 4,994,909.78</b>	<b>N/A</b>	<b>\$ 583,418.58</b>	<b>\$ 1,207,488.38</b>	<b>\$ 380,899.00</b>	<b>\$ 53,749.00</b>	<b>\$ 27,499.00</b>	<b>\$ 668,592.89</b>	<b>\$ 2,921,646.85</b>

\* The Preliminary Draft Recognized Obligation Payment Schedule (ROPS) is to be completed by 3/1/2012 by the successor agency, and subsequently be approved by the oversight board and audited by the County.

\*\* All totals due during fiscal year and payment amounts are projected.

\*\*\* Funding sources from the successor agency: (For fiscal 2011-12 only, references to RPTTF could also mean tax increment allocated to the Agency prior to February 1, 2012.)

RPTTF - Redevelopment Property Tax Trust Fund      Bonds - Bond proceeds      Other - reserves, rents, interest earnings, etc  
 LMIHF - Low and Moderate Income Housing Fund      Admin - Successor Agency Administrative Allowance

## OVERSIGHT BOARD ACTION

2.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF NOVATO APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JANUARY 1, 2012 THROUGH JUNE 30, 2012

WHEREAS, the Oversight Board to the Successor Agency to the dissolved Redevelopment Agency of the City of Novato has been appointed pursuant to the provisions of Health & Safety Code Section 34179; and

WHEREAS, pursuant to Health and Safety Code Section 34180(g), the Oversight Board is required to review and approve the Recognized Obligation Payment Schedule prepared by the Successor Agency covering the six month period January 1, 2012 through June 30, 2012, and for each six month period thereafter; and

WHEREAS, the Successor Agency to the dissolved Redevelopment Agency of the City of Novato has approved the Recognized Obligation Payment Schedule for the six month period January 1, 2012-June 30, 2012; and

WHEREAS, the Successor Agency has presented the foregoing described Recognized Obligation Payment Schedule to the Oversight Board for its review and approval; and

WHEREAS, at its regular meeting of April 9, 2012, the Oversight Board reviewed and considered the Recognized Obligation Payment Schedule presented by the Successor Agency;

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

SECTION 1. The Oversight Board hereby approves the Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012, as set forth in Exhibit "A" to this Resolution and by this reference incorporated herein.

SECTION 2. The Board Secretary, or the City Finance Manager (as the person appointed by action of the Oversight Board at its meeting of April 9, 2012, to be the designated contract person to the Department of Finance), shall transmit the approved Recognized Obligation Payment Schedule to the Department of Finance, State Controller, and County Auditor-Controller in compliance with the requirements of Part 1.85 of Division 24 of the California Health and Safety Code. The staff of the Successor Agency shall take such other and further actions and sign such other and further documents as appropriate to effectuate the intent of this Resolution and to implement the Recognized Obligation Payment Schedule approved hereby on behalf of the Successor Agency.

SECTION 3. The adoption of this Resolution by the Oversight Board shall not impair the right of the Successor Agency to assert any claim or pursue any legal action challenging the constitutionality of Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature ("AB 1x26") or challenging any determination by the State of California or any office, department or agency thereof with respect to the Recognized Obligation Payment Schedule approved hereby.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Resolution. The Board hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Oversight Board of the City of Novato, Marin County, California, at a meeting thereof, held on the \_\_\_\_ day of \_\_\_\_\_, by the following vote, to wit:

AYES: Board Members  
NOES: Board Members  
ABSTAIN: Board Members  
ABSENT: Board Members

\_\_\_\_\_  
Chair, Oversight Board

ATTEST:

\_\_\_\_\_  
ACTING SECRETARY

Approved as to form:

\_\_\_\_\_  
Special Counsel to the Oversight Board

# ATTACHMENT C

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CIEDB Loan Agreement
Novato Human Needs Center Community Services Agreement
Merje – Wayfinding – Consultant Services Agreement
Berkeley Microdesign – Housing Database System – Consultant Services Agreement
TSG Networks – Housing Database System – Consultant Services Agreement (Contract to be provided on Monday, 4/9/2012)
Tattersall Advisory – Appraisal of Hamilton Hospital – Consultant Services Agreement
Novato Library and Flood District Memorandum of Understanding

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**INDENTURE OF TRUST**

**Dated as of February 1, 2005**

**by and between the**

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$24,835,000  
Redevelopment Agency of the City of Novato  
Hamilton Field Redevelopment Project  
Tax Allocation Bonds, Series 2005**

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this "Indenture") is made and entered into and dated as of February 1, 2005, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Agency"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee");

### WITNESSETH:

**WHEREAS**, the Agency is a public body, corporate and politic, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State (the "Law"), including the power to issue bonds for any of its corporate purposes;

**WHEREAS**, a Redevelopment Plan (as defined herein) for the Hamilton Field Redevelopment Project Area in the City of Novato, California has been adopted in compliance with all requirements of the Law;

**WHEREAS**, in order to provide moneys to finance and refinance redevelopment activities for the Redevelopment Project (as defined herein), the Agency has determined to issue its Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005 (the "Series 2005 Bonds");

**WHEREAS**, the Bonds will be payable from Tax Revenues (as hereinafter defined);

**WHEREAS**, in order to provide for the authentication and delivery of the Series 2005 Bonds, to establish and declare the terms and conditions upon which the Series 2005 Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Agency and the Trustee have duly authorized the execution and delivery of this Indenture; and

**WHEREAS**, the Agency has determined that all acts and proceedings required by law necessary to make the Series 2005 Bonds when executed by the Agency, and authenticated and delivered by the Trustee, the valid, binding and legal special obligations of the Agency, and to constitute this Indenture a legal, valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that in order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Bonds, including the Series 2005 Bonds, issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds, including the Series 2005 Bonds, are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds, including the Series 2005 Bonds, by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Agency and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, including the Series 2005 Bonds, as follows:

## ARTICLE I

### DETERMINATIONS; DEFINITIONS

**Section 1.01. Findings and Determinations.** The Agency has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Series 2005 Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Agency is now duly empowered, pursuant to each and every requirement of law, to issue the Series 2005 Bonds in the manner and form provided in this Indenture.

**Section 1.02. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Indenture, of any Supplemental Indenture, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

**"Additional Revenues"** means, as the date of calculation, the amount of Tax Revenues which, as shown in a report of an Independent Redevelopment Consultant, are estimated to be receivable by the Agency within the Fiscal Year following the Fiscal Year in which such calculation is made as a result of increases in the assessed valuation of taxable property in the Project Area due to either (a) construction which has been completed and for which a certificate of occupancy has been issued by the County or other appropriate governmental entity but which is not then reflected on the tax rolls, or (b) transfer of ownership or any other interest in real property which has been recorded but which is not then reflected on the tax rolls. For purposes of this definition, the term "increases in the assessed valuation" means the amount by which the assessed valuation of taxable property in the Project Area is estimated to increase above the assessed valuation of taxable property in the Project Area (as evidenced in the written records of the County) as of the date on which such calculation is made.

**"Agency"** means the Redevelopment Agency of the City of Novato, a public body corporate and politic duly organized and existing under the Law.

**"Annual Debt Service"** means, for each Bond Year, the sum of (a) the interest payable on the Outstanding Bonds and other Parity Debt in such Bond Year, assuming that the Outstanding Serial Bonds are retired as scheduled and that the Outstanding Term Bonds are redeemed from mandatory sinking account payments as scheduled, (b) the principal amount of the Outstanding Serial Bonds and other Parity Debt payable by their terms in such Bond Year, and (c) the principal amount of the Outstanding Term Bonds scheduled to be paid or redeemed from mandatory sinking account payments in such Bond Year. For purposes of such calculation, there shall be excluded debt service payments with respect to the Bonds or any Parity Debt (i) to the extent that amounts due with respect to the Bonds or such Parity Debt are prepaid or otherwise discharged in accordance with this Indenture or the relevant Parity Debt Instrument or (ii) to the extent the proceeds thereof are then deposited in an escrow fund in which amounts are invested in Permitted Investments and from which moneys may not be released to the Agency unless the amount of Tax Revenues (as evidenced in the written records of the County) plus Additional Revenues at least meets the requirements of Section 3.05(b).

**"Bonds"** means the Series 2005 Bonds and any Parity Debt issued as bonds pursuant to a Supplemental Indenture.

**"Bond Counsel"** means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Agency, of nationally-

recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

**"Bond Year"** means any twelve-month period beginning on September 2 in any year and ending on the next succeeding September 1, both dates inclusive, except that the first Bond Year shall begin on the Closing Date with respect to the Series 2005 Bonds and end on September 1, 2005.

**"Business Day"** means a day of the year on which banks in the State of California, are not required or permitted to be closed and on which the New York Stock Exchange is not closed.

**"City"** means the City of Novato, California, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State.

**"Closing Date"** means the date on which a series of Bonds is delivered by the Agency to the original purchaser thereof.

**"Code"** means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Series 2005 Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Series 2005 Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

**"Continuing Disclosure Certificate"** means that certain Continuing Disclosure Certificate, with respect to the Series 2005 Bonds, executed by the Agency, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**"Costs of Issuance"** means all items of expense directly or indirectly payable by or reimbursable to the Agency relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, bond insurance premiums, if any, rating agency fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds, administrative costs of the Agency and the City incurred in connection with the issuance of the Bonds, expenses of the underwriters of the Bonds, the fees and expenses of counsel to the underwriters of the Bonds, and any other cost, charge or fee in connection with the original issuance of the Bonds.

**"Costs of Issuance Fund"** means the fund by that name established and held by the Trustee pursuant to Section 3.03.

**"County"** means the County of Marin, a county duly organized and existing under the laws of the State.

**"Debt Service Fund"** means the fund by that name established and held by the Trustee pursuant to Section 4.03.

**"Defeasance Obligations"** means any of the following which, at the time of investment, are in compliance with the City's investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Agency as conclusive certification to the Trustee that investments described therein are in compliance with the City's investment policies then in effect):

- (a) Cash;

(b) Federal Securities, including direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities;

(c) The interest component of Resolution Funding Corporation strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form;

(d) Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P, provided that, if the issue is rated only by S&P (i.e., there is no Moody's rating), then the pre-refunded municipal bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals; and

(e) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) participation certificates of the General Services Administration; (iv) Federal Financing Bank bonds and debentures; (v) guaranteed Title XI financings of the U.S. Maritime Administration; and (vi) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development.

**"Depository"** means (a) initially, DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.11.

**"Depository System Participant"** means any participant in the Depository's book-entry system.

**"DTC"** means The Depository Trust Company, New York, New York, and its successors and assigns.

**"Event of Default"** means any of the events described in Section 8.01.

**"Fair Market Value"** means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the Agency and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

**"Federal Securities"** means any direct, noncallable general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America and CATS and TGRS), or obligations

the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America.

**"Fiscal Year"** means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve month period selected and designated by the Agency to the Trustee in writing as its official fiscal year period.

**"Indenture"** means this Indenture of Trust by and between the Agency and the Trustee, as originally entered into or as it may be amended or supplemented by any Supplemental Indenture entered into pursuant to the provisions hereof.

**"Independent Accountant"** means any accountant or firm of such accountants duly licensed or registered or entitled to practice as such under the laws of the State, appointed by the Agency, and who, or each of whom:

- (a) is in fact independent and not under domination of the Agency;
  - (b) does not have any substantial interest, direct or indirect, with the Agency;
- and
- (c) is not connected with the Agency as an officer or employee of the Agency, but who may be regularly retained to make reports to the Agency.

**"Independent Redevelopment Consultant"** means any consultant or firm of such consultants appointed by the Agency (who may be an underwriter of bonds of the Agency or the City), and who, or each of whom:

- (a) is judged by the Agency to have experience in matters relating to the collection of Tax Revenues or otherwise with respect to the financing of Redevelopment Projects;
  - (b) is in fact independent and not under domination of the Agency;
  - (c) does not have any substantial interest, direct or indirect, with the Agency;
- and
- (d) is not connected with the Agency as an officer or employee of the Agency, but who may be regularly retained to make reports to the Agency.

**"Information Services"** means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor, FIS/Mergent, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn: Call Notification; Standard & Poor's Securities Evaluation, Inc., 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; Xcitek, 5 Hanover Square, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the redemption of bonds as the Agency may designate in a Written Request of the Agency filed with the Trustee.

**"Insurer"** means the provider of a municipal bond or financial guaranty insurance policy with respect to an issue of Bonds other than the Series 2005 Bonds.

**"Interest Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(a).

**"Interest Payment Date"** means each March 1 and September 1, commencing September 1, 2005, for so long as any of the Bonds remain Outstanding hereunder.

**"Law"** means the Community Redevelopment Law of the State, constituting Part 1 of Division 24 of the Health and Safety Code of the State, and the acts amendatory thereof and supplemental thereto.

**"Maximum Annual Debt Service"** means, as of the date of calculation, the largest Annual Debt Service for the current or any future Bond Year, including payments on any Parity Debt, as certified in writing by the Agency to the Trustee. For purposes of such calculation, there shall be excluded the principal of any Bonds and other Parity Debt, together with the interest to accrue thereon, in the event and to the extent that the proceeds of such Bonds and other Parity Debt are deposited in an escrow fund and are held in cash or are invested solely in Permitted Investments and from which amounts may not be released to the Agency unless the amount of Tax Revenues for the current Fiscal Year (as evidenced in the written records of the County) plus Additional Revenues at least equal the requirements for issuance of Parity Debt under Section 3.06(b).

**"Moody's"** means Moody's Investors Service and its successors.

**"Nominee"** means (a) initially, Cede & Co., as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.11(a).

**"Outstanding"** when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.05) all Bonds except:

(a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the Agency pursuant hereto.

**"Owner"** or **"Bondowner"** means, with respect to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books.

**"Owner Participation Agreement"** means the Owner Participation Agreement dated December 13, 1999, between the Agency, Novato Community Partners, LLC, Shea Homes Limited partnership and Centex Homes, as amended.

**"Parity Debt"** means any additional bonds, loans, advances or indebtedness issued or incurred by the Agency on a parity with the Bonds pursuant to Section 3.05.

**"Parity Debt Instrument"** means any Supplemental Indenture or other instrument providing for the issuance or incurrence of Parity Debt.

**"Participating Underwriter"** has the meaning ascribed thereto in the Continuing Disclosure Certificate.

**"Pass-Through Agreement"** means (i) that certain Amended and Restated Settlement Agreement (Hamilton Field Redevelopment Project) dated as of May 23, 2000, by and between the City, the Agency and the County, (ii) that certain Redevelopment Plan Amendment Mitigation Agreement (Hamilton Field Redevelopment Project – Original Project Area Only) dated as of November 13, 2001, by and between the Agency and the Marin Community College District, (iii) that certain Redevelopment Plan Amendment Mitigation Agreement (Hamilton Field Redevelopment Project – Original Project Area Only) dated as of November 13, 2001, by and between the Agency and the Novato Fire District, (iv) that certain Redevelopment Plan Amendment Mitigation Agreement (Hamilton Field Redevelopment Project – Original Project Area Only) dated as of January 8, 2002, by and between the Agency and the County, (v), if applicable, that certain Multi-Party Cooperation Agreement (Hamilton Field Redevelopment Project Plan Amendment) dated as of the November 10, 1998, by and between the City, the Agency, the County and Other Signatory Taxing Entities (i.e., Novato Fire District and Marin Community College District), as amended, and (vi) any other agreement pursuant to which the Agency pays a portion of its tax increment revenue to a taxing entity.

**"Permitted Investments"** means any of the following which at the time of investment are in compliance with the City's investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Agency as conclusive certification to the Trustee that the investments described therein are in compliance with the City's investment policies then in effect), but only to the extent that the same are acquired at Fair Market Value:

- (a) Federal Securities;
- (b) The interest component of Resolution Funding Corporation strips which have been stripped by request to the Federal Reserve Bank of New York in book-entry form;
- (c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) Federal Housing Administration debentures; (iv) participation certificates of the General Services Administration; (v) Federal Financing Bank bonds and debentures; (vi) guaranteed mortgage-backed bonds or guaranteed pass-through obligations of the Government National Mortgage Association; (vii) guaranteed Title XI financings of the U.S. Maritime Administration; and (viii) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development;
- (d) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities only as stripped by the agency itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of Fannie Mae; (iv) senior debt obligations of the Student Loan Marketing Association; (v) obligations of the Resolution Funding Corporation; and (vi) consolidated system-wide bonds and notes of the Farm Credit System;
- (e) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and

having a rating by S&P of at least "AAAm-G", "AAAm" or "AAm", and a rating by Moody's of "Aaa", "Aa1" or "Aa2" (such funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services);

- (f) Certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral described in (a) or (b) above, which have a maturity not greater than one year from the date of investment and which are issued by commercial banks, savings and loan associations or mutual savings banks whose short-term obligations are rated "A-1+" or better by S&P and "Prime-1" by Moody's, which collateral must be held by a third party and provided that the Trustee must have a perfected first security interest in such collateral;
- (g) Certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee and its affiliates) which are fully insured by FDIC, including BIF and SAIF or which are issued by any bank the obligations of which are rated at least "A" by Moody's and S&P;
- (h) Investment agreements, including guaranteed investment contracts, forward purchase agreements, reserve fund put agreements and collateralized investment agreements with banks, insurance companies or other financial institutions rated "A" or better by S&P and Moody's (or guaranteed by an entity rated "A" or better by S&P and Moody's), subject to the prior written approval of the Series 2005 Insurer;
- (i) Commercial paper rated "Prime-1" by Moody's and "A-1+" or better by S&P;
- (j) Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies;
- (k) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's, and "A-1+" by S&P;
- (l) The Local Agency Investment Fund which is administered by the California Treasurer for the investment of funds belonging to local agencies within the State of California, provided for investment of funds held by the Trustee, the Trustee is entitled to make investments and withdrawals in its own name as Trustee; and
- (m) Any other investments permitted in writing by the Series 2005 Insurer.

**"Plan Limit"** means the limitation contained in the Redevelopment Plan on the number of dollars of taxes which may be divided and allocated to the Agency pursuant to the Redevelopment Plan, as such limitation is prescribed by Section 33492.13 of the Law.

**"Principal Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(b).

**"Principal Corporate Trust Office"** means the corporate trust office of the Trustee located in San Francisco, California, or such other office that the Trustee may designate in writing to the Agency from time to time as the corporate trust office for purposes of this Indenture; *provided, however*, that for purposes of the transfer, registration, exchange, payment and surrender of Bonds, the term "Principal Corporate Trust Office" means care of the corporate trust office of U.S. Bank National Association, in St. Paul, Minnesota.

**"Project Area"** means the territory within the Redevelopment Project, as described in the Redevelopment Plan, provided that the portion of the Project Area added to the Project Area pursuant to Ordinance No. 1401 adopted by the City Council of the City on November 24, 1998 shall be included within this definition of Project Area only if the Agency, in its sole discretion, determines to include a portion of the tax increment from such added area within the definition of Tax Revenues.

**"Project Fund"** means the fund by that name established and held by the Trustee pursuant to Section 3.04.

**"Qualified Reserve Account Credit Instrument"** means an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Trustee, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) in the case of a commercial bank, the long-term credit rating of such bank is at least "AA" from S&P or "Aa" from Moody's and, in the case of an insurance company, the claims paying ability of such insurance company is "AAA" from S&P, or "Aaa" from Moody's or, if rated by A.M. Best & Company, is rated in the highest rating category by A.M. Best & Company; (b) such letter of credit or surety bond has a term of at least 12 months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released; and (d) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.03(a) or 4.03(b) of this Indenture.

**"Record Date"** means, with respect to any Interest Payment Date, the close of business on the fifteenth (15th) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15th) calendar day is a Business Day.

**"Redemption Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(e).

**"Redevelopment Plan"** means the redevelopment plan for the Hamilton Field Redevelopment Project of the Agency in Novato, California, titled "Redevelopment Plan for the Hamilton Field Redevelopment Project," adopted and approved by Ordinance No. 1394, adopted by the Council of the City of Novato, California on July 14, 1998, as amended by Ordinance No. 1401 adopted by said Council on November 24, 1998, by Ordinance No. 1420 adopted by said Council on November 9, 1999, by Ordinance No. 1451 adopted by said Council on January 8, 2002, and by Ordinance No. 1472 adopted by said Council on May 13, 2003, together with all further amendments thereto hereafter made in accordance with the Law.

**"Redevelopment Project"** means the Hamilton Field Redevelopment Project as described in the Redevelopment Plan.

**"Registration Books"** means the records maintained by the Trustee pursuant to Section 2.08 for the registration and transfer of ownership of the Bonds.

**"Report"** means a document in writing signed by an Independent Redevelopment Consultant and including:

(a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Indenture to which such Report relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

**"Reserve Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(c).

**"Reserve Requirement"** means, as of the date of calculation by the Agency, the lesser of (i) the amount of Maximum Annual Debt Service on the Bonds (excluding from the calculation thereof Parity Debt other than Bonds), and (ii) one hundred and twenty five percent (125%) of average Annual Debt Service on the Bonds (excluding from the calculation thereof Parity Debt other than Bonds); provided, that in no event shall the Agency, in connection with the issuance of additional Bonds, be obligated to deposit an amount in the Reserve Account which is in excess of the amount permitted by the applicable provisions of the Code to be so deposited from the proceeds of tax-exempt bonds without having to restrict the yield of any investment purchased with any portion of such deposit and, in the event the amount of any such deposit into the Reserve Account is so limited, the Reserve Requirement shall, in connection with the issuance of such additional Bonds, be increased only by the amount of such deposit.

**"S&P"** means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, and its successors.

**"Securities Depositories"** means The Depository Trust Company, 55 Water Street, 50<sup>th</sup> Floor, New York, New York 10041-0099, Fax-(212) 855-7232; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Agency may designate in a Written Request of the Agency delivered to the Trustee.

**"Serial Bonds"** means all Bonds other than Term Bonds.

**"Series 2005 Bonds"** means the \$24,835,000 aggregate principal amount of Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005.

**"Series 2005 Bond Insurance Policy"** means the municipal bond insurance policy issued by the Series 2005 Insurer insuring the payment when due of the principal of and interest on the Series 2005 Bonds as provided therein.

**"Series 2005 Insurer"** means XL Capital Assurance Inc., a New York Stock Insurance Company and any successor thereto , or any successor thereto.

**"Special Fund"** means the fund held by the Agency established pursuant to Section 4.02.

**"State"** means the State of California.

**"Subordinate Debt"** means any loans, advances or indebtedness issued or incurred by the Agency pursuant to Section 3.06, which are either: (a) payable from, but not secured by a pledge of or lien upon, the Tax Revenues; or (b) secured by a pledge of or lien upon the Tax Revenues which is expressly subordinate to the pledge of and lien upon the Tax Revenues hereunder for the security of the Bonds.

**"Subordinate Debt Instrument"** means any instrument providing for the issuance of Subordinate Debt.

**"Supplemental Indenture"** means any resolution, agreement or other instrument which has been duly adopted or entered into by the Agency, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

**"Tax Revenues"** means, except as provided below, moneys allocated within the Plan Limit and paid to the Agency derived from (a) that portion of taxes levied upon assessable property within the Project Area allocated to the Agency pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Law and Section 16 of Article XVI of the Constitution of the State, or pursuant to other applicable State laws, and (b) payments, reimbursements and subventions (excluding payments to the Agency with respect to personal property within the Project Area pursuant to section 16110, et seq., of the California Government Code) but including payments made by the State with respect to any property taxes that would otherwise be due on real or personal property but for an exemption of such property from such taxes; but excluding (i) all amounts of such taxes (if any) required to be deposited into the Low and Moderate Income Housing Fund of the Agency pursuant to Section 33334.2 of the Law for increasing and improving the supply of low and moderate income housing, (ii) amounts payable by the State to the Agency under and pursuant to Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the California Government Code, (iii) amounts payable by the Agency pursuant to Sections 33492.15, 33607.5 and 33607.7 of the Law, except and to the extent that any amounts so payable are payable on a basis subordinate to the payment of debt service on the Bonds, (iv) amounts payable pursuant to the Pass-Through Agreement, except and to the extent that any amounts so payable have been subordinated to the payment of debt service on the Bonds or are otherwise not payable prior to the payment of debt service on the Bonds, (v) any tax increment derived from the Novato Redevelopment Project and the Downtown Redevelopment Project, as such terms are defined in Ordinance No. 1472 adopted by the City Council of the City on May 13, 2003, and (vi) any tax increment derived from that portion of the Project Area added to the Project Area pursuant to Ordinance No. 1401 adopted by the City Council of the City on November 24, 1998, unless the Agency, in its sole discretion, determines to include such tax increment in this definition of Tax Revenues.

**"Term Bonds"** means the Series 2005 Bonds maturing on September 1, 2031 and 2034 and that portion of any other Bonds payable from mandatory sinking account payments.

**"Trustee"** means U.S. Bank National Association, as trustee hereunder, or any successor thereto appointed as trustee hereunder in accordance with the provisions of Article VI.

**"Written Request of the Agency"** or **"Written Certificate of the Agency"** means a request or certificate, in writing signed by the Treasurer of the Agency or her or his designee, or by any other officer of the Agency or the City duly authorized by the Agency for that purpose.

**Section 1.03. Rules of Construction.** All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this

Indenture, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### AUTHORIZATION AND TERMS

**Section 2.01. Authorization of Series 2005 Bonds.** An initial issue of Bonds in the aggregate principal amount of Twenty Four Million Eight Hundred Thirty Five Thousand Dollars (\$24,835,000) is hereby authorized to be issued by the Agency under and subject to the terms of this Indenture, and the Law. This Indenture constitutes a continuing agreement with the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal and redemption premiums (if any) and the interest on all Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. Such initial issue of Bonds shall be designated the "Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005".

**Section 2.02. Terms of Series 2005 Bonds.** The Series 2005 Bonds shall be issued in fully registered form without coupons. The Series 2005 Bonds shall be issued in denominations of \$5,000 or any integral multiple thereof, so long as no Series 2005 Bond shall have more than one maturity date. The Series 2005 Bonds shall be dated as of their Closing Date. The Series 2005 Bonds shall be lettered and numbered as the Trustee shall prescribe.

The Series 2005 Bonds shall mature and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rate per annum as follows:

<b><u>Maturity Date</u></b> <b><u>(September 1)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
2005	\$ 460,000	2.500%
2006	490,000	2.500
2007	500,000	3.000
2008	510,000	3.250
2009	525,000	3.250
2010	540,000	3.250
2011	555,000	3.375
2012	575,000	3.500
2013	595,000	3.750
2014	615,000	3.400
2015	635,000	3.500
2016	660,000	3.625
2017	685,000	3.875
2018	715,000	4.000
2019	740,000	4.000
2020	775,000	4.100
2021	805,000	4.125
2022	840,000	4.200
2023	875,000	4.250
2024	910,000	4.300
2025	955,000	4.300
2026	995,000	4.400
2027	1,045,000	4.400
2028	1,095,000	4.400
2031	3,600,000	4.500
2034	4,140,000	4.500

Each Series 2005 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before August 15, 2005, in which event it shall bear interest from its Closing Date; provided, however, that if, as of the date of authentication of any Series 2005 Bond, interest thereon is in default, such Series 2005 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Series 2005 Bonds (including the final interest payment upon maturity or redemption) is payable when due by check or draft of the Trustee mailed to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; provided that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of Series 2005 Bonds, which written request is on file with the Trustee as of any Record Date, interest on such Series 2005 Bonds shall be paid on the succeeding Interest Payment Date to such account in the United States as shall be specified in such written request. The principal of the Series 2005 Bonds and any premium upon redemption, are payable in lawful money of the United States of America upon presentation and surrender thereof at the Principal Corporate Trust Office of the Trustee.

**Section 2.03. Redemption of Series 2005 Bonds.**

(a) Optional Redemption. The Bonds maturing on or before September 1, 2012, are not subject to optional redemption prior to maturity. The Bonds maturing on and after September 1, 2013, are subject to redemption, at the option of the Agency on any date on or after September 1, 2012, as a whole or in part, by such maturities as shall be determined by the Agency, and by lot within a maturity, from any available source of funds, at the following redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed) together with accrued interest thereon to the date fixed for redemption.

<u>Redemption Periods</u>	<u>Redemption Price</u>
September 1, 2012 through August 31, 2013	102%
September 1, 2013 through August 31, 2014	101
September 1, 2014 and thereafter	100

The Agency shall be required to give the Trustee written notice of its intention to redeem Series 2005 Bonds under this subsection (a) with a designation of the principal amount and maturities to be redeemed at least forty five (45) days prior to the date fixed for such redemption (or such later date as shall be acceptable to the Trustee), and shall transfer to the Trustee for deposit in the Debt Service Fund all amounts required for such redemption at least five (5) Business Days prior to the date fixed for such redemption.

(b) Mandatory Sinking Fund Redemption. The Series 2005 Bonds that are Term Bonds maturing September 1, 2031 and September 1, 2034 shall also be subject to mandatory redemption in whole, or in part by lot, on September 1 in each year, commencing September 1, 2029 and September 1, 2032, respectively, as set forth below, from sinking fund payments made by the Agency to the Principal Account pursuant to Section 4.03(b), at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 1 in the respective years as set forth in the following table; provided however, that (x) in lieu of redemption thereof such Term Bonds may be purchased by the Agency pursuant to Section 2.03(h) hereof, and (y) if some but not all of such Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Agency (notice of which determination shall be given by the Agency to the Trustee).

Term Bonds of 2031

<u>September 1</u>	<u>Principal Amount</u>
2029	\$1,145,000
2030	1,200,000
2031 (maturity)	1,255,000

Term Bonds of 2034

<u>September 1</u>	<u>Principal Amount</u>
2032	\$1,315,000
2033	1,380,000
2034 (maturity)	1,445,000

(c) Notice of Redemption; Rescission. The Trustee on behalf and at the expense of the Agency shall mail (by first class mail, postage prepaid) notice of any redemption at least thirty (30) but not more than sixty (60) days prior to the redemption date, to (i) to the Series 2005 Insurer, to any other Insurer and to the Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to one or more Information Services designated in a Written Request of the Agency filed with the Trustee; but such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall state, in the case of a redemption pursuant to (a) above, that such redemption is conditioned upon the timely delivery of the redemption price by the Agency to the Trustee for deposit in the Redemption Account, shall designate the CUSIP number of the Bonds to be redeemed, shall state the individual number of each Bond to be redeemed or shall state that all Bonds between two stated numbers (both inclusive) or all of the Bonds Outstanding are to be redeemed, and shall require that such Bonds be then surrendered at the Principal Corporate Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

The Agency shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any such notice of optional redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. The Agency and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(d) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Agency, a new Bond or Bonds of the same interest rate and maturity, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(e) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the redemption price of and interest on the Bonds so called for redemption shall have been duly deposited with the Trustee, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

(f) Manner of Redemption. Whenever any Bonds or portions thereof are to be selected for redemption by lot, the Trustee shall make such selection, in such manner as the Trustee shall deem appropriate, and shall notify the Agency thereof to the extent Bonds are no longer held in book-entry form. In the event of redemption by lot of Bonds, the Trustee shall assign to each Bond then Outstanding a distinctive number for each \$5,000 of the principal amount of each such Bond. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected, but only so much of the principal amount of each such Bond of a

denomination of more than \$5,000 shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected. All Bonds redeemed or purchased pursuant to this Section 2.03 shall be cancelled and destroyed.

(g) **Purchase in Lieu of Redemption.** In lieu of redemption of the Term Bonds pursuant to the preceding sub-paragraph (b) or pursuant to a Supplemental Indenture, amounts on deposit in the Special Fund or in the Principal Account may also be used and withdrawn by the Agency and the Trustee, respectively, at any time, upon the Written Request of the Agency, for the purchase of the Term Bonds at public or private sale as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Agency may in its discretion determine. The par amount of any Term Bonds so purchased by the Agency in any twelve-month period ending on July 1 in any year shall be credited towards and shall reduce the par amount of the Term Bonds required to be redeemed pursuant to subsection (d) on September 1 in each year; provided that evidence satisfactory to the Trustee of such purchase has been delivered to the Trustee by said July 1.

**Section 2.04. Form of Series 2005 Bonds.** The Series 2005 Bonds, the form of Trustee's Certificate of Authentication, and the form of Assignment to appear thereon, shall be substantially in the form set forth in Exhibit A, which is attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

**Section 2.05. Execution of Bonds.** The Bonds shall be executed on behalf of the Agency by the signature of its Treasurer or her or his designee and the signature of its Secretary who are in office on the date of execution and delivery of this Indenture or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the purchaser. Any Bond may be signed and attested on behalf of the Agency by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Agency although on the date of such Bond any such person shall not have been such officer of the Agency.

Only such of the Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore set forth, manually executed and dated by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such Certificate shall be conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture. In the event temporary Bonds are issued pursuant to Section 2.09 hereof, the temporary Bonds may bear thereon a Certificate of Authentication executed and dated by the Trustee, may be initially registered by the Trustee, and, until so exchanged as provided under Section 2.09 hereof, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.06. Transfer of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Principal Corporate Trust Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond shall be surrendered for transfer, the Agency shall execute and the Trustee shall thereupon authenticate and deliver to the transferee a new Bond or Bonds of like tenor, maturity and aggregate principal amount of authorized denominations. The Trustee shall collect from the Owner any tax or other governmental charge on the transfer of any Bonds pursuant to this

Section 2.06. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Agency.

The Trustee may refuse to transfer, under the provisions of this Section 2.06, either (a) any Bonds during the period fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected by the Trustee for redemption.

**Section 2.07. Exchange of Bonds.** Bonds may be exchanged at the Principal Corporate Trust Office of the Trustee for Bonds of the same tenor and maturity and of other authorized denominations. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds pursuant to this Section 2.07. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Agency.

The Trustee may refuse to exchange, under the provisions of this Section 2.07, either (a) any Bonds during the fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption or (b) any Bonds selected by the Trustee for redemption.

**Section 2.08. Registration of Bonds.** The Trustee will keep or cause to be kept, at its Principal Corporate Trust Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours be open to inspection and copying by the Agency, upon reasonable prior notice to the Trustee; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books Bonds as hereinbefore provided.

**Section 2.09. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Agency, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Agency upon the same conditions and in substantially the same manner as the definitive Bonds. If the Agency issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange therefor at the Principal Corporate Trust Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations, interest rates and like maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated, the Agency, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to it and indemnity satisfactory to it shall be given, the Agency, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond has matured or has been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee and the Agency). The Agency may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Bond issued under this Section 2.10 and of the expenses which may be

incurred by the Agency and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Agency whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

### **Section 2.11. Book-Entry System.**

(a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond without coupons (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, neither the Agency nor the Trustee shall have any responsibility or obligation to any Depository System Participant or to any person on behalf of which the Depository System Participant holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, neither the Agency nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the Agency elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Agency and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Agency to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Agency shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Agency and the Trustee shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Agency or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. The Trustee agrees to comply with all provisions in such letter with respect to the giving of notices thereunder by the

Trustee. In addition to the execution and delivery of such letter, upon written request of the Depository or the Trustee, the Agency may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Agency determines to terminate the Depository as such, then the Agency shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Agency and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Agency fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Article II. Prior to its termination, the Depository shall furnish the Trustee with the names and addresses of the Depository System Participants and respective ownership interests thereof.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

**Section 2.12. Applicability of Provisions to Additional Bonds.** Unless otherwise provided in a Supplemental Indenture, the provisions of Sections 2.03(c) through (g) and 2.05 through 2.11 shall apply to additional Bonds.

## ARTICLE III

### DEPOSIT AND APPLICATION; ADDITIONAL DEBT

**Section 3.01. Issuance of Bonds.** Upon the execution and delivery of this Indenture, the Agency shall execute and deliver to the Trustee the Series 2005 Bonds in the aggregate principal amount of Twenty Four Million Eight Hundred Thirty Five Thousand Dollars (\$24,835,000) and the Trustee shall authenticate and deliver the Series 2005 Bonds upon the Written Request of the Agency.

**Section 3.02. Application of Proceeds of Sale and Certain Other Amounts** On the Closing Date with respect to the Series 2005 Bonds, the proceeds of sale of the Series 2005 Bonds (including the good faith deposit of \$300,000), other than the Series 2005 Bond Insurance Policy premium in the amount of \$659,906.06, which is being paid on such Closing Date by the original purchaser to the Series 2005 Insurer on behalf of the Agency, shall be paid to the Trustee and applied as follows:

- (a) The Trustee shall deposit in the Reserve Account the amount of \$1,510,025.00, which amount equals the Reserve Requirement.
- (b) The Trustee shall deposit the amount of \$447,640.95 in the Costs of Issuance Fund.
- (c) The Trustee shall deposit \$22,000,000.00, being the remaining amount of proceeds of the Series 2005 Bonds, in the Project Fund.

**Section 3.03. Costs of Issuance Fund.** There is hereby established a separate fund to be known as the "Costs of Issuance Fund", which shall be held by the Trustee in trust. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance with respect to the Series 2005 Bonds upon submission of a Written Request of the Agency stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On the date which is six (6) months following the Closing Date with respect to the Series 2005 Bonds, or upon the earlier Written Request of the Agency, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the Project Fund.

**Section 3.04. Project Fund.** (a) There shall be established with respect to the Redevelopment Project a separate and segregated fund to be known as the "Hamilton Field Redevelopment Project Fund (the "Project Fund")", which the Trustee shall hold in trust for the benefit of the Agency. The moneys in the Project Fund shall be maintained separate and apart from other moneys of the Agency. The moneys on deposit in the Project Fund shall be used in the manner provided by the Law solely for the purpose of aiding in financing and refinancing the Redevelopment Project, including, without limitation, the payment of any unpaid Costs of Issuance. The Agency covenants that no funds on deposit in the Project Fund shall be applied for any purpose not authorized by the Law.

(b) On the date of issuance of the Series 2005 Bonds, the Trustee shall disburse all of the amounts on deposit in the Project Fund on such date to Novato Community Partners, LLC as partial payment of amounts owing under the Owner Participation Agreement, but only upon receipt of a disbursement request of the Agency substantially in the form attached hereto as Exhibit B. In no event shall the Trustee be responsible for the disbursement of moneys from the Project Fund in accordance with any such disbursement request. Such requisition shall be executed by the Treasurer of the Agency or her or his designee.

(c) In addition to the disbursement described in (b) above, the Trustee shall disburse any other amounts at any time on deposit in the Project Fund and the accounts therein upon receipt of a disbursement request of the Agency substantially in the form attached hereto as Exhibit B. In no event shall the Trustee be responsible for the manner in which the Agency applies the moneys disbursed to it by the Trustee in accordance with any such disbursement request. Such requisition shall be executed by the Treasurer of the Agency or her or his designee.

**Section 3.05. Issuance of Parity Debt.** In addition to the Series 2005 Bonds, the Agency may, by Supplemental Indenture, issue additional bonds or incur other loans, advances or indebtedness payable from Tax Revenues on a parity with the Series 2005 Bonds to finance redevelopment activities with respect to the Redevelopment Project in such principal amount as shall be determined by the Agency. The Agency may issue and deliver any such Parity Debt subject to the following specific conditions all of which are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

(a) No event of default hereunder, under any Parity Debt Instrument or under any Subordinate Debt Instrument shall have occurred and be continuing, and the Agency shall otherwise be in compliance with all covenants set forth in this Indenture;

(b) The Tax Revenues estimated to be received for each future Fiscal Year that the Parity Debt is scheduled to be Outstanding, based on the most recent assessed valuation of property in the Project Area (excluding taxes attributable to a tax rate levied by a taxing agency after January 1, 1989 for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness of such taxing agency), as evidenced in writing from the County Assessor or other appropriate official of the County (provided that in determining Tax Revenues for any Fiscal Year, the Agency shall deduct any amounts expected to be made by the Agency during such Fiscal Year pursuant to the Pass-Through Agreement, unless the payment of such amounts have been subordinated to the payment of the debt service on the Parity Debt), plus any Additional Revenues, shall be at least equal to one hundred twenty five percent (125%) of Annual Debt Service, including annual debt service on the proposed Parity Debt, for the related Bond Year;

(c) In the case of Parity Debt issued as additional Bonds under a Supplemental Indenture, the amount on deposit in the Reserve Account (and any subaccounts therein) shall be increased to the Reserve Requirement taking into account the additional Bonds to be issued;

(d) Principal with respect to such Parity Debt will be required to be paid on September 1 in any year in which such principal is payable; and

(e) The Agency shall deliver to the Trustee a Written Certificate of the Agency certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) above have been satisfied.

**Section 3.06. Issuance of Subordinate Debt.** The Agency may issue or incur Subordinate Debt in such principal amount as shall be determined by the Agency. Such Subordinate Debt may be payable from any assets or property of the Agency, including Tax Revenues on a subordinate basis to the payment of debt service on the Bonds.

**Section 3.07. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the Redevelopment Project or upon the performance by any person of his obligation with respect to the Redevelopment Project.

## ARTICLE IV

### SECURITY OF BONDS; FLOW OF FUNDS

**Section 4.01. Security of Bonds; Equal Security.** Except as provided in Section 6.06, the Series 2005 Bonds and any Parity Debt shall be equally secured by a pledge of, security interest in and lien on all of the Tax Revenues and the moneys in the Special Fund, and the Series 2005 Bonds and any additional Bonds shall also be secured by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Redemption Account and the Reserve Account without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Tax Revenues and such moneys, no funds or properties of the Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the Bonds.

In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Agency and the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

**Section 4.02. Special Fund; Deposit of Tax Revenues.** There is hereby established a special fund which is to be held by the Agency and which shall be known as the "Special Fund". The Agency shall transfer all of the Tax Revenues received in any Bond Year to the Special Fund promptly upon receipt thereof by the Agency, until such time during such Bond Year as the amounts on deposit in the Special Fund equal the aggregate amounts required to be transferred for deposit in such Bond Year (i) for deposit into the Interest Account, the Principal Account, the Reserve Account and the Redemption Account in such Bond Year pursuant to Section 4.03 hereof and, if applicable, and (ii) with respect to any Parity Debt other than additional Bonds pursuant to the applicable Parity Debt Instrument. If the amount of Tax Revenues available in such Bond Year shall be insufficient to deposit the full amount required to be deposited pursuant to subsections (i) and (ii) of this paragraph, then the Agency shall transfer such Tax Revenues for deposit pro rata based on the full amounts required to be so deposited.

All Tax Revenues received by the Agency during any Bond Year in excess of the amount required to be deposited in the Special Fund during such Bond Year pursuant to the preceding paragraph of this Section 4.02 shall be released from the pledge, security interest and lien hereunder for the security of the Bonds and any additional Parity Debt and may be applied by the Agency for any lawful purpose of the Agency, including but not limited to the payment of Subordinate Debt, or the payment of any amounts due and owing to the United States of America pursuant to Section 5.14. Prior to the payment in full of the principal of and interest and redemption premium (if any) on the Bonds and the payment in full of all other amounts payable hereunder and under any Supplemental Indenture or Parity Debt Instrument, the Agency shall not have any beneficial right or interest in the moneys on deposit in the Special Fund, except as may be provided in this Indenture and in any Supplemental Indenture or Parity Debt Instrument.

**Section 4.03. Deposit of Amounts by Trustee.** There is hereby established a trust fund to be known as the Debt Service Fund, which shall be held by the Trustee hereunder in trust. Moneys in the Special Fund shall be transferred by the Agency to the Trustee in the following amounts, at the following times, and deposited by the Trustee in the following

respective special accounts, which are hereby established in the Debt Service Fund, and in the following order of priority (provided further that, if on the fifth (5th) Business Day prior to the date the Agency is required to transfer amounts on deposit in the Special Fund to the Trustee there not amounts on deposit therein sufficient to make the following deposits, taking into accounts amounts required to be transferred with respect to Parity Debt other than Bonds, the Agency shall immediately notify the Trustee of the amount of any such insufficiency):

(a) Interest Account. On or before the fourth (4th) Business Day preceding each Interest Payment Date, the Agency shall withdraw from the Special Fund and transfer to the Trustee, for deposit in the Interest Account an amount which when added to the amount contained in the Interest Account on that date, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such Interest Payment Date. No such transfer and deposit need be made to the Interest Account if the amount contained therein is at least equal to the interest to become due on the next succeeding Interest Payment Date upon all of the Outstanding Bonds. All moneys in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity pursuant to this Indenture).

(b) Principal Account. On or before the fourth (4th) Business Day preceding September 1 in each year beginning September 1, 2005, the Agency shall withdraw from the Special Fund and transfer to the Trustee for deposit in the Principal Account an amount which, when added to the amount then contained in the Principal Account, will be equal to the principal becoming due and payable on the Outstanding Serial Bonds and Outstanding Term Bonds, including pursuant to mandatory sinking account redemption, on the next September 1. No such transfer and deposit need be made to the Principal Account if the amount contained therein is at least equal to the principal to become due on the next September 1 on all of the Outstanding Serial Bonds and Term Bonds. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Serial Bonds and the Term Bonds, including by mandatory sinking account redemption, as the same shall become due and payable.

(c) Reserve Account. In the event that the amount on deposit in the Reserve Account at any time becomes less than the Reserve Requirement, the Trustee shall promptly notify the Agency of such fact. Promptly upon receipt of any such notice, the Agency shall transfer to the Trustee an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account. If there shall then not be sufficient Tax Revenues to transfer an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the Agency shall be obligated to continue making transfers as Tax Revenues become available in the Special Fund until there is an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account. No such transfer and deposit need be made to the Reserve Account so long as there shall be on deposit therein a sum at least equal to the Reserve Requirement. All money in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account and the Principal Account in such order of priority, in the event of any deficiency at any time in any of such accounts or for the retirement of all the Bonds then Outstanding, except that so long as the Agency is not in default hereunder, any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account semiannually on or before the fifth (5th) Business Days preceding each March 1 and September 1 by the Trustee and deposited in the Interest Account. All amounts in the Reserve Account on the Business Day preceding the final Interest Payment Date shall be withdrawn from the Reserve Account and shall be transferred either (i) to the Interest Account and the Principal Account, in such order, to the extent required to make the deposits then required to be made pursuant to this Section 4.03 or, (ii) if the Agency shall have caused to be

transferred to the Trustee an amount sufficient to make the deposits required by this Section 4.03, then to the Agency.

The Agency shall have the right at any time to direct the Trustee to release funds from the Reserve Account, in whole or in part, by tendering to the Trustee: (i) a Qualified Reserve Account Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the Series 2005 Bonds or any other Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Trustee, and upon delivery by the Agency to the Trustee of written calculation of the amount permitted to be released from the Reserve Account (upon which calculation the Trustee may conclusively rely), the Trustee shall transfer such funds from the Reserve Account to the Agency to be used for any lawful purpose that does not adversely affect the exclusion from gross income for federal income tax purposes of interest on any of the Bonds. The Trustee shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this subsection (d). Upon the expiration of any Qualified Reserve Account Credit Instrument, the Agency shall either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Trustee an amount of funds equal to the Reserve Requirement, to be derived from the first available Tax Revenues. If the Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, the cash shall be first used to meet any deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.03(a) or 4.03(b) of this Indenture. If the Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, any draw to meet a deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.03(a) or 4.03(b) of this Indenture shall be pro-rata with respect to each such instrument.

In the event that a Qualified Reserve Account Credit Instrument is available to be drawn upon for only one particular issue of Bonds, a separate subaccount in the Reserve Account may be established for such issue, and the calculation of the Reserve Requirement with respect to all other Bonds shall exclude the debt service on such issue of Bonds. Additionally, the Reserve Account may be maintained in the form of one combined Reserve Account or in the form of one more separate sub-accounts which are established for the purpose of holding the proceeds of separate issues of Bonds in conformity with applicable provisions of the Code to the extent directed by the Agency in writing to the Trustee.

(d) Redemption Account. On or before the Business Day preceding any date on which Bonds are to be redeemed pursuant to Section 2.03(a), the Trustee shall withdraw from the Debt Service Fund any amount transferred by the Agency pursuant to Section 2.03(a) for deposit in the Redemption Account, such amount being the amount required to pay the principal of and premium, if any, on the Series 2005 Bonds and on other Bonds to be redeemed on such date pursuant to Section 2.03(a) or a similar provision of a Supplemental Indenture. All moneys in the Redemption Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium, if any, on the Series 2005 Bonds and on such other Bonds to be redeemed pursuant to Section 2.03(a) or a similar provision of a Supplemental Indenture on the date set for such redemption. Interest due on the Series 2005 Bonds or such other Bonds to be redeemed on the date set for redemption shall, if applicable, be paid from funds available therefor in the Interest Account. Notwithstanding the foregoing, at any time prior to giving notice

of redemption of any such Series 2005 Bonds or such other Bonds, the Trustee may, at the direction of the Agency, apply amounts deposited or otherwise to be deposited in the Redemption Account to the purchase of the Series 2005 Bonds or such other Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest on such Series 2005 Bonds or such other Bonds, which is payable from the Interest Account) as shall be directed by the Agency.

**Section 4.04. Claims Upon the Series 2005 Bond Insurance Policy.** The following provisions apply to claims upon the Series 2005 Bond Insurance Policy and to payments by and to the Series 2005 Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date"), there is not on deposit with the Trustee under this Indenture, after making all transfers and deposits required under this Indenture, moneys sufficient to pay the principal of, and interest on, the Series 2005 Bonds due on such Payment Date, the Trustee shall give notice to the Series 2005 Insurer and to its designated agent (if any) (the "Series 2005 Insurer's Fiscal Agent"), by telephone or telecopy, of the amount of such deficiency by 10:00 a.m., New York City time, on such Business Day. If, on the Business Day prior to the related Payment Date, there is not on deposit with the Trustee moneys sufficient to pay the principal of, and interest on, the Series 2005 Bonds due on such Payment Date, the Trustee shall make a claim under the Series 2005 Bond Insurance Policy and give notice to the Series 2005 Insurer and the Series 2005 Insurer's Fiscal Agent (if any) by telephone of the amount of any deficiency in the amount available to pay principal and interest, and the allocation of such deficiency between the amount required to pay interest on the Series 2005 Bonds and the amount required to pay principal of the Series 2005 Bonds, confirmed in writing to the Series 2005 Insurer and the Series 2005 Insurer's Fiscal Agent by 10:00 a.m., New York City time, on such Business Day, by delivering the Notice of Nonpayment and Certificate.

For the purposes of the preceding paragraph, "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from the Trustee to the Series 2005 Insurer, which notice shall specify (a) the name of the entity making the claim, (b) the policy number, (c) the claimed amount and (d) the date such claimed amount will become Due for Payment. "Nonpayment" means the failure of the Agency to have provided sufficient funds to the Trustee for payment in full of all principal of, and interest on, the Series 2005 Bonds that are insured under the Insurance Policy and that are Due for Payment. "Due for Payment", when referring to the principal of Series 2005 Bonds, means when the stated maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments, acceleration or other advancement of maturity, unless the Insurer shall elect, in its sole discretion, to pay such principal due upon such acceleration; and when referring to interest on Series 2005 Bonds, means when the stated date for payment of interest has been reached. "Certificate" means a certificate in form and substance satisfactory to the Series 2005 Insurer as to the Trustee's right to receive payment under the Series 2005 Bond Insurance Policy.

The Trustee shall designate any portion of payment of principal on Series 2005 Bonds paid by the Series 2005 Insurer at maturity on its books as a reduction in the principal amount of Series 2005 Bonds registered to the then current Owner, whether DTC or its nominee or otherwise, and shall issue a replacement Series 2005 Bond to the Series 2005 Insurer, registered in the name of the Series 2005 Insurer, as the case may be, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Series 2005 Bond shall have no effect on the amount of principal or interest payable by the Trustee on any

Series 2005 Bond insured by the Series 2005 Bond Insurance Policy or the subrogation rights of the Series 2005 Insurer.

The Trustee shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid with respect to any Series 2005 Bond. The Series 2005 Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

Upon payment of a claim under the Series 2005 Bond Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of the Owners of the Series 2005 Bonds (referred to herein as the "Policy Payments Account") and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under Series 2005 Bond Insurance Policy in trust on behalf of Owners of Series 2005 Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to Owners of Series 2005 Bonds in the same manner as principal and interest payments are to be made with respect to the Series 2005 Bonds under the sections hereof regarding payment of Series 2005 Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Series 2005 Insurer.

**Section 4.05. Rights of Series 2005 Insurer; Consent or Approval of the Series 2005 Insurer.** The following provisions shall apply for so long as any Series 2005 Bonds remain Outstanding or the Agency owes amounts to the Series 2005 Insurer.

(a) Notices. Any notice to be given to any party under this Indenture shall also be given to the Series 2005 Insurer at XL Capital Assurance, 1221 Avenue of the Americas, New York, New York 10020-1001, Attn: Surveillance.

(b) Amendments or Supplements. Any amendment or supplement to the Indenture requiring the consent of the Owners of the Series 2005 Bonds shall also require the consent of the Series 2005 Insurer. The Agency agrees to send a copy of any amendment or supplement requiring the consent of the Series 2005 Insurer to S&P. The Agency shall give the Series 2005 Insurer notice of any amendment or supplement made to the Indenture which do not require consent of the Owners of the Series 2005 Bonds.

(c) Events of Default. Upon the occurrence of an Event of Default under the Indenture, the Series 2005 Insurer shall be deemed the Owner of all Series 2005 Bonds, and shall have all the rights as the Owner of the Series 2005 Bonds as are specified in Article 8 hereof, provided that the Series 2005 Insurer shall not be in default under the Series 2005 Bond Insurance Policy.

(d) Series 2005 Insurer as Third Party Beneficiary. The Series 2005 Insurer is a third-party beneficiary hereunder and shall have the power to enforce any right, remedy or claim conferred, given or granted under this Indenture.

(e) Subrogation. If principal and/or interest due on the Series 2005 Bonds shall be paid by the Series 2005 Insurer, the Series 2005 Bonds shall remain outstanding under the Indenture for all purposes, and shall not be deemed defeased or otherwise satisfied, or paid by the Agency, and the assignment and pledge of the Tax Revenues and other amounts pledged to the payment of debt service of the Series 2005 Bonds under this Indenture, and all covenants, agreements and other obligations of the Agency to the Owners of the Series 2005 Bonds shall continue to exist and shall run to the benefit of the Series 2005 Insurer, and the Series 2005 Insurer shall be subrogated to the rights of such Owners.

(f) Series 2005 Insurer Deemed Owner. The Series 2005 Insurer shall be deemed to be the sole owner of the Series 2005 Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the owners of the Series 2005 Bonds insured by it are entitled to take pursuant to Articles VI, VII and VIII of the Indenture. Except as otherwise provided herein, no contract shall be entered into or action taken by which the rights of the Series 2005 Insurer or the security or sources of payment for the Series 2005 Bonds may be impaired or prejudiced, except upon obtaining the prior written consent of the Series 2005 Insurer.

#### **Section 4.06. Information to be Provided to the Series 2005 Insurer.**

The Series 2005 Insurer shall be provided by the Agency (except for items (ii) and (iii), which shall be provided by the Trustee, if appropriate) with the following information:

(a) Annual audited financial statements of the Agency within 180 days after the end of the Agency's fiscal year, the Agency's annual budget within 30 days after the approval thereof, and such other information, data or reports as the Series 2005 Insurer shall reasonably request from time to time;

(b) Notice of any draw upon any of the Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Requirements and (ii) withdrawals in connection with a refunding of any Bonds;

(c) Notice of any default known to the Trustee or the Agency within five Business Days after knowledge thereof;

(d) Prior notice of the advance refunding or redemption of any of the Series 2005 Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(e) Notice of the resignation or removal of the Trustee, any paying agent or any bond registrar and the appointment of, and acceptance of duties by, any successor thereto;

(f) Notice of the commencement of any proceeding by or against the Agency commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(g) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Series 2005 Bonds;

(h) A full original transcript of all proceedings relating to the execution of any amendment or supplement to the Indenture;

(i) All reports, notices and correspondence to be delivered to Owners of the Series 2005 Bonds under the terms of the Indenture;

(j) Annual reports and other filings under and pursuant to the Continuing Disclosure Certificate; and

(k) Such other information as the Series 2005 Insurer shall from time to time reasonably request.

## ARTICLE V

### OTHER COVENANTS OF THE AGENCY

**Section 5.01. Punctual Payment.** The Agency shall punctually pay or cause to be paid the principal and interest to become due in respect of all the Bonds together with the premium thereon, if any, in strict conformity with the terms of the Bonds and of this Indenture. The Agency shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture, all Supplemental Indentures and the Bonds. Nothing herein contained shall prevent the Agency from making advances of its own moneys howsoever derived to any of the uses or purposes referred to herein.

**Section 5.02. Limitation on Additional Indebtedness; Against Encumbrances.** The Agency hereby covenants that, so long as the Bonds are Outstanding, the Agency shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case payable from all or any part of the Tax Revenues, excepting only the Series 2005 Bonds, any Parity Debt and any Subordinate Debt. The Agency will not otherwise encumber, pledge or place any charge or lien upon any of the Tax Revenues or other amounts pledged to the Bonds superior or equal to the pledge and lien herein created for the benefit of the Bonds.

**Section 5.03. Extension of Payment.** The Agency will not, directly or indirectly, extend or consent to the extension of the time for the payment of any Bond or claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding the Bonds or claims for interest in any other manner. In case the maturity of any such Bond or claim for interest shall be extended or funded, whether or not with the consent of the Agency, such Bond or claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

**Section 5.04. Payment of Claims.** The Agency shall promptly pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the Agency or upon the Tax Revenues or other amounts pledged to the payment of the Bonds, or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Bonds. Nothing herein contained shall require the Agency to make any such payment so long as the Agency in good faith shall contest the validity of said claims.

**Section 5.05. Books and Accounts; Financial Statements.** The Agency shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Agency and the City, in which complete and correct entries shall be made of all transactions relating to the Redevelopment Project, the Tax Revenues, the Project Fund and the Special Fund. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Series 2005 Insurer, any other Insurer and the Owners of not less than ten percent (10%) in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

The Agency will cause to be prepared, within two hundred and seventy (270) days after the close of each Fiscal Year so long as the Bonds are Outstanding, complete audited financial statements with respect to such Fiscal Year showing the Tax Revenues, all disbursements of Tax Revenues and the financial condition of the Redevelopment Project, including the balances in all funds and accounts relating to the Redevelopment Project, as of the end of such Fiscal Year. The Agency shall promptly furnish a copy of such financial statements to the Trustee, the Series

2005 Insurer and any other Insurer at no expense and to any Owner upon reasonable request and at the expense of such Owner. In addition, the Agency shall deliver to the Trustee, the Series 2005 Insurer and any other Insurer, on or about February 1 of each year, a Written Certificate of the Agency and a written certificate or opinion of an Independent Accountant stating that the Agency is in compliance with its obligations hereunder. The Trustee shall have no obligation to review any financial statements provided to it by the Agency.

**Section 5.06. Protection of Security and Rights of Owners.** The Agency will preserve and protect the security of the Bonds and the rights of the Owners. From and after the Closing Date with respect to the Series 2005 Bonds, the Bonds shall be incontestable by the Agency.

**Section 5.07. Payments of Taxes and Other Charges.** Except as otherwise provided herein, the Agency will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the Agency or the properties then owned by the Agency in the Redevelopment Project, or upon the revenues therefrom when the same shall become due. Nothing herein contained shall require the Agency to make any such payment so long as the Agency in good faith shall contest the validity of said taxes, assessments or charges. The Agency will duly observe and conform with all valid requirements of any governmental authority relative to the Redevelopment Project or any part thereof.

**Section 5.08. Taxation of Leased Property.** All amounts derived by the Agency pursuant to Section 33673 of the Law with respect to the lease of property for redevelopment shall be treated as Tax Revenues for all purposes of this Indenture.

**Section 5.09. Disposition of Property.** The Agency will not participate in the detachment of taxable land from the Project Area or the disposition of any taxable land or real property in the Project Area to anyone which will result in such property becoming exempt from taxation because of public ownership or use or otherwise (except property dedicated for public right-of-way and except property planned for public ownership or use or other tax exempt use by the Redevelopment Plan in effect on the date of this Indenture) so that such detachment or disposition shall, when taken together with other such detachments or dispositions, (i) aggregate more than ten percent (10%) of the assessed value of property in the Project Area or (ii) would cause the amount of Tax Revenues available to the Agency for application hereunder in the succeeding Fiscal Year to fall below 125% of Maximum Annual Debt Service, in either case unless the Series 2005 Insurer and any other Insurer shall otherwise consent in writing.

**Section 5.10. Maintenance of Tax Revenues.** The Agency shall comply with all requirements of the Law to insure the allocation and payment to it of the Tax Revenues, including without limitation the timely filing of any necessary statements of indebtedness with appropriate officials of the County and, in the case of amounts payable by the State, appropriate officials of the State. The Agency shall not undertake proceedings for amendment of the Redevelopment Plan if such amendment shall result in payments to one or more taxing entities pursuant to Sections 33492.15, 33607.5 and 33607.7 of the Law unless the Agency shall first obtain a written opinion of an Independent Redevelopment Consultant that such payments will not adversely impair the Agency's ability to pay debt service on the Bonds. Additionally, the Agency shall not approve any amendment to the Redevelopment Plan which would, in and of itself, cause the amount of Tax Revenues available to the Agency for application hereunder in any succeeding Fiscal Year to fall below 125% of Maximum Annual Debt Service without the written consent of the Series 2005 Insurer and any other Insurer.

**Section 5.11. No Arbitrage.** The Agency shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Series 2005 Bonds

which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series 2005 Bonds would have caused the Series 2005 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

**Section 5.12. Private Activity Bond Limitation.** The Agency shall assure that the proceeds of the Series 2005 Bonds are not so used as to cause the Series 2005 Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

**Section 5.13. Federal Guarantee Prohibition.** The Agency shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series 2005 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

**Section 5.14. Rebate Requirement.** The Agency shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series 2005 Bonds.

**Section 5.15. Maintenance of Tax-Exemption.** The Agency shall take all actions necessary to assure the exclusion of interest on the Series 2005 Bonds from the gross income of the Owners of the Series 2005 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series 2005 Bonds.

**Section 5.16. Compliance with the Law; Low and Moderate Income Housing Fund.** The Agency shall ensure that all activities undertaken by the Agency with respect to the redevelopment of the Project Area are undertaken and accomplished in conformity with all applicable requirements of the Redevelopment Plan and the Law, including, without limitation, duly noticing and holding any public hearing required by either Section 33445 or Section 33679 of the Law prior to application of proceeds of the Bonds to any portion of the Redevelopment Project. Without limiting the generality of the foregoing, the Agency covenants that it shall deposit or cause to be deposited in the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Law, all amounts when, as and if required to be deposited therein pursuant to the Law.

**Section 5.17. Plan Limit.** The Agency shall manage its fiscal affairs in a manner which ensures that it will have sufficient Tax Revenues available under the Plan Limit in the amounts and at the times required to enable the Agency to pay the principal of and interest and premium (if any) on the outstanding Bonds and any outstanding Parity Debt when due.

Additionally, the Agency hereby covenants that it will annually review, no later than March 31 of each year, commencing March 31, 2006, the total amount of tax increment revenue remaining available to be received by the Agency under the Plan Limit, as well as future cumulative Annual Debt Service, estimated future fees of the Trustee, and other obligations payable from tax increment whether senior to or subordinate to the Bonds. If, based on such review, the allocation of tax increment revenues available to pay debt service on the Bonds to the Agency in any of the next three succeeding Fiscal Years will cause an amount equal to eighty (80%) of the amount remaining under the Plan Limit to fall below the remaining cumulative Annual Debt Service, estimated future fees of the Trustee, and payments on other obligations that are senior to or subordinate to the Bonds, the Agency shall either (i) defease Bonds by depositing an amount of Tax Revenues equal to the amount that is required to ensure continuing compliance with the first paragraph of this Section 5.17 (by defeasing Bonds) in a defeasance

escrow to be held by the Trustee and to be pledged solely to the payment of debt service on the Bonds, which escrow shall be invested in Defeasance Obligations and used for the payment of interest on and principal of and redemption premiums, if any, on the Bonds or (ii) adopt a plan approved by an Independent Redevelopment Consultant which demonstrates the Agency's continuing ability to pay debt service on the Bonds. In determining the amount to be deposited in escrow with the Trustee, the Agency shall not take into account any projected interest earnings on the amounts so deposited, but may take into account investment earnings received from amounts on deposit in such escrow. Additionally, prior to depositing such Tax Revenues into escrow, as described in (i) above, the Agency may retain, in each Fiscal Year, Tax Revenues in the amount required to make all payments due in such Fiscal Year under the Pass-Through Agreement and pursuant to all statutory pass-throughs to the extent that such payments have been subordinated to the payment of debt service on the Bonds, plus an amount not in excess of \$500,000 of such Tax Revenues (unless retention by the Agency of any portion or all of such \$500,000 would prevent the Agency from paying debt service on the Bonds in full prior to the Plan Limit being reached, in which event such \$500,000 shall be reduced by such amount).

The Agency shall annually no later than March 31 (commencing March 31, 2006), transmit to the Trustee, the Series 2005 Insurer and any other Insurer, a Written Certificate of the Agency setting forth the calculation required by this Section 5.17, including the remaining Annual Debt Service, estimated future fees of the Trustee, any other obligations of the Agency payable from tax increment revenues, remaining tax increment revenue under the Plan Limit, and the amount, if any, to be used or escrowed for use to pay interest on and principal of and redemption premiums, if any, on the Bonds.

**Section 5.18. Continuing Disclosure.** The Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Agency to comply with the Continuing Disclosure Certificate shall not be an Event of Default hereunder. However, any Participating Underwriter or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Agency to comply with its obligations under this Section 5.18. Any notice required to be given pursuant to the provisions of the Continuing Disclosure Certificate shall also be given to the Series 2005 Insurer and to S&P and Moody's.

**Section 5.19. Further Assurances.** The Agency will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

**ARTICLE VI**  
**THE TRUSTEE**

**Section 6.01. Duties, Immunities and Liabilities of Trustee.**

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants, duties or obligations shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Agency may remove the Trustee at any time, unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time the Agency has knowledge that the Trustee shall cease to be eligible in accordance with subsection (e) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of written notice of such removal by the Agency to the Trustee, with a copy to the Series 2005 Insurer and any other Insurer, whereupon the Agency shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Agency and by giving the Owners, the Series 2005 Insurer and any other Insurer notice of such resignation by first class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Agency shall promptly appoint a successor Trustee by an instrument in writing, with notice of such appointment to be furnished to the Series 2005 Insurer and any other Insurer.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of such Owner and all other Owners) may petition any court of competent jurisdiction at the expense of the Agency for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing, acknowledging and delivering to the Agency and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Agency or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and

certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Agency shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Agency shall cause either the predecessor Trustee or the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which then has a current rating on the Bonds and to the Owners at their respective addresses shown on the Registration Books.

(e) If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been given or is deemed to have notice, as provided in Section 6.03(e) hereof, then the Trustee shall immediately give written notice thereof, by first-class mail to the Series 2005 Insurer, any other Insurer and the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice; provided, however, that unless such Event of Default consists of the failure by the Agency to make any payment when due, the Trustee shall, within thirty (30) days of the Trustee's knowledge thereof, give such notice to the Series 2005 Insurer and any other Insurer, and the Trustee, with the consent of the Series 2005 Insurer and any other Insurer may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

(f) The Agency agrees that, so long as any Bonds or any Parity Debt are Outstanding, the Trustee shall be a financial institution having a trust office in the State, having (or in the case of a corporation or trust company included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least \$75,000,000, and subject to supervision or examination by federal or state authority. If such financial institution publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such financial institution shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (f), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

**Section 6.02. Merger or Consolidation.** Any bank or trust company into which the Trustee may be merged or converted or with which may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

### **Section 6.03. Liability of Trustee.**

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Agency, and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the security for the Bonds or the tax status of interest thereon nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or misconduct. The Trustee shall not be liable for the acts of any agents of the Trustee selected by it with due care. The Trustee and its officers and employees may become the Owner of any Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(c) The Trustee shall not be liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or misconduct of the Trustee. Where the Trustee is given the permissive right to do things enumerated in this Indenture, such right shall not be construed as a mandatory duty.

(d) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until a responsible officer shall have actual knowledge thereof, or shall have received written notice thereof from the Agency at its Principal Corporate Trust Office. In the absence of such actual knowledge or notice, the Trustee may conclusively assume that no Event of Default has occurred and is continuing under this Indenture. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by any other party of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee may rely conclusively on the Agency's certificates to establish the Agency's compliance with its financial covenants hereunder, including, without limitation, its covenants regarding the deposit of Tax Revenues into the Special Fund and the investment and application of moneys on deposit in the Special Fund (other than its covenants to transfer such moneys to the Trustee when due hereunder).

(e) The Trustee shall have no liability or obligation to the Bondowners with respect to the payment of debt service on the Bonds by the Agency or with respect to the observance or performance by the Agency of the other conditions, covenants and terms contained in this Indenture, or with respect to the investment of any moneys in any

fund or account established, held or maintained by the Agency pursuant to this Indenture or otherwise.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee shall be entitled to interest on all amounts advanced by it at the maximum rate permitted by law.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys or receivers and the Trustee shall not be responsible for any intentional misconduct or negligence on the part of any agent, attorney or receiver appointed with due care by it hereunder.

(h) The Trustee shall have no responsibility, opinion, or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(i) Before taking any action under Article VIII or this Article at the request of the Owners or the Series 2005 Insurer or any other Insurer, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners, the Series 2005 Insurer or any other Insurer for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

**Section 6.04. Right to Rely on Documents and Opinions.** The Trustee shall have no liability in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, facsimile transmission, electronic mail, or other paper or document reasonably believed by it to be genuine and to have been signed or prescribed by the proper party or parties, and shall not be required to make any investigation into the facts or matters contained thereon. The Trustee may consult with counsel, including, without limitation, counsel of or to the Agency, with regard to legal questions, and, in the absence of negligence or intentional misconduct by the Trustee, the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Agency, which shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate or report of any Independent Accountant or Independent Redevelopment Consultant appointed by the Agency.

**Section 6.05. Preservation and Inspection of Documents.** All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times upon reasonable notice to the inspection of and copying by the Agency, the Series 2005 Insurer, any other Insurer and any Owner, and their agents and

representatives duly authorized in writing, during regular business hours and under reasonable conditions.

**Section 6.06. Compensation and Indemnification.** The Agency shall pay to the Trustee from time to time reasonable compensation for all services rendered under this Indenture in accordance with the letter proposal from the Trustee approved by the Agency and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel), agents and employees, incurred in and about the performance of its powers and duties under this Indenture. The Trustee shall have a lien on the Tax Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel).

The Agency further covenants and agrees to indemnify, defend and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities which it may incur to the extent arising out of or in connection with the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Agency and the rights of the Trustee under this Section 6.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

**Section 6.07. Deposit and Investment of Moneys in Funds.** Moneys in the Project Fund, the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account, the Redemption Account and the Costs of Issuance Fund shall be invested by the Trustee in Permitted Investments as directed by the Agency in the Written Request of the Agency filed with the Trustee, except that moneys in the Reserve Account shall not be invested in Permitted Investments having a maturity of more than five (5) years, unless any such Permitted Investment is described in clause (h) of the definition thereof. In the absence of any such Written Request of the Agency, the Trustee shall invest any such moneys in Permitted Investments described in clause (e) of the definition thereof, which by their terms mature prior to the date on which such moneys are required to be paid out hereunder. The Trustee shall be entitled to rely conclusively upon the written instructions of the Agency directing investments in Permitted Investments as to the fact that each such investment is permitted by the laws of the State, and shall not be required to make further investigation with respect thereto. With respect to any restrictions set forth in the above list which embody legal conclusions (e.g., the existence, validity and perfection of security interests in collateral), the Trustee shall be entitled to rely conclusively on an opinion of counsel or upon a representation of the provider of such Permitted Investment obtained at the Agency's expense. Moneys in the Special Fund may be invested by the Agency in any obligations in which the Agency is legally authorized to invest its funds. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder shall be deposited in the Interest Account; *provided, however,* that all interest or gain from the investment of amounts in the Reserve Account shall be deposited by the Trustee in the Interest Account only to the extent not required to cause the balance in the Reserve Account to equal the Reserve Requirement. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made at the direction of the Agency or otherwise made in accordance with this

Section. For investment purposes only, the Trustee may commingle the funds and accounts established hereunder, but shall account for each separately.

The Agency acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Agency the right to receive brokerage confirmations of security transactions as they occur, the Agency specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Agency monthly cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

All moneys held by the Trustee shall be held in trust, but need not be segregated from other funds unless specifically required by this Indenture. Except as specifically provided in this Indenture, the Trustee shall not be liable to pay interest on any moneys received by it, but shall be liable only to account to the Agency for earnings derived from funds that have been invested.

The Agency covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value.

Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code shall be valued by the Agency at their present value (within the meaning of section 148 of the Code). Investments on deposit in the Reserve Account shall be valued on June 30 of each year at their market value.

**Section 6.08. Accounting Records and Financial Statements.** The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions relating to the proceeds of the Bonds made by it and all funds and accounts held by the Trustee established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Agency upon reasonable prior notice, at reasonable hours and under reasonable circumstances. The Trustee shall furnish to the Agency, on at least a monthly basis, an accounting of all transactions in the form of its customary statements relating to the proceeds of the Bonds and all funds and accounts held by the Trustee pursuant to this Indenture.

**Section 6.09. Other Transactions with Agency.** The Trustee, either as principal or agent, may engaged in or be interested in any financial or other transaction with the Agency.

## ARTICLE VII

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

**Section 7.01. Amendment With And Without Consent of Owners.** This Indenture and the rights and obligations of the Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption without the consent of any Owners, but only with the prior written consent of the Series 2005 Insurer (except that no such consent shall be required with respect to any Supplemental Indenture entered into for the purposes set forth in (c) below), to the extent permitted by law, but only for any one or more of the following purposes -

(a) to add to the covenants and agreements of the Agency in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or powers herein reserved to or conferred upon the Agency; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Agency may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not, in the reasonable determination of the Agency, materially adversely affect the interests of the Owners; or

(c) to provide for the issuance of Parity Debt in accordance with Section 3.05; or

(d) to amend any provision hereof relating to the requirements of or compliance with the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exemption from federal income taxation of interest on any of the Bonds, in the opinion of Bond Counsel; or

(e) to comply with the requirements of a provider of a Qualified Reserve Account Credit Instrument.

Except as set forth in the preceding paragraph, this Indenture and the rights and obligations of the Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consent of the Series 2005 Insurer, any other Insurer and the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Agency to pay the principal, interest, or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Series 2005 Insurer, any other Insurer or the Owner of such Bond, or (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification. In no event shall any Supplemental Indenture modify any of the rights or obligations of the Trustee without its prior written consent. In no event shall any Supplemental Indenture modify any of the rights or obligations of the Series 2005 Insurer or any other Insurer without its prior written consent.

**Section 7.02. Effect of Supplemental Indenture.** From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter

be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 7.03. Endorsement or Replacement of Bonds After Amendment.** After the effective date of any amendment or modification hereof pursuant to this Article VII, the Agency may, with the prior written consent of the Series 2005 Insurer and any other Insurer, determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the Agency, as to such amendment or modification and in that case upon demand of the Agency the Owners of such Bonds shall present such Bonds for that purpose at the Principal Corporate Trust Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the Agency may determine that new Bonds shall be prepared at the expense of the Agency and executed in exchange for any or all of the Bonds, and in that case, upon demand of the Agency, the Owners of the Bonds shall present such Bonds for exchange at the Principal Corporate Trust Office of the Trustee, without cost to such Owners.

**Section 7.04. Amendment by Mutual Consent.** The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond and, provided further that written consent to such amendment shall first be obtained from the Series 2005 Insurer and any other Insurer.

**Section 7.05. Opinion of Counsel.** Prior to executing any Supplemental Indenture, the Trustee shall be furnished an opinion of counsel, upon which it may conclusively rely to the effect that all conditions precedent to the execution of such Supplemental Indenture under this Indenture have been satisfied and such Supplemental Indenture is authorized and permitted under this Indenture and does not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or adversely affect the exemption of interest on the Bonds from personal income taxation by the State.

**Section 7.06. Copy of Supplemental Indenture to S&P and Moody's.** The Agency shall provide to S&P and Moody's, for so long as S&P and Moody's, as the case may be, maintain a rating on any of the Bonds (without regard to any municipal bond or financial guaranty insurance), a copy of any Supplemental Indenture at least 15 days prior to its proposed effective date.

**Section 7.07. Transcript of Proceedings to Series 2005 Insurer.** The Agency shall provide or cause to be provided to the Series 2005 Insurer and any other Insurer a full transcript of proceedings relating to any Supplemental Indenture.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF OWNERS

**Section 8.01. Events of Default and Acceleration of Maturities.** The following events shall constitute Events of Default hereunder:

(a) if default shall be made by the Agency in the due and punctual payment of the principal of or interest or redemption premium (if any) on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if default shall be made by the Agency in the observance of any of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, other than a default described in the preceding clause (a), and such default shall have continued for a period of thirty (30) days following receipt by the Agency of written notice from the Trustee, the Series 2005 Insurer or any other Insurer or written notice from any Owner (with a copy of said notice delivered to the Trustee and the Series 2005 Insurer and any other Insurer) of the occurrence of such default, provided that if in the reasonable opinion of the Agency the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure will not constitute an event of default if corrective action is instituted by the Agency (with the prior written consent of the Series 2005 Insurer and any other Insurer) within such thirty (30) day period and the Agency thereafter diligently and in good faith cures such failure in a reasonable period of time as approved by the Series 2005 Insurer and any other Insurer; or

(c) If the Agency files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction will approve a petition by the Agency seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will approve a petition by the Agency, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will assume custody or control of the Agency or of the whole or any substantial part of its property.

In determining whether an Event of Default has occurred under (a) above, no effect shall be given to payments made under the Series 2005 Bond Insurance Policy, or under any other municipal bond insurance policy, financial guaranty insurance policy or Qualified Reserve Account Credit Instrument.

If an Event of Default has occurred under this Section and is continuing, the Trustee, may, and, if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee shall, (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and (b) subject to the provisions of Section 8.06, exercise any other remedies available to the Trustee and the Bond Owners in law or at equity.

Immediately upon receiving notice or actual knowledge of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to the Series 2005 Insurer and any other Insurer and to the Agency by telephone promptly confirmed in writing. Such notice shall

also state whether the principal of the Bonds shall have been declared to be or have immediately become due and payable. With respect to any Event of Default described in clauses (a) or (c) above the Trustee shall, and with respect to any Event of Default described in clause (b) above the Trustee in its sole discretion may, also give such notice to the Owners by mail, which shall include the statement that interest on the Bonds shall cease to accrue from and after the date, if any, on which the Trustee shall have declared the Bonds to become due and payable pursuant to the preceding paragraph (but only to the extent that principal and any accrued, but unpaid, interest on the Bonds is actually paid on such date). In no event shall the debt service on the Series 2005 Bonds be accelerated without the prior written consent of the Series 2005 Insurer.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Agency shall, with the written consent of a majority in aggregate principal amount of the Owners of the Bonds, deposit with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal and interest (to the extent permitted by law), and the reasonable fees and expenses of the Trustee, (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee shall promptly give written notice of the foregoing to the Series 2005 Insurer, any other Insurer and the Owners of all Bonds then Outstanding, and with the prior written approval of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Agency and to the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon. In no event shall any rescission or annulment of the acceleration of the debt service on the Series 2005 Bonds occur without the prior written consent of the Series 2005 Insurer.

**Section 8.02. Application of Funds Upon Acceleration.** All of the Tax Revenues and all sums in the funds and accounts established and held by the Trustee hereunder upon the date of the declaration of acceleration as provided in Section 8.01, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in exercising the rights and remedies set forth in this Article VIII, including reasonable compensation to its agents, attorneys (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and counsel and any outstanding fees, expenses of the Trustee; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for principal and interest, as applicable, with interest on the overdue principal, and installments of interest at the net effective rate then borne by the Outstanding Bonds (to the extent that such interest on overdue installments of principal and interest shall have been collected), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such principal and

interest without preference or priority, ratably to the aggregate of such principal and interest.

**Section 8.03. Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however,* that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

**Section 8.04. Limitation on Owner's Right to Sue.** No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Agency, the Trustee, the Series 2005 Insurer and any other Insurer written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

**Section 8.05. Non-Waiver.** Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the Agency, which is absolute and unconditional, to pay from the Tax Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners or the Trustee to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner or the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and

every power and remedy conferred upon the Owners and the Trustee by the Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners and the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Owners or the Trustee, the Agency, the Trustee and the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

**Section 8.06. Actions by Trustee as Attorney-in-Fact.** Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds or Parity Debt shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, *provided, however*, the Trustee shall have no duty or obligation to exercise any such right or remedy unless it has been indemnified to its satisfaction from any loss, liability or expense (including fees and expenses of its outside counsel and the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel).

**Section 8.07. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

**Section 8.08. Determination of Percentage of Bond Owners.** Whenever in this Indenture the consent, direction or other action is required or permitted to be given or taken by a percentage of the Owners of an aggregate principal amount of Outstanding Bonds (including by the Owners of a majority in aggregate principal amount of the Outstanding Bonds), such percentage shall be calculated on the basis of the principal amount of the Outstanding Bonds determined as of the next succeeding Interest Payment Date.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Benefits Limited to Parties.** Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Agency, the Series 2005 Insurer, any other Insurer, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Agency shall be for the sole and exclusive benefit of the Trustee, the Series 2005 Insurer, any other Insurer and the Owners. To the extent that this Indenture confers upon or gives or grants to the Series 2005 Insurer or any other Insurer any right, remedy or claim under or by reason of this Indenture, the Series 2005 Insurer and any other Insurer are hereby explicitly recognized as being third-party beneficiaries hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.

**Section 9.02. Successor is Deemed Included in All References to Predecessor.** Whenever in this Indenture or any Supplemental Indenture either the Agency or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Agency or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Discharge of Indenture.** (a) If the Agency shall pay and discharge the entire indebtedness on all Bonds or any portion thereof in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on all or the applicable portion of Outstanding Bonds, as and when the same become due and payable;

(ii) by irrevocably depositing with the Trustee or an escrow agent, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay all or the applicable portion of Outstanding Bonds, including all principal, interest and redemption premiums, or;

(iii) by irrevocably depositing with the Trustee or an escrow agent, in trust, Defeasance Obligations in such amount as an Independent Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on all Bonds or the applicable portion thereof (including all principal, interest and redemption premiums) at or before maturity;

and, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given pursuant to Section 2.03(b) or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the Agency, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Tax Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the Agency under this Indenture shall cease and terminate with respect to all Outstanding Bonds or, if applicable, with respect to that portion of the Bonds which has been paid and discharged, except only (a) the covenants of the Agency hereunder with respect to the Code, (b) the obligation of the Trustee to transfer and exchange Bonds hereunder, (c)

the obligations of the Agency under Section 6.06 hereof, and (d) the obligation of the Agency to pay or cause to be paid to the Owners (or the Series 2005 Insurer and any other Insurer), from the amounts so deposited with the Trustee, all sums due thereon and to pay the Trustee, the Series 2005 and any other Insurer all fees, expenses and costs of the Trustee, the Series 2005 Insurer and any other Insurer. In the event the Agency shall, pursuant to the foregoing provision, pay and discharge any portion or all of the Bonds then Outstanding, the Trustee shall be authorized to take such actions and execute and deliver to the Agency all such instruments as may be necessary or desirable to evidence such discharge, including, without limitation, selection by lot of Bonds of any maturity of the Bonds that the Agency has determined to pay and discharge in part.

In the case of a defeasance or payment of all of the Bonds Outstanding, any funds thereafter held by the Trustee which are not required for said purpose or for payment of amounts due the Trustee pursuant to Section 6.06 shall be paid over to the Agency.

(b) In the event that any portion or all of the Bonds are to be paid and discharged pursuant to Section 9.03(a)(iii), the Series 2005 Insurer and any other Insurer shall be notified and provided with a draft copy of any proposed escrow agreement establishing the defeasance trust, the form of the Independent Certified Public Accountant's certificate, the preliminary official statement of the refunding issue (if applicable) and the form of approving opinion of Bond Counsel. These materials shall be delivered to the Series 2005 Insurer and any other Insurer by the Agency no less than five (5) Business Days prior to the scheduled payment and discharge. Substitution of securities held in trust in the escrow shall not be permitted without the consent of the Series 2005 Insurer and any other Insurer. In the event that a forward purchase agreement will be utilized in connection with a defeasance trust, such agreement shall be subject to the approval of the Series 2005 Insurer and any other Insurer and shall be accompanied by such opinions of counsel as may be required by the Series 2005 Insurer and any other Insurer.

A copy of any such escrow agreement and the Independent Certified Public Accountant's certificate stating that the escrow is sufficient to meet the standards of Section 9.03(a)(iii), the final official statement for the refunding issue (if applicable), the approving opinion of Bond Counsel, the Trustee's receipt, and the Trustee's certification as to the application of funds shall be furnished to the Series 2005 Insurer and any other Insurer no later than ten (10) Business Days subsequent to payment and discharge of the applicable Bonds by the Agency.

If a forward supply contract is employed in connection with the defeasance of any of the Bonds, (i) the verification report relating to the defeasance of such Bonds shall expressly state that the adequacy of the escrow to accomplish the defeasance relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement, the terms of the escrow agreement shall be controlling.

(c) Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due of the Bonds is paid by the Series 2005 Insurer pursuant to the Series 2005 Bond Insurance Policy or by any other Insurer pursuant to its municipal bond or financial guaranty insurance policy, such Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Agency, and the assignment and pledge of the Tax Revenues and other assets hereunder and all covenants, agreements and other obligations of the Agency to the Bond Owners so paid shall continue to exist and shall run to the benefit of Series 2005 Insurer and any other Insurer, and the Series 2005 Insurer and any other Insurer shall be subrogated to the rights of such Bond Owners, as applicable.

**Section 9.04. Execution of Documents and Proof of Ownership by Owners.** Any request, consent, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by such Owner's attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be proved by the Registration Books.

Any demand, request, direction, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Agency or the Trustee and in accordance therewith, provided, however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by or for the account of the Agency unless the Agency is the registered Owner or the Trustee has received written notice that any other registered Owner is such an affiliate.

**Section 9.05. Disqualified Bonds.** In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Agency or the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination.

**Section 9.06. Waiver of Personal Liability.** No member, officer, agent or employee of the Agency shall be individually or personally liable for the payment of the principal or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.07. Destruction of Cancelled Bonds.** Whenever in this Indenture provision is made for the surrender to the Trustee of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, the Trustee shall destroy such bonds and upon request of the Agency provide the Agency a certificate of destruction. The Agency shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

**Section 9.08. Notices.** (a) Any notice, request, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or upon receipt when mailed by first class, registered or certified mail, postage prepaid, or sent by facsimile, addressed as follows:

If to the Agency:

Redevelopment Agency of the  
City of Novato  
900 Sherman Avenue  
Novato, California 94945  
Attention: Treasurer  
Facsimile: (415) 897-4343

If to the Trustee:

U.S. Bank National Association  
One California Street, Suite 2550  
San Francisco, California 94111  
Attention: Corporate Trust Services  
Facsimile: (415) 273-4591

The Agency and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 9.09. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Agency hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Trustee hereunder shall, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof, be assumed by and vest in the Treasurer of the Agency in trust for the benefit of the Owners. The Agency covenants for the direct benefit of the Owners that its Treasurer in such case shall be vested with all of the rights and powers of the Trustee hereunder, and shall assume all of the responsibilities and perform all of the duties of the Trustee hereunder, in trust for the benefit of the Bonds, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof.

**Section 9.10. Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the Agency as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Agency for the payment of the principal of and interest and redemption premium (if any) on of such Bonds.

**Section 9.11. Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.12. Governing Law.** This Indenture shall be construed and governed in accordance with the laws of the State.

IN WITNESS WHEREOF, the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, has caused this Indenture to be signed in its name by its Treasurer and attested by its Secretary, and U.S. BANK NATIONAL ASSOCIATION in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: May Neila  
Treasurer

Attest:

Shirley Crommed  
Secretary

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, has caused this Indenture to be signed in its name by its Treasurer and attested by its Secretary, and U.S. BANK NATIONAL ASSOCIATION in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

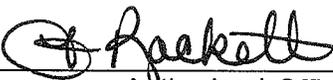
REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: \_\_\_\_\_  
Treasurer

Attest:

\_\_\_\_\_  
Secretary

U.S. BANK NATIONAL ASSOCIATION, as  
*Trustee*

By:  \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**(FORM OF SERIES 2005 BOND)**

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF MARIN**

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO  
HAMILTON FIELD REDEVELOPMENT PROJECT  
TAX ALLOCATION BOND, SERIES 2005**

INTEREST RATE:            MATURITY DATE:            DATED DATE:            CUSIP:  
   September 1, \_\_\_\_\_            {Closing Date}

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM:            DOLLARS

The REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California (the "Agency"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Registered Owner"), on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond, unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the fifteenth (15th) day of the month immediately preceding an Interest Payment Date (the "Record Date"), in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before August 15, 2005, in which event it shall bear interest from the Dated Date above; provided however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, until payment of such Principal Sum in full, at the Interest Rate per annum stated above, payable semiannually on March 1 and September 1 in each year, commencing September 1, 2005 (each an "Interest Payment Date"), calculated on the basis of 360-day year comprised of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable upon surrender of this Bond at the corporate trust office of U.S. BANK NATIONAL ASSOCIATION in St. Paul, Minneapolis, as trustee (the "Trustee"), or at such other place designated by the Trustee (the "Principal Corporate Trust Office"). Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check of the Trustee mailed by first class mail, postage prepaid, on the Interest Payment Date to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books maintained by the Trustee as of the Record Date for such Interest Payment Date; provided however, that payment of interest may be by wire transfer to an account in the United States of America to any registered owner of Bonds in the aggregate principal amount of \$1,000,000 or more upon written instructions of any such registered owner filed with the Trustee for that

purpose prior to the Record Date preceding the applicable Interest Payment Date. This Bond is one of a duly authorized issue of bonds of the Agency designated as "Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005" (the "Bonds"), of an aggregate principal amount of Twenty Four Million Eight Hundred Thirty Five Thousand Dollars (\$24,835,000), all of like tenor and date (except for such variation, if any, as may be required to designate varying series, numbers, maturities, interest rates, or redemption and other provisions) and all issued pursuant to the provisions of the Community Redevelopment Law, being Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code of the State of California (the "Law"), and pursuant to an Indenture of Trust, dated as of February 1, 2005, entered into by and between the Agency and the Trustee (the "Indenture"), providing for the issuance of the Bonds. The Bonds are being issued in the form of registered Bonds without coupons. Additional bonds, or other obligations may be issued on a parity with the Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Agency) and all indentures supplemental thereto and to the Law for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Tax Revenues (as that term is defined in the Indenture), and the rights thereunder of the registered owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Agency thereunder, to all of the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees. Capitalized terms not otherwise defined herein shall have the meanings given them in the Indenture.

The Bonds have been issued by the Agency for the purpose of providing funds to finance and refinance certain redevelopment activities with respect to its Hamilton Field Redevelopment Project Area (the "Project Area") and to pay certain expenses of the Agency in issuing the Bonds.

The Bonds are special obligations of the Agency and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Tax Revenues derived by the Agency from the Project Area.

There has been created and will be maintained by the Agency, the Special Fund (as defined in the Indenture) into which Tax Revenues shall be deposited and from which the Agency shall transfer amounts to the Trustee for payment, when due, of the principal of and the interest and redemption premium, if any, on the Bonds and any additional Parity Debt as defined in the Indenture. As and to the extent set forth in the Indenture, all such Tax Revenues and the moneys in the Special Fund (as such terms are defined in the Indenture) are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture and the Law, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds and any additional Parity Debt. In addition, the Bonds shall be additionally secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account and the Redemption Account (as such terms are defined in the Indenture). Except for the Tax Revenues and such moneys, no funds or properties of the Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Bonds maturing on or before September 1, 2012, are not subject to optional redemption prior to maturity. The Bonds maturing on and after September 1, 2013, are subject to redemption, at the option of the Agency on any date on or after September 1, 2012, as a whole or in part, by such maturities as shall be determined by the Agency, and by lot within a maturity, from any available source of funds, at the following redemption prices (expressed as

percentages of the principal amount of the Bonds to be redeemed) together with accrued interest thereon to the date fixed for redemption.

<u>Redemption Periods</u>	<u>Redemption Price</u>
September 1, 2012 through August 31, 2013	102%
September 1, 2013 through August 31, 2014	101
September 1, 2014 and thereafter	100

The Bonds maturing on September 1, 2031, and September 1, 2034 (the "Term Bonds") shall also be subject to mandatory redemption in whole, or in part by lot, on September 1 in each year, commencing September 1, 2029 and September 1, 2032, respectively, as set forth below, from sinking fund payments made by the Agency to the Principal Account at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 1 in the respective years as set forth in the following table; provided however, that (x) in lieu of redemption thereof the Term Bonds may be purchased by the Agency pursuant to the Indenture, and (y) if some but not all of the Term Bonds have been redeemed pursuant to optional redemption, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 (notice of which determination shall be given by the Agency to the Trustee).

Term Bonds of 2031

<u>September 1</u>	<u>Principal Amount</u>
2029	\$1,145,000
2030	1,200,000
2031 (maturity)	1,255,000

Term Bonds of 2034

<u>September 1</u>	<u>Principal Amount</u>
2032	\$1,315,000
2033	1,380,000
2034 (maturity)	1,445,000

As provided in the Indenture, notice of redemption shall be given by first class mail no less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

The Agency shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Agency and the Trustee shall have no liability to the Owners or any other party related to or arising from such

rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bond during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bond selected for redemption.

The Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Agency and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Agency and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided herein of any Bond without the express written consent of the registered owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Agency or the Trustee for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

This Bond is not a debt, liability or obligation of the City of Novato, the State of California, or any of its political subdivisions, and neither said City, said State, nor any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or

properties other than those pledged by the Agency. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the Law and the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Agency, does not exceed any limit prescribed by the Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Redevelopment Agency of the City of Novato has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Treasurer and attested by the facsimile signature of its Secretary, all as of the Dated Date set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: \_\_\_\_\_  
Treasurer

ATTEST:

\_\_\_\_\_

Secretary

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

### ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or Tax Regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT _____ Custodian _____
TEN ENT --	as tenants by the entireties	(Cust.) (Minor)
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act _____ (State)
COMM PROP --	as community property	

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED  
THOUGH NOT IN THE LIST ABOVE

**(FORM OF ASSIGNMENT)**

For value received the undersigned hereby sells, assigns and transfers unto

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---

(Name, Address and Tax Identification or Social Security Number of Assignee)  
the within-registered Bond and hereby irrevocably constitute(s) and appoints(s)  
\_\_\_\_\_ attorney,

to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signatures Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor.

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

## STATEMENT OF INSURANCE

XL Capital Assurance Inc. (the "Insurer"), New York, New York, has delivered its municipal bond insurance policy (the "Policy") with respect to the scheduled payments due of principal of and interest on this Bond to U.S. Bank National Association, St. Paul, Minneapolis, or its successor, as paying agent (the "Paying Agent") for the Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project, Tax Allocation Bonds, Series 2005. **Said Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from Insurer or the Paying Agent.**

**EXHIBIT B**

**FORM OF REDEVELOPMENT FUND DISBURSEMENT REQUEST**

**DISBURSEMENT REQUEST NO.:** \_\_\_\_\_

U.S. Bank National Association  
One California Street, Suite 2550  
San Francisco, California 94111  
Attention: Corporate Trust Services

Re: \$24,835,000 Redevelopment Agency of the City of Novato Hamilton Field  
Redevelopment Project Tax Allocation Bonds, Series 2005

Ladies and Gentlemen:

In accordance with the terms of an Indenture of Trust, by and between you and the undersigned, dated as of February 1, 2005 (the "Indenture"), you are hereby authorized and requested to make immediate disbursement of funds held by you in the Project Fund for costs of financing the Redevelopment Project (as defined in the Indenture) pursuant to Section 3.04 of the Indenture.

You are hereby requested to pay to the person(s), corporation(s) or other entity(ies) designated on Schedule A attached hereto as Payee(s), the sum set forth on said Schedule, in payment of all or a portion of the costs of the Redevelopment Project described on said Schedule.

Dated: \_\_\_\_\_, 200\_

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: \_\_\_\_\_  
Treasurer

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**FIRST AMENDMENT TO INDENTURE OF TRUST**

**by and between the**

**Dated as of September 1, 2007**

**by and between the**

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$24,835,000  
Redevelopment Agency of the City of Novato  
Hamilton Field Redevelopment Project  
Tax Allocation Bonds, Series 2005**

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## FIRST AMENDMENT TO INDENTURE OF TRUST

THIS FIRST AMENDMENT TO INDENTURE OF TRUST (this "First Amendment") is dated as of September 1, 2007, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Agency"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee").

### RECITALS:

WHEREAS, the Agency issued, on February 18, 2005, its Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005 (the "Series 2005 Bonds") pursuant to an Indenture of Trust dated as of February 1, 2005 (the "Original Indenture") between the Agency and the Trustee;

WHEREAS, the Agency now desires to make certain amendments to the Original Indenture pursuant to Section 7.01 thereof in order to expand the definition of Tax Revenues set forth in the Original Indenture; and

WHEREAS, in accordance with Sections 4.05(f) and 7.01 of the Original Indenture, the execution and delivery of this First Amendment requires the consent of the Series 2005 Insurer prior to its becoming effective;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

Section 1. The definition of Tax Revenues set forth in Section 1.02 of the Original Indenture is hereby amended to read as follows:

**"Tax Revenues"** means, except as provided below, (i) moneys allocated within the Plan Limit and paid to the Agency derived from (a) that portion of taxes levied upon assessable property within the Project Area allocated to the Agency pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Law and Section 16 of Article XVI of the Constitution of the State, or pursuant to other applicable State laws, and (b) payments, reimbursements and subventions (excluding payments to the Agency with respect to personal property within the Project Area pursuant to section 16110, et seq., of the California Government Code) but including payments made by the State with respect to any property taxes that would otherwise be due on real or personal property but for an exemption of such property from such taxes, plus (ii) amounts transferred, pursuant to Resolution No. R-3-07 of the Agency, from the Agency's Low and Moderate Income Housing Fund to the redevelopment fund established for the Project Area as repayment for the loan made to the Agency's Low and Moderate Income Housing Fund from the proceeds of the 2005 Bonds; but excluding (1) except as provided in (ii) above, all amounts of such taxes (if any) required to be deposited into the Low and Moderate Income Housing Fund of the Agency pursuant to Section 33334.2 of the Law for increasing and improving the supply of low and moderate income housing, (2) amounts payable by the State to the Agency under and pursuant to Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the California Government Code, (3) amounts payable by the Agency pursuant to Sections 33492.15, 33607.5 and

33607.7 of the Law, except and to the extent that any amounts so payable are payable on a basis subordinate to the payment of debt service on the Bonds, (4) amounts payable pursuant to the Pass-Through Agreement, except and to the extent that any amounts so payable have been subordinated to the payment of debt service on the Bonds or are otherwise not payable prior to the payment of debt service on the Bonds, (5), except as provided in (ii) above, any tax increment derived from the Novato Redevelopment Project and the Downtown Redevelopment Project, as such terms are defined in Ordinance No. 1472 adopted by the City Council of the City on May 13, 2003, and (6) any tax increment derived from that portion of the Project Area added to the Project Area pursuant to Ordinance No. 1401 adopted by the City Council of the City on November 24, 1998, unless the Agency, in its sole discretion, determines to include such tax increment in this definition of Tax Revenues.

Section 2. A new Section 5.20 is hereby added to the Original Indenture, as follows:

**Section 5.20. Covenant Relating to the 2005 Housing Bonds.** The Agency agrees that, other than the Agency's Hamilton Field Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A (the "2005 Housing Bonds"), or any debt issued to refund the 2005 Housing Bonds for the purpose of achieving annual debt service savings, until such time as the loan made to the Agency's Low and Moderate Income Housing Fund from the proceeds of the 2005 Bonds is repaid in full, the Agency shall not create a lien on the amounts required by law to be deposited in the Agency's Low and Moderate Income Housing Fund, whether from the Project Area or any other project area of the Agency, that is senior to the Agency's obligation to repay the loan made to the Agency's Low and Moderate Income Housing Fund from the proceeds of the 2005 Bonds.

Section 3. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Original Indenture.

Section 4. This First Amendment shall become effective only upon the receipt of the written consent of the Series 2005 Insurer.

Section 5. This First Amendment may be executed in counterparts. The Agency's execution of this First Amendment shall be deemed to be a Request of the Agency to the Trustee to execute and deliver this First Amendment.

IN WITNESS WHEREOF, the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO and U.S. BANK NATIONAL ASSOCIATION have caused this First Amendment to be signed by their respective officers, all as of the day and year first above written.

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By: Ray Neilan  
Treasurer

Attest:

Shirley Gremmes  
Secretary

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: Patrick  
Authorized Officer

**\$24,835,000**  
**Redevelopment Agency of the City of Novato**  
**Hamilton Field Redevelopment Project**  
**Tax Allocation Bonds, Series 2005**

**CONSENT OF**  
**XL CAPITAL ASSURANCE INC.**

The undersigned, an authorized officer of the XL Capital Assurance Inc., a New York Stock Insurance Company ("XL"), hereby consents, on behalf of XL, to the execution and delivery of the First Amendment to Indenture of Trust dated as of September 1, 2007 (the "First Amendment") between the Redevelopment Agency of the City of Novato (the "Agency") and U.S. Bank National Association, as trustee (the "Trustee"), relating to the captioned bonds, in substantially the form attached hereto. The First Amendment amends certain provisions of the Indenture of Trust dated as of February 1, 2005 between the Agency and the Trustee.

Dated: September 20 2007

XL CAPITAL ASSURANCE INC.

By: David J. Hoffer  
Name: David J. Hoffer  
Title: IA Design Director

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**INDENTURE OF TRUST**

**Dated as of February 1, 2005**

**by and between the**

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$9,520,000  
Redevelopment Agency of the City of Novato  
Hamilton Field Redevelopment Project  
2005 Tax Allocation Housing Bonds, Series A**

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this "Indenture") is made and entered into and dated as of February 1, 2005, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Agency"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee");

### WITNESSETH:

**WHEREAS**, the Agency is a public body, corporate and politic, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State (the "Law"), including the power to issue bonds for any of its corporate purposes;

**WHEREAS**, a Redevelopment Plan (as defined herein) for the Hamilton Field Redevelopment Project Area in the City of Novato, California (the "City") has been adopted in compliance with all requirements of the Law;

**WHEREAS**, under the Redevelopment Law, twenty percent (20%) of the tax increment revenues payable to the Agency pursuant to the Redevelopment Plan are required to be set aside in a Low and Moderate Income Housing Fund for use in increasing the supply of low- and moderate-income housing in or of benefit to the Redevelopment Project (as defined herein);

**WHEREAS**, in order to provide moneys to finance and refinance low- and moderate-income housing activities for or of benefit to the Redevelopment Project, the Agency has determined to issue its Hamilton Field Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A (the "2005 Series A Bonds");

**WHEREAS**, the Bonds will be payable from Housing Tax Revenues (as hereinafter defined);

**WHEREAS**, in order to provide for the authentication and delivery of the 2005 Series A Bonds, to establish and declare the terms and conditions upon which the 2005 Series A Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the Agency and the Trustee have duly authorized the execution and delivery of this Indenture; and

**WHEREAS**, the Agency has determined that all acts and proceedings required by law necessary to make the 2005 Series A Bonds when executed by the Agency, and authenticated and delivered by the Trustee, the valid, binding and legal special obligations of the Agency, and to constitute this Indenture a legal, valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that in order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Bonds, including the 2005 Series A Bonds, issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds, including the 2005 Series A Bonds, are to be issued and received, and in

consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds, including the 2005 Series A Bonds, by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Agency and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, including the 2005 Series A Bonds, as follows:

## ARTICLE I

### DETERMINATIONS; DEFINITIONS

**Section 1.01. Findings and Determinations.** The Agency has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 2005 Series A Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Agency is now duly empowered, pursuant to each and every requirement of law, to issue the 2005 Series A Bonds in the manner and form provided in this Indenture.

**Section 1.02. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Indenture, of any Supplemental Indenture, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

**"Additional Revenues"** means, as the date of calculation, the amount of Housing Tax Revenues which, as shown in a report of an Independent Redevelopment Consultant, are estimated to be receivable by the Agency within the Fiscal Year following the Fiscal Year in which such calculation is made as a result of increases in the assessed valuation of taxable property in the Project Area due to either (a) construction which has been completed and for which a certificate of occupancy has been issued by the County or other appropriate governmental entity but which is not then reflected on the tax rolls, or (b) transfer of ownership or any other interest in real property which has been recorded but which is not then reflected on the tax rolls. For purposes of this definition, the term "increases in the assessed valuation" means the amount by which the assessed valuation of taxable property in the Project Area is estimated to increase above the assessed valuation of taxable property in the Project Area (as evidenced in the written records of the County) as of the date on which such calculation is made.

**"Agency"** means the Redevelopment Agency of the City of Novato, a public body corporate and politic duly organized and existing under the Law.

**"Annual Debt Service"** means, for each Bond Year, the sum of (a) the interest payable on the Outstanding Bonds and other Parity Debt in such Bond Year, assuming that the Outstanding Serial Bonds are retired as scheduled and that the Outstanding Term Bonds are redeemed from mandatory sinking account payments as scheduled, (b) the principal amount of the Outstanding Serial Bonds and other Parity Debt payable by their terms in such Bond Year, and (c) the principal amount of the Outstanding Term Bonds scheduled to be paid or redeemed from mandatory sinking account payments in such Bond Year. For purposes of such calculation, there shall be excluded debt service payments with respect to the Bonds or any Parity Debt (i) to the extent that amounts due with respect to the Bonds or such Parity Debt are prepaid or otherwise discharged in accordance with this Indenture or the relevant Parity Debt Instrument or (ii) to the extent the proceeds thereof are then deposited in an escrow fund in which amounts are invested in Permitted Investments and from which moneys may not be released to the Agency unless the amount of Housing Tax Revenues for the current Fiscal Year (as evidenced in the written records of the County) plus Additional Revenues at least meets the requirements of Section 3.05(b).

**"Bonds"** means the 2005 Series A Bonds and any Parity Debt issued as bonds pursuant to a Supplemental Indenture.

**"Bond Counsel"** means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Agency, of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

**"Bond Year"** means any twelve-month period beginning on September 2 in any year and ending on the next succeeding September 1, both dates inclusive, except that the first Bond Year shall begin on the Closing Date with respect to the 2005 Series A Bonds and end on September 1, 2005.

**"Business Day"** means a day of the year on which banks in the State of California, are not required or permitted to be closed and on which the New York Stock Exchange is not closed.

**"City"** means the City of Novato, California, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State.

**"Closing Date"** means the date on which a series of Bonds is delivered by the Agency to the original purchaser thereof.

**"Code"** means the Internal Revenue Code of 1986 as in effect on the date of issuance of the 2005 Series A Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the 2005 Series A Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

**"Continuing Disclosure Certificate"** means that certain Continuing Disclosure Certificate, with respect to the 2005 Series A Bonds, executed by the Agency, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**"Costs of Issuance"** means all items of expense directly or indirectly payable by or reimbursable to the Agency relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, bond insurance premiums, if any, rating agency fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds, administrative costs of the Agency and the City incurred in connection with the issuance of the Bonds, expenses of the underwriters of the Bonds, the fees and expenses of counsel to the underwriters of the Bonds, and any other cost, charge or fee in connection with the original issuance of the Bonds.

**"Costs of Issuance Fund"** means the fund by that name established and held by the Trustee pursuant to Section 3.03.

**"County"** means the County of Marin, a county duly organized and existing under the laws of the State.

**"Debt Service Fund"** means the fund by that name established and held by the Trustee pursuant to Section 4.03.

**"Defeasance Obligations"** means any of the following which, at the time of investment, are in compliance with the City's investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Agency as conclusive certification to the Trustee that investments described therein are in compliance with the City's investment policies then in effect):

- (a) Cash;
- (b) Federal Securities, including direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities;
- (c) The interest component of Resolution Funding Corporation strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form;
- (d) Pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P, provided that, if the issue is rated only by S&P (i.e., there is no Moody's rating), then the pre-refunded municipal bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or AAA rated pre-refunded municipals;
- (e) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) Federal Housing Administration debentures; (iv) participation certificates of the General Services Administration; (v) Federal Financing Bank bonds and debentures; (vi) guaranteed mortgage-backed bonds or guaranteed pass-through obligations of the Government National Mortgage Association; (vii) guaranteed Title XI financings of the U.S. Maritime Administration; and (viii) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development; and
- (f) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities only as stripped by the agency itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of Fannie Mae; (iv) senior debt obligations of the Student Loan Marketing Association; (v) obligations of the Resolution Funding Corporation; and (vi) consolidated system-wide bonds and notes of the Farm Credit System.

**"Depository"** means (a) initially, DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.11.

**"Depository System Participant"** means any participant in the Depository's book-entry system.

**"DTC"** means The Depository Trust Company, New York, New York, and its successors and assigns.

**"Event of Default"** means any of the events described in Section 8.01.

**"Fair Market Value"** means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and,

otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the Agency and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

**"Federal Securities"** means any direct, noncallable general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America and CATS and TGRS), or obligations the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America.

**"Fiscal Year"** means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve month period selected and designated by the Agency to the Trustee in writing as its official fiscal year period.

**"Housing Tax Revenues"** means that portion of Tax Revenues required by Section 33334.3 of the Redevelopment Law to be deposited in the Agency's Low and Moderate Income Housing Fund.

**"Indenture"** means this Indenture of Trust by and between the Agency and the Trustee, as originally entered into or as it may be amended or supplemented by any Supplemental Indenture entered into pursuant to the provisions hereof.

**"Independent Accountant"** means any accountant or firm of such accountants duly licensed or registered or entitled to practice as such under the laws of the State, appointed by the Agency, and who, or each of whom:

- (a) is in fact independent and not under domination of the Agency;
  - (b) does not have any substantial interest, direct or indirect, with the Agency;
- and
- (c) is not connected with the Agency as an officer or employee of the Agency, but who may be regularly retained to make reports to the Agency.

**"Independent Redevelopment Consultant"** means any consultant or firm of such consultants appointed by the Agency (who may be an underwriter of bonds of the Agency or the City), and who, or each of whom:

- (a) is judged by the Agency to have experience in matters relating to the collection of Tax Revenues and Housing Tax Revenues or otherwise with respect to the financing of Redevelopment Projects;
- (b) is in fact independent and not under domination of the Agency;

(c) does not have any substantial interest, direct or indirect, with the Agency;  
and

(d) is not connected with the Agency as an officer or employee of the Agency, but who may be regularly retained to make reports to the Agency.

**"Information Services"** means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; FIS/Mergent, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn: Call Notification; Standard & Poor's Securities Evaluation, Inc., 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; Xcitek, 5 Hanover Square, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to the redemption of bonds as the Agency may designate in a Written Request of the Agency filed with the Trustee.

**"Insurer"** means the provider of a municipal bond or financial guaranty insurance policy with respect to an issue of Bonds.

**"Interest Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(a).

**"Interest Payment Date"** means each March 1 and September 1, commencing September 1, 2005, for so long as any of the Bonds remain Outstanding hereunder.

**"Law"** means the Community Redevelopment Law of the State, constituting Part 1 of Division 24 of the Health and Safety Code of the State, and the acts amendatory thereof and supplemental thereto.

**"Low and Moderate Income Housing Fund"** means the Low and Moderate Income Housing Fund of the Agency, heretofore established by the Agency under the Redevelopment Law.

**"Maximum Annual Debt Service"** means, as of the date of calculation, the largest Annual Debt Service for the current or any future Bond Year, including payments on any Parity Debt, as certified in writing by the Agency to the Trustee. For purposes of such calculation, there shall be excluded the principal of any Bonds and other Parity Debt, together with the interest to accrue thereon, in the event and to the extent that the proceeds of such Bonds and other Parity Debt are deposited in an escrow fund and are held in cash or are invested solely in Permitted Investments and from which amounts may not be released to the Agency unless the amount of Housing Tax Revenues for the current Fiscal Year (as evidenced in the written records of the County) plus Additional Revenues at least equal the requirements for issuance of Parity Debt under Section 3.06(b).

**"Moody's"** means Moody's Investors Service and its successors.

**"Nominee"** means (a) initially, Cede & Co., as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.11(a).

**"Outstanding"** when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.05) all Bonds except:

(a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the Agency pursuant hereto.

**"Owner" or "Bondowner"** means, with respect to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books.

**"Owner Participation Agreement"** means the Owner Participation Agreement dated December 13, 1999, between the Agency, Novato Community Partners, LLC, Shea Homes Limited Partnership and Centex Homes, as amended.

**"Parity Debt"** means any additional bonds, loans, advances or indebtedness issued or incurred by the Agency on a parity with the Bonds pursuant to Section 3.05.

**"Parity Debt Instrument"** means any Supplemental Indenture or other instrument providing for the issuance or incurrence of Parity Debt.

**"Participating Underwriter"** has the meaning ascribed thereto in the Continuing Disclosure Certificate.

**"Pass-Through Agreement"** means (i) that certain Amended and Restated Settlement Agreement (Hamilton Field Redevelopment Project) dated as of May 23, 2000, by and between the City, the Agency and the County, (ii) that certain Redevelopment Plan Amendment Mitigation Agreement (Hamilton Field Redevelopment Project – Original Project Area Only) dated as of November 13, 2001, by and between the Agency and the Marin Community College District, (iii) that certain Redevelopment Plan Amendment Mitigation Agreement (Hamilton Field Redevelopment Project – Original Project Area Only) dated as of November 13, 2001, by and between the Agency and the Novato Fire District, (iv) that certain Redevelopment Plan Amendment Mitigation Agreement (Hamilton Field Redevelopment Project – Original Project Area Only) dated as of January 8, 2002, by and between the Agency and the County, (v), if applicable, that certain Multi-Party Cooperation Agreement (Hamilton Field Redevelopment Project Plan Amendment) dated as of the November 10, 1998, by and between the City, the Agency, the County and Other Signatory Taxing Entities (i.e., Novato Fire District and Marin Community College District), as amended, and (vi) any other agreement pursuant to which the Agency pays a portion of its tax increment revenue to a taxing entity.

**"Permitted Investments"** means any of the following which at the time of investment are in compliance with the City's investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the Agency as conclusive certification to the Trustee that the investments described therein are in compliance with the City's investment policies then in effect), but only to the extent that the same are acquired at Fair Market Value:

(a) Federal Securities;

(b) The interest component of Resolution Funding Corporation strips which have been stripped by request to the Federal Reserve Bank of New York in book-entry form;

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of

America (stripped securities are only permitted if they have been stripped by the agency itself): (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) Federal Housing Administration debentures; (iv) participation certificates of the General Services Administration; (v) Federal Financing Bank bonds and debentures; (vi) guaranteed mortgage-backed bonds or guaranteed pass-through obligations of the Government National Mortgage Association; (vii) guaranteed Title XI financings of the U.S. Maritime Administration; and (viii) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development;

- (d) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities only as stripped by the agency itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of Fannie Mae; (iv) senior debt obligations of the Student Loan Marketing Association; (v) obligations of the Resolution Funding Corporation; and (vi) consolidated system-wide bonds and notes of the Farm Credit System;
- (e) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least "AAAm-G", "AAAm" or "AAm", and a rating by Moody's of "Aaa", "Aa1" or "Aa2" (such funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services);
- (f) Certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral described in (a) or (b) above, which have a maturity not greater than one year from the date of investment and which are issued by commercial banks, savings and loan associations or mutual savings banks whose short-term obligations are rated "A-1+" or better by S&P and "Prime-1" by Moody's, which collateral must be held by a third party and provided that the Trustee must have a perfected first security interest in such collateral;
- (g) Certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee and its affiliates) which are fully insured by FDIC, including BIF and SAIF or which are issued by any bank the obligations of which are rated at least "A" by Moody's and S&P;
- (h) Investment agreements, including guaranteed investment contracts, forward purchase agreements, reserve fund put agreements and collateralized investment agreements with banks, insurance companies or other financial institutions rated "A" or better by S&P and Moody's (or guaranteed by an entity rated "A" or better by S&P and Moody's);
- (i) Commercial paper rated "Prime-1" by Moody's and "A-1+" or better by S&P;

- (j) Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies;
- (k) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's, and "A-1+" by S&P; and
- (l) The Local Agency Investment Fund which is administered by the California Treasurer for the investment of funds belonging to local agencies within the State of California, provided for investment of funds held by the Trustee, the Trustee is entitled to make investments and withdrawals in its own name as Trustee.

**"Plan Limit"** means the limitation contained in the Redevelopment Plan on the number of dollars of taxes which may be divided and allocated to the Agency pursuant to the Redevelopment Plan, as such limitation is prescribed by Section 33492.13 of the Law.

**"Principal Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(b).

**"Principal Corporate Trust Office"** means the corporate trust office of the Trustee located in San Francisco, California, or such other office that the Trustee may designate in writing to the Agency from time to time as the corporate trust office for purposes of this Indenture; *provided, however*, that for purposes of the transfer, registration, exchange, payment and surrender of Bonds, the term "Principal Corporate Trust Office" means care of the corporate trust office of U.S. Bank National Association, in St. Paul, Minnesota.

**"Project Area"** means the territory within the Redevelopment Project, as described in the Redevelopment Plan, provided that the portion of the Project Area added to the Project Area pursuant to Ordinance No. 1401 adopted by the City Council of the City on November 24, 1998 shall be included within this definition of Project Area only if the Agency, in its sole discretion, determines to include a portion of the tax increment from such added area within the definition of Tax Revenues and Housing Tax Revenues.

**"Qualified Reserve Account Credit Instrument"** means an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Trustee, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) in the case of a commercial bank, the long-term credit rating of such bank is at least "AA" from S&P or "Aa" from Moody's and, in the case of an insurance company, the claims paying ability of such insurance company is "AAA" from S&P, or "Aaa" from Moody's or, if rated by A.M. Best & Company, is rated in the highest rating category by A.M. Best & Company; (b) such letter of credit or surety bond has a term of at least 12 months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released; and (d) the Trustee is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.03(a) or 4.03(b) of this Indenture.

**"Record Date"** means, with respect to any Interest Payment Date, the close of business on the fifteenth (15th) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15th) calendar day is a Business Day.

**"Redemption Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(e).

**"Redevelopment Plan"** means the redevelopment plan for the Hamilton Field Redevelopment Project of the Agency in Novato, California, titled "Redevelopment Plan for the Hamilton Field Redevelopment Project," adopted and approved by Ordinance No. 1394, adopted by the Council of the City of Novato, California on July 14, 1998, as amended by Ordinance No. 1401 adopted by said Council on November 24, 1998, by Ordinance No. 1420 adopted by said Council on November 9, 1999, by Ordinance No. 1451 adopted by said Council on January 8, 2002, and by Ordinance No. 1472 adopted by said Council on May 13, 2003, together with all further amendments thereto hereafter made in accordance with the Law.

**"Redevelopment Project"** means the Hamilton Field Redevelopment Project as described in the Redevelopment Plan.

**"Registration Books"** means the records maintained by the Trustee pursuant to Section 2.08 for the registration and transfer of ownership of the Bonds.

**"Report"** means a document in writing signed by an Independent Redevelopment Consultant and including:

(a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Indenture to which such Report relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

**"Reserve Account"** means the account by that name established and held by the Trustee pursuant to Section 4.03(c).

**"Reserve Requirement"** means, as of the date of calculation by the Agency, the lesser of (i) the amount of Maximum Annual Debt Service on the Bonds (excluding from the calculation thereof Parity Debt other than Bonds), and (ii) one hundred and twenty five percent (125%) of average Annual Debt Service on the Bonds (excluding from the calculation thereof Parity Debt other than Bonds); provided, that in no event shall the Agency, in connection with the issuance of additional Bonds, be obligated to deposit an amount in the Reserve Account which is in excess of the amount permitted by the applicable provisions of the Code to be so deposited from the proceeds of tax-exempt bonds without having to restrict the yield of any investment purchased with any portion of such deposit and, in the event the amount of any such deposit into the Reserve Account is so limited, the Reserve Requirement shall, in connection with the issuance of such additional Bonds, be increased only by the amount of such deposit.

**"S&P"** means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, and its successors.

**"Securities Depositories"** means The Depository Trust Company, 55 Water Street, 50<sup>th</sup> Floor, New York, New York 10041-0099, Fax-(212) 855-7232; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Agency may designate in a Written Request of the Agency delivered to the Trustee.

**"Serial Bonds"** means all Bonds other than Term Bonds.

**"Special Fund"** means the fund held by the Agency established pursuant to Section 4.02.

**"State"** means the State of California.

**"Subordinate Debt"** means any loans, advances or indebtedness issued or incurred by the Agency pursuant to Section 3.06, which are either: (a) payable from, but not secured by a pledge of or lien upon, the Housing Tax Revenues; or (b) secured by a pledge of or lien upon the Housing Tax Revenues which is expressly subordinate to the pledge of and lien upon the Housing Tax Revenues hereunder for the security of the Bonds.

**"Subordinate Debt Instrument"** means any instrument providing for the issuance of Subordinate Debt.

**"Supplemental Indenture"** means any resolution, agreement or other instrument which has been duly adopted or entered into by the Agency, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

**"Tax Revenues"** means all taxes pledged and annually allocated within the Plan Limit, following the Closing Date, and paid to the Agency with respect to the Project Area pursuant to Article 6 of Chapter 6 (commencing with Section 33670) of the Redevelopment Law and Section 16 of Article XVI of the Constitution of the State, or pursuant to other applicable State laws, and as provided in the Redevelopment Plan, and all payments, subventions and reimbursements, if any, to the Agency specifically attributable to *ad valorem* taxes lost by reason of tax exemptions and tax rate limitations, but excluding (i) amounts payable by the State to the Agency under and pursuant to Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the California Government Code, (ii) amounts payable by the Agency pursuant to Sections 33492.15, 33607.5 and 33607.7 of the Law, except and to the extent that any amounts so payable are not on a basis subordinate to the payment of the 2005 Series A Bonds or to the payment of Parity Debt, as applicable, (iii) any tax increment derived from the Novato Redevelopment Project and the Downtown Redevelopment Project, as such terms are defined in Ordinance No. 1472 adopted by the City Council of the City on May 13, 2003 and (iv) any tax increment derived from that portion of the Project Area added to the Project Area pursuant to Ordinance No. 1401 adopted by the City Council of the City on November 24, 1998, unless the Agency, in its sole discretion, determines to include such tax increment in this definition of Tax Revenues.

**"Term Bonds"** means the 2005 Series A Bonds maturing on September 1, 2032 and 2034 and that portion of any other Bonds payable from mandatory sinking account payments.

**"Trustee"** means U.S. Bank National Association, as trustee hereunder, or any successor thereto appointed as trustee hereunder in accordance with the provisions of Article VI.

**"2005 Series A Bonds"** means the \$9,520,000 aggregate principal amount of Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A.

**"2005 Series A Tax Allocation Bond Proceeds Account"** means the account by that name established with the Low and Moderate Income Housing Fund pursuant to Section 3.04 hereof.

**"Written Request of the Agency" or "Written Certificate of the Agency"** means a request or certificate, in writing signed by the Treasurer of the Agency or her or his designee, or by any other officer of the Agency or the City duly authorized by the Agency for that purpose.

**Section 1.03. Rules of Construction.** All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### AUTHORIZATION AND TERMS

**Section 2.01. Authorization of 2005 Series A Bonds.** An initial issue of Bonds in the aggregate principal amount of Nine Million Five Hundred Twenty Thousand Dollars (\$9,520,000) is hereby authorized to be issued by the Agency under and subject to the terms of this Indenture, and the Law. This Indenture constitutes a continuing agreement with the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal and redemption premiums (if any) and the interest on all Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. Such initial issue of Bonds shall be designated the "Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A".

**Section 2.02. Terms of 2005 Series A Bonds.** The 2005 Series A Bonds shall be issued in fully registered form without coupons. The 2005 Series A Bonds shall be issued in denominations of \$5,000 or any integral multiple thereof, so long as no Series 2005 Bond shall have more than one maturity date. The 2005 Series A Bonds shall be dated as of their Closing Date. The 2005 Series A Bonds shall be lettered and numbered as the Trustee shall prescribe.

The 2005 Series A Bonds shall mature and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rate per annum as follows:

<u>Maturity Date</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2005	\$ 100,000	4.500%
2006	80,000	4.500
2007	185,000	4.500
2008	190,000	4.500
2009	195,000	4.500
2010	200,000	3.250
2011	210,000	3.250
2012	215,000	3.400
2013	225,000	3.500
2014	230,000	3.625
2015	240,000	3.875
2016	250,000	3.900
2017	260,000	4.000
2018	275,000	4.200
2019	285,000	4.300
2020	300,000	4.300
2021	310,000	4.350
2022	325,000	4.375
2023	340,000	4.400
2024	360,000	4.500
2025	375,000	4.600
2026	395,000	4.625
2027	415,000	4.625
2028	435,000	4.750
2029	460,000	4.750
2030	480,000	4.750
2032	1,035,000	4.875
2034	1,150,000	4.875

Each Series 2005 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before August 15, 2005, in which event it shall bear interest from its Closing Date; provided, however, that if, as of the date of authentication of any Series 2005 Bond, interest thereon is in default, such Series 2005 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the 2005 Series A Bonds (including the final interest payment upon maturity or redemption) is payable when due by check or draft of the Trustee mailed to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; provided that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of 2005 Series A Bonds, which written request is on file with the Trustee as of any Record Date, interest on such 2005 Series A Bonds shall be paid on the succeeding Interest Payment Date to such account in the United States as shall be specified in such written request. The principal of the 2005 Series A Bonds and any premium upon redemption, are payable in lawful money of the United States of America upon presentation and surrender thereof at the Principal Corporate Trust Office of the Trustee.

**Section 2.03. Redemption of 2005 Series A Bonds.**

(a) Optional Redemption. The Bonds maturing on or before September 1, 2012, are not subject to optional redemption prior to maturity. The Bonds maturing on and after September 1, 2013, are subject to redemption, at the option of the Agency on any date on or after September 1, 2012, as a whole or in part, by such maturities as shall be determined by the Agency, and by lot within a maturity, from any available source of funds, at the following redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed) together with accrued interest thereon to the date fixed for redemption.

<u>Redemption Periods</u>	<u>Redemption Price</u>
September 1, 2012 through August 31, 2013	102%
September 1, 2013 through August 31, 2014	101
September 1, 2014 and thereafter	100

The Agency shall be required to give the Trustee written notice of its intention to redeem 2005 Series A Bonds under this subsection (a) with a designation of the principal amount and maturities to be redeemed at least forty five (45) days prior to the date fixed for such redemption (or such later date as shall be acceptable to the Trustee), and shall transfer to the Trustee for deposit in the Debt Service Fund all amounts required for such redemption at least five (5) Business Days prior to the date fixed for such redemption.

(b) Mandatory Sinking Fund Redemption. The 2005 Series A Bonds that are Term Bonds maturing September 1, 2032 and September 1, 2034 shall also be subject to mandatory redemption in whole, or in part by lot, on September 1 in each year, commencing September 1, 2031 and September 1, 2033, respectively, as set forth below, from sinking fund payments made by the Agency to the Principal Account pursuant to Section 4.03(b), at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 1 in the respective years as set forth in the following table; provided however, that (x) in lieu of redemption thereof such Term Bonds may be purchased by the Agency pursuant to Section 2.03(h) hereof, and (y) if some but not all of such Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Agency (notice of which determination shall be given by the Agency to the Trustee).

Term Bonds of 2032

<u>September 1</u>	<u>Principal Amount</u>
2031	\$505,000
2032 (maturity)	530,000

Term Bonds of 2034

<u>September 1</u>	<u>Principal Amount</u>
2033	\$560,000
2034 (maturity)	590,000

(c) Notice of Redemption; Rescission. The Trustee on behalf and at the expense of the Agency shall mail (by first class mail, postage prepaid) notice of any redemption at least thirty (30) but not more than sixty (60) days prior to the redemption date, to (i) to the Owners of any

Bonds designated for redemption at their respective addresses appearing on the Registration Books and to any Insurer, and (ii) the Securities Depositories and to one or more Information Services designated in a Written Request of the Agency filed with the Trustee; but such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall state, in the case of a redemption pursuant to (a) above, that such redemption is conditioned upon the timely delivery of the redemption price by the Agency to the Trustee for deposit in the Redemption Account, shall designate the CUSIP number of the Bonds to be redeemed, shall state the individual number of each Bond to be redeemed or shall state that all Bonds between two stated numbers (both inclusive) or all of the Bonds Outstanding are to be redeemed, and shall require that such Bonds be then surrendered at the Principal Corporate Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

The Agency shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any such notice of optional redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. The Agency and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(d) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Agency, a new Bond or Bonds of the same interest rate and maturity, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(e) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the redemption price of and interest on the Bonds so called for redemption shall have been duly deposited with the Trustee, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

(f) Manner of Redemption. Whenever any Bonds or portions thereof are to be selected for redemption by lot, the Trustee shall make such selection, in such manner as the Trustee shall deem appropriate, and shall notify the Agency thereof to the extent Bonds are no longer held in book-entry form. In the event of redemption by lot of Bonds, the Trustee shall assign to each Bond then Outstanding a distinctive number for each \$5,000 of the principal amount of each such Bond. The Bonds to be redeemed shall be the Bonds to which were assigned numbers so selected, but only so much of the principal amount of each such Bond of a denomination of more than \$5,000 shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected. All Bonds redeemed or purchased pursuant to this Section 2.03 shall be cancelled and destroyed.

(g) Purchase in Lieu of Redemption. In lieu of redemption of the Term Bonds pursuant to the preceding sub-paragraph (b) or pursuant to a Supplemental Indenture, amounts on deposit in the Special Fund or in the Principal Account may also be used and withdrawn by the Agency and the Trustee, respectively, at any time, upon the Written Request of the Agency, for the purchase of the Term Bonds at public or private sale as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Agency may in its discretion determine. The par amount of any Term Bonds so purchased by the Agency in any twelve-month period ending on July 1 in any year shall be credited towards and shall reduce the par amount of the Term Bonds required to be redeemed pursuant to subsection (d) on September 1 in each year; provided that evidence satisfactory to the Trustee of such purchase has been delivered to the Trustee by said July 1.

**Section 2.04. Form of 2005 Series A Bonds.** The 2005 Series A Bonds, the form of Trustee's Certificate of Authentication, and the form of Assignment to appear thereon, shall be substantially in the form set forth in Exhibit A, which is attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

**Section 2.05. Execution of Bonds.** The Bonds shall be executed on behalf of the Agency by the signature of its Treasurer or her or his designee and the signature of its Secretary who are in office on the date of execution and delivery of this Indenture or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the purchaser, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the purchaser. Any Bond may be signed and attested on behalf of the Agency by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Agency although on the date of such Bond any such person shall not have been such officer of the Agency.

Only such of the Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore set forth, manually executed and dated by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such Certificate shall be conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture. In the event temporary Bonds are issued pursuant to Section 2.09 hereof, the temporary Bonds may bear thereon a Certificate of Authentication executed and dated by the Trustee, may be initially registered by the Trustee, and, until so exchanged as provided under Section 2.09 hereof, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.06. Transfer of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Principal Corporate Trust Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond shall be surrendered for transfer, the Agency shall execute and the Trustee shall thereupon authenticate and deliver to the transferee a new Bond or Bonds of like tenor, maturity and aggregate principal amount of authorized denominations. The Trustee shall collect from the Owner any tax or other governmental charge on the transfer of any Bonds pursuant to this Section 2.06. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the Agency.

The Trustee may refuse to transfer, under the provisions of this Section 2.06, either (a) any Bonds during the period fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected by the Trustee for redemption.

**Section 2.07. Exchange of Bonds.** Bonds may be exchanged at the Principal Corporate Trust Office of the Trustee for Bonds of the same tenor and maturity and of other authorized denominations. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds pursuant to this Section 2.07. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the Agency.

The Trustee may refuse to exchange, under the provisions of this Section 2.07, either (a) any Bonds during the fifteen (15) days prior to the date established by the Trustee for the selection of Bonds for redemption or (b) any Bonds selected by the Trustee for redemption.

**Section 2.08. Registration of Bonds.** The Trustee will keep or cause to be kept, at its Principal Corporate Trust Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours be open to inspection and copying by the Agency, upon reasonable prior notice to the Trustee; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books Bonds as hereinbefore provided.

**Section 2.09. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Agency, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Agency upon the same conditions and in substantially the same manner as the definitive Bonds. If the Agency issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange therefor at the Principal Corporate Trust Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations, interest rates and like maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits pursuant to this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated, the Agency, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to it and indemnity satisfactory to it shall be given, the Agency, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and amount in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond has matured or has been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee and the Agency). The Agency may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Bond issued under this Section 2.10 and of the expenses which may be incurred by the Agency and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Agency whether or not the Bond so

alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

### **Section 2.11. Book-Entry System.**

(a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond without coupons (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, neither the Agency nor the Trustee shall have any responsibility or obligation to any Depository System Participant or to any person on behalf of which the Depository System Participant holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, neither the Agency nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the Agency elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Agency and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Agency to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Agency shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Agency and the Trustee shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Agency or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. The Trustee agrees to comply with all provisions in such letter with respect to the giving of notices thereunder by the Trustee. In addition to the execution and delivery of such letter, upon written request of the Depository or the Trustee, the Agency may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Agency determines to terminate the Depository as such, then the Agency shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Agency and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Agency fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Article II. Prior to its termination, the Depository shall furnish the Trustee with the names and addresses of the Depository System Participants and respective ownership interests thereof.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

**Section 2.12. Applicability of Provisions to Additional Bonds.** Unless otherwise provided in a Supplemental Indenture, the provisions of Sections 2.03(c) through (g) and 2.05 through 2.11 shall apply to additional Bonds.

## ARTICLE III

### DEPOSIT AND APPLICATION; ADDITIONAL DEBT

**Section 3.01. Issuance of Bonds.** Upon the execution and delivery of this Indenture, the Agency shall execute and deliver to the Trustee the 2005 Series A Bonds in the aggregate principal amount of Nine Million Five Hundred Twenty Thousand Dollars (\$9,520,000) and the Trustee shall authenticate and deliver the 2005 Series A Bonds upon the Written Request of the Agency.

**Section 3.02. Application of Proceeds of Sale and Certain Other Amounts.** On the Closing Date with respect to the 2005 Series A Bonds, the proceeds of sale of the 2005 Series A Bonds, including the good faith deposit of \$100,000, shall be paid to the Trustee and applied as follows:

(a) The Trustee shall deposit in the Reserve Account the amount of \$618,762.50, which amount equals the Reserve Requirement.

(b) The Trustee shall deposit the amount of \$272,237.50 in the Costs of Issuance Fund.

(c) The Trustee shall deposit \$8,510,000.00, being the remaining amount of proceeds of the 2005 Series A Bonds, in the 2005 Series A Tax Allocation Bond Proceeds Account of the Low and Moderate Income Housing Fund.

**Section 3.03. Costs of Issuance Fund.** There is hereby established a separate fund to be known as the "Costs of Issuance Fund", which shall be held by the Trustee in trust. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance with respect to the 2005 Series A Bonds upon submission of a Written Request of the Agency stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On the date which is six (6) months following the Closing Date with respect to the 2005 Series A Bonds, or upon the earlier Written Request of the Agency, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the 2005 Series A Tax Allocation Bond Proceeds Account of the Low and Moderate Income Housing Fund.

**Section 3.04. 2005 Series A Tax Allocation Proceeds Account.** (a) There shall be established within the Low and Moderate Income Housing Fund a separate and segregated account to be known as the "2005 Series A Tax Allocation Bond Proceeds Account", which shall be held by the Trustee, on behalf of the Agency, and into which shall be deposited the amount required by Section 3.02(c). The Trustee shall hold amounts on deposit in the 2005 Series A Tax Allocation Bond Proceeds Account in trust for the benefit of the Agency. The moneys in the 2005 Series A Tax Allocation Bond Proceeds Account shall be maintained separate and apart from other moneys of the Agency, and shall be used in the manner provided by the Law solely for the purpose of aiding in financing and refinancing low- and moderate- income housing or of benefit to the Redevelopment Project, including, without limitation, the payment of any unpaid Costs of Issuance. The Agency covenants that no funds on deposit in the 2005 Series A Tax Allocation Bond Proceeds Account shall be applied for any purpose not authorized by the Law.

(b) On the date of issuance of the 2005 Series A Bonds, the Trustee shall disburse all of the amounts on deposit in the 2005 Series A Tax Allocation Bond Proceeds Account on such date to Novato Community Partners, LLC as partial payment of amounts owing under the Owner Participation Agreement, but only upon receipt of a disbursement request of the Agency

substantially in the form attached hereto as Exhibit B. In no event shall the Trustee be responsible for the disbursements of moneys from the 2005 Series A Bond Proceeds Account in accordance with any such disbursement request. Such requisition shall be executed by the Treasurer of the Agency or her or his designee.

(c) In addition to the disbursement described in (b) above, the Trustee shall disburse any other amounts at any time on deposit in the 2005 Series A Tax Allocation Bond Proceeds Account and the accounts therein upon receipt of a disbursement request of the Agency substantially in the form attached hereto as Exhibit B. In no event shall the Trustee be responsible for the manner in which the Agency applies the moneys disbursed to it by the Trustee in accordance with any such disbursement request. Such requisition shall be executed by the Treasurer of the Agency or her or his designee.

**Section 3.05. Issuance of Parity Debt.** In addition to the 2005 Series A Bonds, the Agency may, by Supplemental Indenture, issue additional bonds or incur other loans, advances or indebtedness payable from Housing Tax Revenues on a parity with the 2005 Series A Bonds to finance low- and moderate income housing activities with respect to the Redevelopment Project in such principal amount as shall be determined by the Agency. The Agency may issue and deliver any such Parity Debt subject to the following specific conditions all of which are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

(a) No event of default hereunder, under any Parity Debt Instrument or under any Subordinate Debt Instrument shall have occurred and be continuing, and the Agency shall otherwise be in compliance with all covenants set forth in this Indenture;

(b) The Housing Tax Revenues estimated to be received for the then current Fiscal Year, based on the most recent assessed valuation of property in the Project Area (excluding taxes attributable to a tax rate levied by a taxing agency after January 1, 1989 for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness of such taxing agency), as evidenced in writing from the County Assessor or other appropriate official of the County, plus any Additional Revenues, shall be at least equal to one hundred twenty five percent (125%) of Maximum Annual Debt Service, including annual debt service on the proposed Parity Debt;

(c) In the case of Parity Debt issued as additional Bonds under a Supplemental Indenture, the amount on deposit in the Reserve Account (and any subaccounts therein) shall be increased to the Reserve Requirement taking into account the additional Bonds to be issued;

(d) Principal with respect to such Parity Debt will be required to be paid on September 1 in any year in which such principal is payable; and

(e) The Agency shall deliver to the Trustee a Written Certificate of the Agency certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) above have been satisfied.

**Section 3.06. Issuance of Subordinate Debt.** The Agency may issue or incur Subordinate Debt in such principal amount as shall be determined by the Agency. Such Subordinate Debt may be payable from any assets or property of the Agency, including Housing Tax Revenues on a subordinate basis to the payment of debt service on the Bonds.

**Section 3.07. Validity of Bonds.** The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the Redevelopment Project or upon the performance by any person of his obligation with respect to the Redevelopment Project.

## ARTICLE IV

### SECURITY OF BONDS; FLOW OF FUNDS

**Section 4.01. Security of Bonds; Equal Security.** Except as provided in Section 6.06, the 2005 Series A Bonds and any Parity Debt shall be equally secured by a pledge of, security interest in and lien on all of the Housing Tax Revenues and the moneys in the Special Fund, and the 2005 Series A Bonds and any additional Bonds shall also be secured by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Redemption Account and the Reserve Account without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Housing Tax Revenues and such moneys, no funds or properties of the Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the Bonds.

In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Indenture shall be deemed to be and shall constitute a contract between the Agency and the Owners from time to time of the Bonds, and the covenants and agreements herein set forth to be performed on behalf of the Agency shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution and delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

**Section 4.02. Special Fund; Deposit of Housing Tax Revenues.** There is hereby established a special fund which is to be held by the Agency and which shall be known as the "Special Fund". The Agency shall transfer all of the Housing Tax Revenues received in any Bond Year to the Special Fund promptly upon receipt thereof by the Agency, until such time during such Bond Year as the amounts on deposit in the Special Fund equal the aggregate amounts required to be transferred for deposit in such Bond Year (i) for deposit into the Interest Account, the Principal Account, the Reserve Account and the Redemption Account in such Bond Year pursuant to Section 4.03 hereof and, if applicable, and (ii) with respect to any Parity Debt other than additional Bonds pursuant to the applicable Parity Debt Instrument. If the amount of Housing Tax Revenues available in such Bond Year shall be insufficient to deposit the full amount required to be deposited pursuant to subsections (i) and (ii) of this paragraph, then the Agency shall transfer such Housing Tax Revenues for deposit pro rata based on the full amounts required to be so deposited.

All Housing Tax Revenues received by the Agency during any Bond Year in excess of the amount required to be deposited in the Special Fund during such Bond Year pursuant to the preceding paragraph of this Section 4.02 shall be released from the pledge, security interest and lien hereunder for the security of the Bonds and any additional Parity Debt and may be applied by the Agency for any lawful purpose of the Agency, including but not limited to the payment of Subordinate Debt, or the payment of any amounts due and owing to the United States of America pursuant to Section 5.14. Prior to the payment in full of the principal of and interest and redemption premium (if any) on the Bonds and the payment in full of all other amounts payable hereunder and under any Supplemental Indenture or Parity Debt Instrument, the Agency shall not have any beneficial right or interest in the moneys on deposit in the Special Fund, except as may be provided in this Indenture and in any Supplemental Indenture or Parity Debt Instrument.

**Section 4.03. Deposit of Amounts by Trustee.** There is hereby established a trust fund to be known as the Debt Service Fund, which shall be held by the Trustee hereunder in trust. Moneys in the Special Fund shall be transferred by the Agency to the Trustee in the following amounts, at the following times, and deposited by the Trustee in the following

respective special accounts, which are hereby established in the Debt Service Fund, and in the following order of priority (provided further that, if on the fifth (5th) Business Day prior to the date the Agency is required to transfer amounts on deposit in the Special Fund to the Trustee there not amounts on deposit therein sufficient to make the following deposits, taking into accounts amounts required to be transferred with respect to Parity Debt other than Bonds, the Agency shall immediately notify the Trustee of the amount of any such insufficiency):

(a) Interest Account. On or before the fourth (4th) Business Day preceding each Interest Payment Date, the Agency shall withdraw from the Special Fund and transfer to the Trustee, for deposit in the Interest Account an amount which when added to the amount contained in the Interest Account on that date, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such Interest Payment Date. No such transfer and deposit need be made to the Interest Account if the amount contained therein is at least equal to the interest to become due on the next succeeding Interest Payment Date upon all of the Outstanding Bonds. All moneys in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity pursuant to this Indenture).

(b) Principal Account. On or before the fourth (4th) Business Day preceding September 1 in each year beginning September 1, 2005, the Agency shall withdraw from the Special Fund and transfer to the Trustee for deposit in the Principal Account an amount which, when added to the amount then contained in the Principal Account, will be equal to the principal becoming due and payable on the Outstanding Serial Bonds and Outstanding Term Bonds, including pursuant to mandatory sinking account redemption, on the next September 1. No such transfer and deposit need be made to the Principal Account if the amount contained therein is at least equal to the principal to become due on the next September 1 on all of the Outstanding Serial Bonds and Term Bonds. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Serial Bonds and the Term Bonds, including by mandatory sinking account redemption, as the same shall become due and payable.

(c) Reserve Account. In the event that the amount on deposit in the Reserve Account at any time becomes less than the Reserve Requirement, the Trustee shall promptly notify the Agency of such fact. Promptly upon receipt of any such notice, the Agency shall transfer to the Trustee an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account. If there shall then not be sufficient Housing Tax Revenues to transfer an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account, the Agency shall be obligated to continue making transfers as Housing Tax Revenues become available in the Special Fund until there is an amount sufficient to maintain the Reserve Requirement on deposit in the Reserve Account. No such transfer and deposit need be made to the Reserve Account so long as there shall be on deposit therein a sum at least equal to the Reserve Requirement. All money in the Reserve Account shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account and the Principal Account in such order of priority, in the event of any deficiency at any time in any of such accounts or for the retirement of all the Bonds then Outstanding, except that so long as the Agency is not in default hereunder, any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account semiannually on or before the fifth (5th) Business Days preceding each March 1 and September 1 by the Trustee and deposited in the Interest Account. All amounts in the Reserve Account on the Business Day preceding the final Interest Payment Date shall be withdrawn from the Reserve Account and shall be transferred either (i) to the Interest Account and the Principal Account, in such order, to the extent required to make the deposits then required to be made pursuant to this Section 4.03

or, (ii) if the Agency shall have caused to be transferred to the Trustee an amount sufficient to make the deposits required by this Section 4.03, then, to the Agency.

The Agency shall have the right at any time to direct the Trustee to release funds from the Reserve Account, in whole or in part, by tendering to the Trustee: (i) a Qualified Reserve Account Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the 2005 Series A Bonds or any other Bonds the interest on which is excluded from gross income of the owners thereof for federal income tax purposes to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Trustee, and upon delivery by the Agency to the Trustee of written calculation of the amount permitted to be released from the Reserve Account (upon which calculation the Trustee may conclusively rely), the Trustee shall transfer such funds from the Reserve Account to the Agency to be used for any lawful purpose that does not adversely affect from gross income for federal income tax purposes on any of the Bonds. The Trustee shall comply with all documentation relating to a Qualified Reserve Account Credit Instrument as shall be required to maintain such Qualified Reserve Account Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under this subsection (d). Upon the expiration of any Qualified Reserve Account Credit Instrument, the Agency shall either (i) replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, or (ii) deposit or cause to be deposited with the Trustee an amount of funds equal to the Reserve Requirement, to be derived from the first available Housing Tax Revenues. If the Reserve Requirement is being maintained partially in cash and partially with a Qualified Reserve Account Credit Instrument, the cash shall be first used to meet any deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.03(a) or 4.03(b) of this Indenture. If the Reserve Requirement is being maintained with two or more Qualified Reserve Account Credit Instruments, any draw to meet a deficiency which may exist from time to time in the Interest Account or the Principal Account for the purpose of making payments required pursuant to Sections 4.03(a) or 4.03(b) of this Indenture shall be pro-rata with respect to each such instrument.

In the event that a Qualified Reserve Account Credit Instrument is available to be drawn upon for only one particular issue of Bonds, a separate subaccount in the Reserve Account may be established for such issue, and the calculation of the Reserve Requirement with respect to all other Bonds shall exclude the debt service on such issue of Bonds. Additionally, the Reserve Account may be maintained in the form of one combined Reserve Account or in the form of one more separate sub-accounts which are established for the purpose of holding the proceeds of separate issues of Bonds in conformity with applicable provisions of the Code to the extent directed by the Agency in writing to the Trustee.

(d) Redemption Account. On or before the Business Day preceding any date on which Bonds are to be redeemed pursuant to Section 2.03(a), the Trustee shall withdraw from the Debt Service Fund any amount transferred by the Agency pursuant to Section 2.03(a) for deposit in the Redemption Account, such amount being the amount required to pay the principal of and premium, if any, on the 2005 Series A Bonds and on other Bonds to be redeemed on such date pursuant to Section 2.03(a) or a similar provision of a Supplemental Indenture. All moneys in the Redemption Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium, if any, on the 2005 Series A Bonds and on such other Bonds to be redeemed pursuant to Section 2.03(a) or a similar provision of a Supplemental Indenture on the date set for such redemption. Interest due on the 2005 Series A Bonds or such other Bonds to be redeemed on the date set for redemption shall, if applicable, be paid from funds available therefor in the Interest Account. Notwithstanding the foregoing, at any time prior

to giving notice of redemption of any such 2005 Series A Bonds or such other Bonds, the Trustee may, at the direction of the Agency, apply amounts deposited or otherwise to be deposited in the Redemption Account to the purchase of the 2005 Series A Bonds or such other Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest on such 2005 Series A Bonds or such other Bonds, which is payable from the Interest Account) as shall be directed by the Agency.

## ARTICLE V

### OTHER COVENANTS OF THE AGENCY

**Section 5.01. Punctual Payment.** The Agency shall punctually pay or cause to be paid the principal and interest to become due in respect of all the Bonds together with the premium thereon, if any, in strict conformity with the terms of the Bonds and of this Indenture. The Agency shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture, all Supplemental Indentures and the Bonds. Nothing herein contained shall prevent the Agency from making advances of its own moneys howsoever derived to any of the uses or purposes referred to herein.

**Section 5.02. Limitation on Additional Indebtedness; Against Encumbrances.** The Agency hereby covenants that, so long as the Bonds are Outstanding, the Agency shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case payable from all or any part of the Housing Tax Revenues, excepting only the 2005 Series A Bonds, any Parity Debt and any Subordinate Debt. The Agency will not otherwise encumber, pledge or place any charge or lien upon any of the Housing Tax Revenues or other amounts pledged to the Bonds superior or equal to the pledge and lien herein created for the benefit of the Bonds.

**Section 5.03. Extension of Payment.** The Agency will not, directly or indirectly, extend or consent to the extension of the time for the payment of any Bond or claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding the Bonds or claims for interest in any other manner. In case the maturity of any such Bond or claim for interest shall be extended or funded, whether or not with the consent of the Agency, such Bond or claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

**Section 5.04. Payment of Claims.** The Agency shall promptly pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the Agency or upon the Housing Tax Revenues or other amounts pledged to the payment of the Bonds, or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Bonds. Nothing herein contained shall require the Agency to make any such payment so long as the Agency in good faith shall contest the validity of said claims.

**Section 5.05. Books and Accounts; Financial Statements.** The Agency shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Agency and the City, in which complete and correct entries shall be made of all transactions relating to the Redevelopment Project, the Housing Tax Revenues, the 2005 Series A Tax Allocation Bonds Proceeds Account and the Special Fund. Such books of record and accounts shall at all times during business hours be subject to the inspection of any Insurer and the Owners of not less than ten percent (10%) in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

The Agency will cause to be prepared, within two hundred and seventy (270) days after the close of each Fiscal Year so long as the Bonds are Outstanding, complete audited financial statements with respect to such Fiscal Year showing the Tax Revenues and the Housing Tax Revenues, all disbursements of Tax Revenues and Housing Tax Revenues and the financial condition of the Redevelopment Project, including the balances in all funds and accounts relating to the Redevelopment Project, as of the end of such Fiscal Year. The Agency shall promptly

furnish a copy of such financial statements to the Trustee and any Insurer at no expense and to any Owner upon reasonable request and at the expense of such Owner. In addition, the Agency shall deliver to the Trustee and any Insurer, on or about February 1 of each year, a Written Certificate of the Agency and a written certificate or opinion of an Independent Accountant stating that the Agency is in compliance with its obligations hereunder. The Trustee shall have no obligation to review any financial statements provided to it by the Agency.

**Section 5.06. Protection of Security and Rights of Owners.** The Agency will preserve and protect the security of the Bonds and the rights of the Owners. From and after the Closing Date with respect to the 2005 Series A Bonds, the Bonds shall be incontestable by the Agency.

**Section 5.07. Payments of Taxes and Other Charges.** Except as otherwise provided herein, the Agency will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the Agency or the properties then owned by the Agency in the Redevelopment Project, or upon the revenues therefrom when the same shall become due. Nothing herein contained shall require the Agency to make any such payment so long as the Agency in good faith shall contest the validity of said taxes, assessments or charges. The Agency will duly observe and conform with all valid requirements of any governmental authority relative to the Redevelopment Project or any part thereof.

**Section 5.08. Taxation of Leased Property.** All amounts derived by the Agency pursuant to Section 33673 of the Law with respect to the lease of property for redevelopment shall be treated as Housing Tax Revenues for all purposes of this Indenture.

**Section 5.09. Disposition of Property.** The Agency will not participate in the detachment of taxable land from the Project Area or the disposition of any taxable land or real property in the Project Area to anyone which will result in such property becoming exempt from taxation because of public ownership or use or otherwise (except property dedicated for public right-of-way and except property planned for public ownership or use or other tax exempt use by the Redevelopment Plan in effect on the date of this Indenture) so that such detachment or disposition shall, when taken together with other such detachments or dispositions, (i) aggregate more than ten percent (10%) of the assessed value of property in the Project Area or (ii) would cause the amount of Housing Tax Revenues available to the Agency for application hereunder in the succeeding Fiscal Year to fall below 125% of Maximum Annual Debt Service, in either case unless each Insurer shall otherwise consent in writing.

**Section 5.10. Maintenance of Tax Revenues.** The Agency shall comply with all requirements of the Law to insure the allocation and payment to it of the Tax Revenues, including without limitation the timely filing of any necessary statements of indebtedness with appropriate officials of the County and, in the case of amounts payable by the State, appropriate officials of the State. The Agency shall not undertake proceedings for amendment of the Redevelopment Plan if such amendment shall result in payments to one or more taxing entities pursuant to Sections 33492.15, 33607.5 and 33607.7 of the Law unless the Agency shall first obtain a written opinion of an Independent Redevelopment Consultant that such payments will not adversely impair the Agency's ability to pay debt service on the Bonds. Additionally, the Agency shall not approve any amendment to the Redevelopment Plan which would, in and of itself, cause the amount of Housing Tax Revenues available to the Agency for application hereunder in any succeeding Fiscal Year to fall below 125% of Maximum Annual Debt Service without the written consent of each Insurer.

**Section 5.11. No Arbitrage.** The Agency shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the 2005 Series A

Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2005 Series A Bonds would have caused the 2005 Series A Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

**Section 5.12. Private Activity Bond Limitation.** The Agency shall assure that the proceeds of the 2005 Series A Bonds are not so used as to cause the 2005 Series A Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

**Section 5.13. Federal Guarantee Prohibition.** The Agency shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the 2005 Series A Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

**Section 5.14. Rebate Requirement.** The Agency shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the 2005 Series A Bonds.

**Section 5.15. Maintenance of Tax-Exemption.** The Agency shall take all actions necessary to assure the exclusion of interest on the 2005 Series A Bonds from the gross income of the Owners of the 2005 Series A Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the 2005 Series A Bonds.

**Section 5.16. Compliance with the Law; Low and Moderate Income Housing Fund.** The Agency shall ensure that all activities undertaken by the Agency with respect to the redevelopment of the Project Area are undertaken and accomplished in conformity with all applicable requirements of the Redevelopment Plan and the Law, including, without limitation, duly noticing and holding any public hearing required by either Section 33445 or Section 33679 of the Law prior to application of proceeds of the Bonds to any portion of the Redevelopment Project. Without limiting the generality of the foregoing, the Agency covenants that it shall deposit or cause to be deposited in the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Law, all amounts when, as and if required to be deposited therein pursuant to the Law.

**Section 5.17. Plan Limit.** The Agency shall manage its fiscal affairs in a manner which ensures that it will have sufficient Housing Tax Revenues available under the Plan Limit in the amounts and at the times required to enable the Agency to pay the principal of and interest and premium (if any) on the outstanding Bonds and any outstanding Parity Debt when due.

Additionally, the Agency hereby covenants that it will annually review, no later than March 31 of each year, commencing March 31, 2006, the total amount of tax increment revenue remaining available to be received by the Agency under the Plan Limit, as well as future cumulative Annual Debt Service, estimated future fees of the Trustee, and other obligations payable from tax increment whether senior to or subordinate to the Bonds. If, based on such review, the allocation of tax increment revenues available to pay debt service on the Bonds to the Agency in any of the next three succeeding Fiscal Years will cause an amount equal to eighty (80%) of the amount remaining under the Plan Limit (taking into account only the tax increment revenue required to be deposited in the Low and Moderate Income Housing Fund) to fall below the remaining cumulative Annual Debt Service, estimated future fees of the Trustee, and payments on other obligations that are senior to or subordinate to the Bonds, the Agency shall either (i) defease Bonds by depositing an amount of Housing Tax Revenues equal to the

amount that is required to ensure continuing compliance with the first paragraph of this Section 5.17 (by defeasing Bonds) in a defeasance escrow to be held by the Trustee and to be pledged solely to the payment of debt service on the Bonds, which escrow shall be invested in Defeasance Obligations and used for the payment of interest on and principal of and redemption premiums, if any, on the Bonds or (ii) adopt a plan approved by an Independent Redevelopment Consultant which demonstrates the Agency's continuing ability to pay debt service on the Bonds. In determining the amount to be deposited in escrow with the Trustee, the Agency shall not take into account any projected interest earnings on the amounts so deposited, but may take into account investment earnings received from amounts on deposit in such escrow. Additionally, prior to depositing such Housing Tax Revenues into escrow, as described in (i) above, the Agency may retain, in each Fiscal Year, Tax Revenues in the amount required to make all payments due in such Fiscal Year under the Pass-Through Agreement and pursuant to all statutory pass-throughs to the extent that such payments have been subordinated to the payment of debt service on the Bonds, plus an amount not in excess of \$500,000 of Tax Revenues (unless retention by the Agency of any portion or all of such \$500,000 would prevent the Agency from paying debt service on the Bonds in full prior to the Plan Limit being reached, in which event such \$500,000 shall be reduced by such amount).

The Agency shall annually no later than March 31 (commencing March 31, 2006), transmit to the Trustee and any Insurer, a Written Certificate of the Agency setting forth the calculation required by this Section 5.17, including the remaining Annual Debt Service, estimated future fees of the Trustee, any other obligations of the Agency payable from tax increment revenues, remaining tax increment revenue under the Plan Limit, and the amount, if any, to be used or escrowed for use to pay interest on and principal of and redemption premiums, if any, on the Bonds.

**Section 5.18. Continuing Disclosure.** The Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Agency to comply with the Continuing Disclosure Certificate shall not be an Event of Default hereunder. However, any Participating Underwriter or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Agency to comply with its obligations under this Section 5.18. Any notice required to be given pursuant to the provisions of the Continuing Disclosure Certificate shall also be given to S&P and Moody's.

**Section 5.19. Further Assurances.** The Agency will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

## ARTICLE VI

### THE TRUSTEE

#### Section 6.01. Duties, Immunities and Liabilities of Trustee.

(a) The Trustee shall, prior to the occurrence of an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants, duties or obligations shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Agency may remove the Trustee at any time, unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (ii) if at any time the Agency has knowledge that the Trustee shall cease to be eligible in accordance with subsection (e) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of written notice of such removal by the Agency to the Trustee, with a copy to any Insurer, whereupon the Agency shall appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Agency and by giving the Owners and any Insurer notice of such resignation by first class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the Agency shall promptly appoint a successor Trustee by an instrument in writing, with notice of such appointment to be furnished to any Insurer.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of such Owner and all other Owners) may petition any court of competent jurisdiction at the expense of the Agency for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing, acknowledging and delivering to the Agency and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Agency or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and

interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Agency shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Agency shall cause either the predecessor Trustee or the successor Trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which then has a current rating on the Bonds and to the Owners at their respective addresses shown on the Registration Books.

(e) If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been given or is deemed to have notice, as provided in Section 6.03(e) hereof, then the Trustee shall immediately give written notice thereof, by first-class mail to any Insurer and the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice; provided, however, that unless such Event of Default consists of the failure by the Agency to make any payment when due, the Trustee shall, within thirty (30) days of the Trustee's knowledge thereof, give such notice to any Insurer, and the Trustee, with the consent of the any Insurer may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

(f) The Agency agrees that, so long as any Bonds or any Parity Debt are Outstanding, the Trustee shall be a financial institution having a trust office in the State, having (or in the case of a corporation or trust company included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least \$75,000,000, and subject to supervision or examination by federal or state authority. If such financial institution publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such financial institution shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (f), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

**Section 6.02. Merger or Consolidation.** Any bank or trust company into which the Trustee may be merged or converted or with which may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company shall be eligible under subsection (e) of Section 6.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

### Section 6.03. Liability of Trustee.

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Agency, and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the security for the Bonds or the tax status of interest thereon nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or misconduct. The Trustee shall not be liable for the acts of any agents of the Trustee selected by it with due care. The Trustee and its officers and employees may become the Owner of any Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(c) The Trustee shall not be liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, except for actions arising from the negligence or misconduct of the Trustee. Where the Trustee is given the permissive right to do things enumerated in this Indenture, such right shall not be construed as a mandatory duty.

(d) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until a responsible officer shall have actual knowledge thereof, or shall have received written notice thereof from the Agency at its Principal Corporate Trust Office. In the absence of such actual knowledge or notice, the Trustee may conclusively assume that no Event of Default has occurred and is continuing under this Indenture. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by any other party of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default thereunder. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee may rely conclusively on the Agency's certificates to establish the Agency's compliance with its financial covenants hereunder, including, without limitation, its covenants regarding the deposit of Tax Revenues into the Special Fund and the investment and application of moneys on deposit in the Special Fund (other than its covenants to transfer such moneys to the Trustee when due hereunder).

(e) The Trustee shall have no liability or obligation to the Bondowners with respect to the payment of debt service on the Bonds by the Agency or with respect to the observance or performance by the Agency of the other conditions, covenants and terms contained in this Indenture, or with respect to the investment of any moneys in any

fund or account established, held or maintained by the Agency pursuant to this Indenture or otherwise.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee shall be entitled to interest on all amounts advanced by it at the maximum rate permitted by law.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys or receivers and the Trustee shall not be responsible for any intentional misconduct or negligence on the part of any agent, attorney or receiver appointed with due care by it hereunder.

(h) The Trustee shall have no responsibility, opinion, or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(i) Before taking any action under Article VIII or this Article at the request of the Owners or any Insurer, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners or any Insurer for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

**Section 6.04. Right to Rely on Documents and Opinions.** The Trustee shall have no liability in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, facsimile transmission, electronic mail, or other paper or document reasonably believed by it to be genuine and to have been signed or prescribed by the proper party or parties, and shall not be required to make any investigation into the facts or matters contained thereon. The Trustee may consult with counsel, including, without limitation, counsel of or to the Agency, with regard to legal questions, and, in the absence of negligence or intentional misconduct by the Trustee, the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

The Trustee shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is established to the satisfaction of the Trustee.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the Agency, which shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate or report of any Independent Accountant or Independent Redevelopment Consultant appointed by the Agency.

**Section 6.05. Preservation and Inspection of Documents.** All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times upon reasonable notice to the inspection of and copying by the Agency, any Insurer and any Owner, and their agents and representatives duly authorized in writing, during regular business hours and under reasonable conditions.

**Section 6.06. Compensation and Indemnification.** The Agency shall pay to the Trustee from time to time reasonable compensation for all services rendered under this Indenture in accordance with the letter proposal from the Trustee approved by the Agency and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel), agents and employees, incurred in and about the performance of its powers and duties under this Indenture. The Trustee shall have a lien on the Housing Tax Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel (including the allocated costs and disbursement of in-house counsel to the extent such services are not redundant with those provided by outside counsel).

The Agency further covenants and agrees to indemnify, defend and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities which it may incur to the extent arising out of or in connection with the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the Agency and the rights of the Trustee under this Section 6.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

**Section 6.07. Deposit and Investment of Moneys in Funds.** Moneys in the 2005 Series A Tax Allocation Bond Proceed Account, the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account, the Redemption Account and the Costs of Issuance Fund shall be invested by the Trustee in Permitted Investments as directed by the Agency in the Written Request of the Agency filed with the Trustee, except that moneys in the Reserve Account shall not be invested in Permitted Investments having a maturity of more than five (5) years, unless any such Permitted Investment is described in clause (h) of the definition thereof. In the absence of any such Written Request of the Agency, the Trustee shall invest any such moneys in Permitted Investments described in clause (e) of the definition thereof, which by their terms mature prior to the date on which such moneys are required to be paid out hereunder. The Trustee shall be entitled to rely conclusively upon the written instructions of the Agency directing investments in Permitted Investments as to the fact that each such investment is permitted by the laws of the State, and shall not be required to make further investigation with respect thereto. With respect to any restrictions set forth in the above list which embody legal conclusions (e.g., the existence, validity and perfection of security interests in collateral), the Trustee shall be entitled to rely conclusively on an opinion of counsel or upon a representation of the provider of such Permitted Investment obtained at the Agency's expense. Moneys in the Special Fund may be invested by the Agency in any obligations in which the Agency is legally authorized to invest its funds. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts held by the Trustee hereunder shall be deposited in the Interest Account; *provided, however,* that all interest or gain from the investment of amounts in the Reserve Account shall be deposited by the Trustee in the Interest Account only to the extent not required to cause the balance in the Reserve Account to equal the Reserve Requirement. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made at the direction of the Agency or otherwise made in accordance with this Section. For investment purposes only, the Trustee may commingle the funds and accounts established hereunder, but shall account for each separately.

The Agency acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Agency the right to receive brokerage confirmations of security transactions as they occur, the Agency specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Agency monthly cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

All moneys held by the Trustee shall be held in trust, but need not be segregated from other funds unless specifically required by this Indenture. Except as specifically provided in this Indenture, the Trustee shall not be liable to pay interest on any moneys received by it, but shall be liable only to account to the Agency for earnings derived from funds that have been invested.

The Agency covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Code) at Fair Market Value.

Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code shall be valued by the Agency at their present value (within the meaning of section 148 of the Code). Investments on deposit in the Reserve Account shall be valued on June 30 of each year at their market value.

**Section 6.08. Accounting Records and Financial Statements.** The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions relating to the proceeds of the Bonds made by it and all funds and accounts held by the Trustee established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Agency upon reasonable prior notice, at reasonable hours and under reasonable circumstances. The Trustee shall furnish to the Agency, on at least a monthly basis, an accounting of all transactions in the form of its customary statements relating to the proceeds of the Bonds and all funds and accounts held by the Trustee pursuant to this Indenture.

**Section 6.09. Other Transactions with Agency.** The Trustee, either as principal or agent, may engaged in or be interested in any financial or other transaction with the Agency.

## ARTICLE VII

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

**Section 7.01. Amendment With And Without Consent of Owners.** This Indenture and the rights and obligations of the Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption without the consent of any Owners, to the extent permitted by law, but only for any one or more of the following purposes -

(a) to add to the covenants and agreements of the Agency in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or powers herein reserved to or conferred upon the Agency; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Agency may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not, in the reasonable determination of the Agency, materially adversely affect the interests of the Owners; or

(c) to provide for the issuance of Parity Debt in accordance with Section 3.05;  
or

(d) to amend any provision hereof relating to the requirements of or compliance with the Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exemption from federal income taxation of interest on any of the Bonds, in the opinion of Bond Counsel; or

(e) to comply with the requirements of a provider of a Qualified Reserve Account Credit Instrument.

Except as set forth in the preceding paragraph, this Indenture and the rights and obligations of the Agency and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consent of any Insurer and the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Agency to pay the principal, interest, or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of any Insurer or the Owner of such Bond, or (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification. In no event shall any Supplemental Indenture modify any of the rights or obligations of the Trustee without its prior written consent. In no event shall any Supplemental Indenture modify any of the rights or obligations of any Insurer without its prior written consent.

**Section 7.02. Effect of Supplemental Indenture.** From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 7.03. Endorsement or Replacement of Bonds After Amendment.** After the effective date of any amendment or modification hereof pursuant to this Article VII, the Agency may, with the prior written consent of any Insurer, determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the Agency, as to such amendment or modification and in that case upon demand of the Agency the Owners of such Bonds shall present such Bonds for that purpose at the Principal Corporate Trust Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the Agency may determine that new Bonds shall be prepared at the expense of the Agency and executed in exchange for any or all of the Bonds, and in that case, upon demand of the Agency, the Owners of the Bonds shall present such Bonds for exchange at the Principal Corporate Trust Office of the Trustee, without cost to such Owners.

**Section 7.04. Amendment by Mutual Consent.** The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond and, provided further that written consent to such amendment shall first be obtained from any Insurer.

**Section 7.05. Opinion of Counsel.** Prior to executing any Supplemental Indenture, the Trustee shall be furnished an opinion of counsel, upon which it may conclusively rely to the effect that all conditions precedent to the execution of such Supplemental Indenture under this Indenture have been satisfied and such Supplemental Indenture is authorized and permitted under this Indenture and does not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or adversely affect the exemption of interest on the Bonds from personal income taxation by the State.

**Section 7.06. Copy of Supplemental Indenture to S&P and Moody's.** The Agency shall provide to S&P and Moody's, for so long as S&P and Moody's, as the case may be, maintain a rating on any of the Bonds (without regard to any municipal bond or financial guaranty insurance), a copy of any Supplemental Indenture at least 15 days prior to its proposed effective date.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES OF OWNERS

**Section 8.01. Events of Default and Acceleration of Maturities.** The following events shall constitute Events of Default hereunder:

(a) if default shall be made by the Agency in the due and punctual payment of the principal of or interest or redemption premium (if any) on any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if default shall be made by the Agency in the observance of any of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, other than a default described in the preceding clause (a), and such default shall have continued for a period of thirty (30) days following receipt by the Agency of written notice from the Trustee or any Insurer or written notice from any Owner (with a copy of said notice delivered to the Trustee and any Insurer) of the occurrence of such default, provided that if in the reasonable opinion of the Agency the failure stated in the notice can be corrected, but not within such thirty (30) day period, such failure will not constitute an event of default if corrective action is instituted by the Agency (with the prior written consent of any Insurer) within such thirty (30) day period and the Agency thereafter diligently and in good faith cures such failure in a reasonable period of time as approved by any Insurer; or

(c) If the Agency files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction will approve a petition by the Agency seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will approve a petition by the Agency, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, if under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction will assume custody or control of the Agency or of the whole or any substantial part of its property.

In determining whether an Event of Default has occurred under (a) above, no effect shall be given to payments made under any municipal bond insurance policy, financial guaranty insurance policy or Qualified Reserve Account Credit Instrument.

If an Event of Default has occurred under this Section and is continuing, the Trustee, may, and, if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee shall, (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and (b) subject to the provisions of Section 8.06, exercise any other remedies available to the Trustee and the Bond Owners in law or at equity.

Immediately upon receiving notice or actual knowledge of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to any Insurer and to the Agency by telephone promptly confirmed in writing. Such notice shall also state whether the principal of the Bonds shall have been declared to be or have immediately become due and payable. With respect to any Event of Default described in clauses (a) or (c) above the Trustee shall, and with respect to any Event of Default described in clause (b) above the Trustee in its sole discretion

may, also give such notice to the Owners by mail, which shall include the statement that interest on the Bonds shall cease to accrue from and after the date, if any, on which the Trustee shall have declared the Bonds to become due and payable pursuant to the preceding paragraph (but only to the extent that principal and any accrued, but unpaid, interest on the Bonds is actually paid on such date).

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Agency shall, with the written consent of a majority in aggregate principal amount of the Owners of the Bonds, deposit with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal and interest (to the extent permitted by law), and the reasonable fees and expenses of the Trustee, (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee shall promptly give written notice of the foregoing to any Insurer and the Owners of all Bonds then Outstanding, and with the prior written approval of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Agency and to the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

**Section 8.02. Application of Funds Upon Acceleration.** All of the Housing Tax Revenues and all sums in the funds and accounts established and held by the Trustee hereunder upon the date of the declaration of acceleration as provided in Section 8.01, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in exercising the rights and remedies set forth in this Article VIII, including reasonable compensation to its agents, attorneys (including the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel) and counsel and any outstanding fees, expenses of the Trustee; and

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for principal and interest, as applicable, with interest on the overdue principal, and installments of interest at the net effective rate then borne by the Outstanding Bonds (to the extent that such interest on overdue installments of principal and interest shall have been collected), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such principal and interest without preference or priority, ratably to the aggregate of such principal and interest.

**Section 8.03. Power of Trustee to Control Proceedings.** In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or

upon the request of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however*, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

**Section 8.04. Limitation on Owner's Right to Sue.** No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Agency, the Trustee and any Insurer written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of any remedy hereunder; it being understood and intended that no one or more Owners shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of (and premium, if any) and interest on such Bond as herein provided, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

**Section 8.05. Non-Waiver.** Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the Agency, which is absolute and unconditional, to pay from the Housing Tax Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners or the Trustee to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

A waiver of any default by any Owner or the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Owners and the Trustee by the Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners and the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Owners or the Trustee, the Agency, the Trustee and

the Owners shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

**Section 8.06. Actions by Trustee as Attorney-in-Fact.** Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by taking and holding the Bonds or Parity Debt shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, *provided, however,* the Trustee shall have no duty or obligation to exercise any such right or remedy unless it has been indemnified to its satisfaction from any loss, liability or expense (including fees and expenses of its outside counsel and the allocated costs and disbursements of its in-house counsel to the extent such services are not redundant with those provided by outside counsel).

**Section 8.07. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

**Section 8.08. Determination of Percentage of Bond Owners.** Whenever in this Indenture the consent, direction or other action is required or permitted to be given or taken by a percentage of the Owners of an aggregate principal amount of Outstanding Bonds (including by the Owners of a majority in aggregate principal amount of the Outstanding Bonds), such percentage shall be calculated on the basis of the principal amount of the Outstanding Bonds determined as of the next succeeding Interest Payment Date.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Benefits Limited to Parties.** Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Agency, any Insurer, the Trustee and the Owners, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Agency shall be for the sole and exclusive benefit of the Trustee, any Insurer and the Owners. To the extent that this Indenture confers upon or gives or grants to any Insurer any right, remedy or claim under or by reason of this Indenture and any Insurer are hereby explicitly recognized as being third-party beneficiaries hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.

**Section 9.02. Successor is Deemed Included in All References to Predecessor.** Whenever in this Indenture or any Supplemental Indenture either the Agency or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Agency or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 9.03. Discharge of Indenture.** (a) If the Agency shall pay and discharge the entire indebtedness on all Bonds or any portion thereof in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on all or the applicable portion of Outstanding Bonds, as and when the same become due and payable;

(ii) by irrevocably depositing with the Trustee or an escrow agent, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay all or the applicable portion of Outstanding Bonds, including all principal, interest and redemption premiums, or;

(iii) by irrevocably depositing with the Trustee or an escrow agent, in trust, Defeasance Obligations in such amount as an Independent Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on all Bonds or the applicable portion thereof (including all principal, interest and redemption premiums) at or before maturity;

and, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given pursuant to Section 2.03(b) or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the Agency, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Housing Tax Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the Agency under this Indenture shall cease and terminate with respect to all Outstanding Bonds or, if applicable, with respect to that portion of the Bonds which has been paid and discharged, except only (a) the covenants of the Agency hereunder with respect to the Code, (b) the obligation of the Trustee to transfer and exchange Bonds hereunder, (c) the obligations of the Agency under Section 6.06 hereof, and (d) the obligation of the

Agency to pay or cause to be paid to the Owners (or any Insurer), from the amounts so deposited with the Trustee, all sums due thereon and to pay the Trustee, any Insurer all fees, expenses and costs of the Trustee and any Insurer. In the event the Agency shall, pursuant to the foregoing provision, pay and discharge any portion or all of the Bonds then Outstanding, the Trustee shall be authorized to take such actions and execute and deliver to the Agency all such instruments as may be necessary or desirable to evidence such discharge, including, without limitation, selection by lot of Bonds of any maturity of the Bonds that the Agency has determined to pay and discharge in part.

In the case of a defeasance or payment of all of the Bonds Outstanding, any funds thereafter held by the Trustee which are not required for said purpose or for payment of amounts due the Trustee pursuant to Section 6.06 shall be paid over to the Agency.

(b) If a forward supply contract is employed in connection with the defeasance of any of the Bonds, (i) the verification report relating to the defeasance of such Bonds shall expressly state that the adequacy of the escrow to accomplish the defeasance relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement, the terms of the escrow agreement shall be controlling.

(c) Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due of the Bonds is paid by any Insurer pursuant to its municipal bond or financial guaranty insurance policy, such Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Agency, and the assignment and pledge of the Housing Tax Revenues and other assets hereunder and all covenants, agreements and other obligations of the Agency to the Bond Owners so paid shall continue to exist and shall run to the benefit of any such Insurer, and any such Insurer shall be subrogated to the rights of such Bond Owners, as applicable.

**Section 9.04. Execution of Documents and Proof of Ownership by Owners.** Any request, consent, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by such Owner's attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be proved by the Registration Books.

Any demand, request, direction, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Agency or the Trustee and in accordance therewith, provided, however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by or for the account of the Agency unless the Agency is the registered Owner or the Trustee has received written notice that any other registered Owner is such an affiliate.

**Section 9.05. Disqualified Bonds.** In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Agency or the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination.

**Section 9.06. Waiver of Personal Liability.** No member, officer, agent or employee of the Agency shall be individually or personally liable for the payment of the principal or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.07. Destruction of Cancelled Bonds.** Whenever in this Indenture provision is made for the surrender to the Trustee of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, the Trustee shall destroy such bonds and upon request of the Agency provide the Agency a certificate of destruction. The Agency shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

**Section 9.08. Notices.** (a) Any notice, request, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or upon receipt when mailed by first class, registered or certified mail, postage prepaid, or sent by facsimile, addressed as follows:

If to the Agency:

Redevelopment Agency of the  
City of Novato  
900 Sherman Avenue  
Novato, California 94945  
Attention: Treasurer  
Facsimile: (415) 897-4343

If to the Trustee:

U.S. Bank National Association  
One California Street, Suite 2550  
San Francisco, California 94111  
Attention: Corporate Trust Services  
Facsimile: (415) 273-4591

The Agency and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 9.09. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The Agency hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable. If, by reason of the judgment of any court, the Trustee is rendered unable to perform its duties hereunder, all such duties and all of the rights and powers of the Trustee hereunder shall, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof, be assumed by and vest in the Treasurer of the Agency in trust for the benefit of the Owners. The Agency covenants for the direct benefit of the Owners that its Treasurer in such case shall be vested with all of the rights and powers of the Trustee hereunder, and shall assume all of the

responsibilities and perform all of the duties of the Trustee hereunder, in trust for the benefit of the Bonds, pending appointment of a successor Trustee in accordance with the provisions of Section 6.01 hereof.

**Section 9.10. Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the Agency as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Agency for the payment of the principal of and interest and redemption premium (if any) on of such Bonds.

**Section 9.11. Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.12. Governing Law.** This Indenture shall be construed and governed in accordance with the laws of the State.

IN WITNESS WHEREOF, the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, has caused this Indenture to be signed in its name by its Treasurer and attested by its Secretary, and U.S. BANK NATIONAL ASSOCIATION in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: May Neiler  
Treasurer

Attest:

Shirley Grammel  
Secretary

U.S. BANK NATIONAL ASSOCIATION, as  
*Trustee*

By: \_\_\_\_\_  
Authorized Officer





purpose prior to the Record Date preceding the applicable Interest Payment Date. This Bond is one of a duly authorized issue of bonds of the Agency designated as "Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A" (the "Bonds"), of an aggregate principal amount of Nine Million Five Hundred Twenty Thousand Dollars (\$9,520,000), all of like tenor and date (except for such variation, if any, as may be required to designate varying series, numbers, maturities, interest rates, or redemption and other provisions) and all issued pursuant to the provisions of the Community Redevelopment Law, being Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code of the State of California (the "Law"), and pursuant to an Indenture of Trust, dated as of February 1, 2005, entered into by and between the Agency and the Trustee (the "Indenture"), providing for the issuance of the Bonds. The Bonds are being issued in the form of registered Bonds without coupons. Additional bonds, or other obligations may be issued on a parity with the Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Agency) and all indentures supplemental thereto and to the Law for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Housing Tax Revenues (as that term is defined in the Indenture), and the rights thereunder of the registered owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Agency thereunder, to all of the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees. Capitalized terms not otherwise defined herein shall have the meanings given them in the Indenture.

The Bonds have been issued by the Agency for the purpose of providing funds to finance and refinance low- and moderate- income housing activities with respect to its Hamilton Field Redevelopment Project Area (the "Project Area") and to pay certain expenses of the Agency in issuing the Bonds.

The Bonds are special obligations of the Agency and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Housing Tax Revenues derived by the Agency from the Project Area.

There has been created and will be maintained by the Agency, the Special Fund (as defined in the Indenture) into which Housing Tax Revenues shall be deposited and from which the Agency shall transfer amounts to the Trustee for payment, when due, of the principal of and the interest and redemption premium, if any, on the Bonds and any additional Parity Debt as defined in the Indenture. As and to the extent set forth in the Indenture, all such Housing Tax Revenues and the moneys in the Special Fund (as such terms are defined in the Indenture) are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture and the Law, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds and any additional Parity Debt. In addition, the Bonds shall be additionally secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account and the Redemption Account (as such terms are defined in the Indenture). Except for the Housing Tax Revenues and such moneys, no funds or properties of the Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Bonds maturing on or before September 1, 2012, are not subject to optional redemption prior to maturity. The Bonds maturing on and after September 1, 2013, are subject to redemption, at the option of the Agency on any date on or after September 1, 2012, as a whole or in part, by such maturities as shall be determined by the Agency, and by lot within a maturity,

from any available source of funds, at the following redemption prices (expressed as percentages of the principal amount of the Bonds to be redeemed) together with accrued interest thereon to the date fixed for redemption.

<u>Redemption Periods</u>	<u>Redemption Price</u>
September 1, 2012 through August 31, 2013	102%
September 1, 2013 through August 31, 2014	101
September 1, 2014 and thereafter	100

The Bonds maturing on September 1, 2032, and September 1, 2034 (the "Term Bonds") shall also be subject to mandatory redemption in whole, or in part by lot, on September 1 in each year, commencing September 1, 2031 and September 1, 2032, respectively, as set forth below, from sinking fund payments made by the Agency to the Principal Account at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 1 in the respective years as set forth in the following table; provided however, that (x) in lieu of redemption thereof the Term Bonds may be purchased by the Agency pursuant to the Indenture, and (y) if some but not all of the Term Bonds have been redeemed pursuant to optional redemption, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 (notice of which determination shall be given by the Agency to the Trustee).

Term Bonds of 2032

<u>September 1</u>	<u>Principal Amount</u>
2031	\$505,000
2032 (maturity)	530,000

Term Bonds of 2034

<u>September 1</u>	<u>Principal Amount</u>
2033	\$560,000
2034 (maturity)	590,000

As provided in the Indenture, notice of redemption shall be given by first class mail no less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

The Agency shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Agency and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bond during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bond selected for redemption.

The Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Agency and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Agency and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided herein of any Bond without the express written consent of the registered owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Agency or the Trustee for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

This Bond is not a debt, liability or obligation of the City of Novato, the State of California, or any of its political subdivisions, and neither said City, said State, nor any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than those pledged by the Agency. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the Law and the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Agency, does not exceed any limit prescribed by the Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Redevelopment Agency of the City of Novato has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Treasurer and attested by the facsimile signature of its Secretary, all as of the Dated Date set forth above.

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: \_\_\_\_\_  
Treasurer

ATTEST:

\_\_\_\_\_  
Secretary

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

## ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or Tax Regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT _____ Custodian _____
TEN ENT --	as tenants by the entireties	(Cust.) (Minor)
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act _____ (State)
COMM PROP --	as community property	

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED  
THOUGH NOT IN THE LIST ABOVE

**(FORM OF ASSIGNMENT)**

For value received the undersigned hereby sells, assigns and transfers unto

---

---

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Bond and hereby irrevocably constitute(s) and appoints(s) \_\_\_\_\_ attorney,

to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signatures Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor.

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT B**

**FORM OF 2005 SERIES A TAX ALLOCATION BOND PROCEEDS ACCOUNT DISBURSEMENT  
REQUEST**

**DISBURSEMENT REQUEST NO.:** \_\_\_\_\_

U.S. Bank National Association  
One California Street, Suite 2550 San Francisco, California 94111  
Attention: Corporate Trust Services

Re: \$9,520,000 Redevelopment Agency of the City of Novato Hamilton Field  
Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A

Ladies and Gentlemen:

In accordance with the terms of an Indenture of Trust, by and between you and the undersigned, dated as of February 1, 2005 (the "Indenture"), you are hereby authorized and requested to make immediate disbursement of funds held by you in the 2005 Series A Tax Allocation Bond Proceeds Account for costs of financing and refinancing low- and moderate-income housing of benefit to the Redevelopment Project (as defined in the Indenture) pursuant to Section 3.04 of the Indenture.

You are hereby requested to pay to the person(s), corporation(s) or other entity(ies) designated on Schedule A attached hereto as Payee(s), the sum set forth on said Schedule, in payment of all or a portion of the costs of the Redevelopment Project described on said Schedule.

Dated: \_\_\_\_\_, 200\_\_

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By: \_\_\_\_\_  
Treasurer

---

**FIRST SUPPLEMENTAL INDENTURE OF TRUST**

**Dated as of March 1, 2011**

**by and between the**

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**

**and**

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$17,000,000  
Redevelopment Agency of the City of Novato  
Hamilton Field Redevelopment Project  
Tax Allocation Bonds, Series 2011**

**(Supplemental to the Indenture of Trust dated as of February 1, 2005)**

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FUND DISBURSEMENT REQUEST

## FIRST SUPPLEMENTAL INDENTURE OF TRUST

This First Supplemental Indenture of Trust (this "First Supplement"), dated as of March 1, 2011, is by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Agency"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee under the hereinafter defined Series 2005 Indenture (the "Trustee");

### WITNESSETH:

**WHEREAS**, the Agency was duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the Community Redevelopment Law, being Part 1 of Division 24 of the Health and Safety Code of the State of California (the "Law"), including the power to issue bonds for any of its corporate purposes;

**WHEREAS**, a Redevelopment Plan (as defined in the hereinafter mentioned Series 2005 Indenture) for the Hamilton Field Redevelopment Project Area in the City of Novato (the "City"), California has been adopted in compliance with all requirements of the Law;

**WHEREAS**, the Agency issued its \$24,835,000 aggregate principal amount of Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005 (the "Series 2005 Bonds"), for the purpose of financing and refinancing redevelopment activities, pursuant to an Indenture of Trust, dated as of February 1, 2005, by and between the Agency and the Trustee (the "Series 2005 Indenture");

**WHEREAS**, the Agency and the Trustee have heretofore entered into a First Amendment to Indenture of Trust dated as of September 1, 2007 (the "First Amendment") in order to amend certain provisions of the Series 2005 Indenture; and

**WHEREAS**, the Series 2005 Indenture permits the issuance of Parity Debt (within the meaning of the Series 2005 Indenture) payable from Tax Revenues (as defined in the Series 2005 Indenture, as amended by the First Amendment) on a parity with the Series 2005 Bonds, subject to certain terms and conditions;

**WHEREAS**, for the purpose of refinancing redevelopment activities by repaying a portion of the amounts the City has loaned to the Agency, the Agency proposes to issue its \$17,000,000 aggregate principal amount of its Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2011 (the "Series 2011 Bonds");

**WHEREAS**, the Series 2011 Bonds are being issued as Parity Debt and, to that end, this First Supplement is entered into pursuant to and in accordance with the provisions of and conditions applicable to the issuance of the Series 2011 Bonds as Parity Debt under the Series 2005 Indenture, as amended by the First Amendment, and for the purposes of supplementing the Series 2005 Indenture, as amended by the First Amendment; and

**WHEREAS**, the Agency has determined that all acts and proceedings required by law necessary to make the Series 2011 Bonds, when executed by the Agency, authenticated and delivered by the Trustee, and duly issued, the valid, binding and legal special obligations of the

Agency, and to constitute this First Supplement a legal, valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the First Supplement have been in all respects duly authorized;

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

## ARTICLE X

### ADDITIONAL DEFINITIONS RELATING TO THE SERIES 2011 BONDS

**Section 10.01. Definitions.** Unless the context otherwise requires, the terms defined in this Section 10.01 shall, for all purposes of this First Supplement, have the respective meanings specified in this Section 10.01. All terms defined in Section 1.02 and not otherwise defined in this Section 10.01 shall, when used in this First Supplement, have the respective meanings given to such terms in Section 1.02. In the event that a term is defined both in this Section 10.01 and also in Section 1.02, the definition set forth in this Section 10.01 shall prevail unless the context otherwise requires.

**"Annual Debt Service"** means, for each Bond Year, the sum of (a) the interest payable on the Outstanding Bonds and other Parity Debt in such Bond Year, assuming that the Outstanding Serial Bonds are retired as scheduled and that the Outstanding Term Bonds are redeemed from mandatory sinking account payments as scheduled, (b) the principal amount of the Outstanding Serial Bonds and other Parity Debt payable by their terms in such Bond Year, and (c) the principal amount of the Outstanding Term Bonds scheduled to be paid or redeemed from mandatory sinking account payments in such Bond Year. For purposes of such calculation, there shall be excluded debt service payments with respect to the Bonds or any Parity Debt (i) to the extent that amounts due with respect to the Bonds or such Parity Debt are prepaid or otherwise discharged in accordance with this Indenture or the relevant Parity Debt Instrument or (ii) to the extent the proceeds thereof are then deposited in an escrow fund in which amounts are invested in Permitted Investments and from which moneys may not be released to the Agency unless the amount of Tax Revenues (as evidenced in the written records of the County) plus Additional Revenues at least meets the requirements of Section 3.05(b) of the Indenture.

**"Bond Year"** means, with respect to the Series 2011 Bonds, the one-year period beginning on September 2 in any year and ending on the next succeeding September 1, both dates inclusive, except that the first Bond Year shall begin on the Closing Date and end on September 1, 2011.

**"Bonds"** means the Series 2005 Bonds, the Series 2011 Bonds and any Parity Debt issued as bonds pursuant to a Supplemental Indenture.

**"Closing Date"** means, with respect to the Series 2011 Bonds, the date on which the Series 2011 Bonds are delivered to the original purchasers thereof.

**"Continuing Disclosure Certificate"** means, with respect to the Series 2011 Bonds, that certain Continuing Disclosure Certificate relating to the Series 2011 Bonds executed by the Agency and dated the date of issuance and delivery of the Series 2011 Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**"First Amendment"** means this First Amendment to Indenture of Trust, dated as of September 1, 2007, by and between the Agency and the Trustee.

**"First Supplement"** means this First Supplemental Indenture of Trust, dated as of March 1, 2011, by and between the Agency and the Trustee, as the same may be amended from time to time in accordance with the terms of the Series 2005 Indenture.

"Indenture" means the Series 2005 Indenture, as amended by the First Amendment and as supplemented and amended by this First Supplement, and as it may be further supplemented or amended by any Supplemental Indenture entered into pursuant to the provisions thereof.

"Net Proceeds" means the proceeds from the sale of the Series 2011 Bonds (par amount of the Series 2011 Bonds less original issue discount plus original issue premium) less proceeds of the Series 2011 Bonds deposited into the 2011 Subaccount of the Reserve Account.

"Resolution" means Resolution No. R-10-11 adopted by the Agency on March 23, 2011.

"Series 2011 Account" means the Account by that name established pursuant to Section 12.03.

"Series 2011 Bonds" means, the Agency's Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2011, issued pursuant to Section 11.01 in an initial aggregate principal amount of \$17,000,000.

"Series 2011 Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 12.02.

"Series 2011 Subaccount" means the account by that name within the Reserve Account established and held by the Trustee pursuant to Section 12.04 hereof.

"Series 2005 Bonds" means the Agency's Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005 initially issued in the principal amount of \$24,835,000 pursuant to the provisions of the Series 2005 Indenture.

"Series 2005 Indenture" means the Indenture of Trust dated as of February 1, 2005, by and between the Agency and the Trustee.

**ARTICLE XI**

**AUTHORIZATION OF SERIES 2011 BONDS**

**Section 11.01. Authorization of Series 2011 Bonds.** The Series 2011 Bonds have been authorized to be issued by the Agency pursuant to the Resolution. The Series 2011 Bonds are being issued as Parity Debt in the aggregate principal amounts of Seventeen Million Dollars (\$17,000,000), under and subject to the terms of the Indenture, the Resolution and the Law, for the purpose of providing funds to refinance redevelopment activities. The Indenture, including this First Supplement, constitutes a continuing agreement with the Owners of all of the Series 2011 Bonds issued hereunder and at any time Outstanding to secure the full and final payment of principal of and premium, if any, and interest on all Series 2011 Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The Series 2011 Bonds shall be designated the "Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2011".

**Section 11.02. Terms of Series 2011 Bonds.** The Series 2011 Bonds shall be issued in the initial principal amount of \$17,000,000 and shall be dated as of the Closing Date. The Series 2011 Bonds shall be issued in fully registered form without coupons in denominations of \$5,000. The Series 2011 Bonds shall be issued in Book-Entry Form as provided in Section 2.11 of the Indenture.

The Series 2011 Bonds shall mature on September 1 in each of the years and in the respective principal amounts, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months), at the rates per annum, as set forth in the following table:

**Series 2011 Bonds Maturity Schedule**

**\$3,620,000 Serial Bonds**

<u>Maturity Date</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2012	\$215,000	2.000%
2013	215,000	3.000
2014	230,000	3.750
2015	235,000	4.250
2016	245,000	4.625
2017	255,000	5.000
2018	260,000	5.125
2019	275,000	5.375
2020	285,000	5.625
2021	305,000	5.875
2022	320,000	6.000
2023	335,000	6.250
2024	355,000	6.250
2025	45,000	6.375
2026	45,000	6.500

## **\$13,380,000 Terms Bonds**

<u>Maturity Date</u> (September 1)	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2032	\$220,000	6.750%
2040	13,160,000	6.750

Each Series 2011 Bond shall bear interest, payable commencing September 1, 2011 and each Interest Payment Date thereafter, from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before August 15, 2011, in which event it shall bear interest from its Closing Date; provided, however, that if, as of the date of authentication of any Series 2011 Bond, interest thereon is in default, such Series 2011 Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Series 2011 Bonds (including the final interest payment upon maturity or redemption) is payable when due by check or draft of the Trustee mailed to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; provided that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of Series 2011 Bonds, which written request is on file with the Trustee as of any Record Date, interest on such Series 2011 Bonds shall be paid on the succeeding Interest Payment Date to such account in the United States as shall be specified in such written request.

**Section 11.03. Redemption.** The Series 2011 Bonds shall be subject to redemption as provided in this Section 11.03.

(a) Optional Redemption. The Series 2011 Bonds maturing on or before September 1, 2021 are not subject to redemption at the option of the Agency prior to their stated maturities. The Series 2011 Bonds maturing on and after September 1, 2022 are subject to redemption prior to their stated maturities, at the option of the Agency on any date on or after September 1, 2021, as a whole or in part, by such maturities as shall be determined by the Agency, and by lot within a maturity, from any available source of funds, at the principal amount of the Series 2011 Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption without premium.

(b) Mandatory Sinking Fund Redemption. The Series 2011 Bonds that are Term Bonds maturing September 1, 2032 and September 1, 2040 shall also be subject to mandatory redemption in whole, or in part by lot, on September 1 in each year, commencing September 1, 2027 and September 1, 2035, respectively, as set forth below, from sinking fund payments made by the Agency to the Principal Account pursuant to Section 4.03(b), at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 1 in the respective years as set forth in the following table; provided however, that (x) in lieu of redemption thereof such Term Bonds may be purchased by the Agency pursuant to Section 2.03(g) hereof, and (y) if some but not all of such Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Term

Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 as determined by the Agency (notice of which determination shall be given by the Agency to the Trustee).

Term Bonds maturing September 1, 2032

<u>September 1</u>	<u>Principal Amount</u>
2027	\$40,000
2028	40,000
2029	35,000
2030	35,000
2031	35,000
2032 (maturity)	35,000

Term Bonds maturing September 1, 2040

<u>September 1</u>	<u>Principal Amount</u>
2035	\$2,110,000
2036	2,255,000
2037	2,405,000
2038	2,015,000
2039	2,150,000
2040 (maturity)	2,225,000

(c) Redemption Procedures. Except as provided in this Section 11.03 to the contrary, the Section 2.03(c) through Section 2.03(g) shall apply to the redemption of the Series 2011 Bonds.

**Section 11.04. Form and Execution of Series 2011 Bonds, CUSIP Numbers.** The Series 2011 Bonds, the form of Trustee's Certificate of Authentication, and the form of Assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Series 2011 Bonds shall be executed as provided in Section 2.05 of the Indenture (provided that Bonds may also be executed by the Executive Director of the Agency or any other officer of the Agency approved by a resolution adopted by the Agency), and shall be otherwise subject to said Section 2.05 and Sections 2.06 through 2.11 of the Indenture.

## ARTICLE XII

### APPLICATION OF PROCEEDS OF SERIES 2011 BONDS

**Section 12.01. Application of Proceeds of Sale of Series 2011 Bonds.** Upon the receipt of payment for the Series 2011 Bonds on the Closing Date, the proceeds thereof (being \$16,568,041.40, constituting the original principal amount of the Series 2011 Bonds, less an underwriter's discount of \$170,000.00 and less original issue discount on the Series 2011 Bonds in the amount of \$261,958.60), shall be paid to the Trustee and deposited in a temporary fund (if required by the Trustee to make the following transfers and deposits, which temporary fund shall be closed after such transfers and deposits have been made), all of the amounts on deposit in which shall be transferred on the Closing Date as follows:

(a) The Trustee shall deposit in the Series 2011 Costs of Issuance Fund the amount of \$305,000.00, which amount shall be applied as provided in Section 12.02.

(b) The Trustee shall deposit in the Reserve Account the amount of \$1,700,000.00, being the Reserve Requirement with respect to the Bonds.

(c) The Trustee shall deposit the remainder of the proceeds of the Series 2011 Bonds, being \$14,563,041.40 in the Series 2011 Account of the Redevelopment Fund to be applied as provided in Section 12.03.

**Section 12.02. Series 2011 Costs of Issuance Fund.** There is hereby established a separate fund to be known as the "Series 2011 Costs of Issuance Fund", which shall be held by the Trustee in trust. The moneys in the Series 2011 Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance with respect to the Series 2011 Bonds upon submission of a Written Request of the Agency stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Series 2011 Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Written Request of the Agency; in each case together with a statement or invoice for each amount requested thereunder. On the earlier of September 1, 2011, or the date of receipt by the Trustee of a Written Request of the Agency, all amounts (if any) remaining in the Series 2011 Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and be transferred to the Interest Account.

Notwithstanding anything in the Indenture to the contrary, amounts on deposit in the Series 2011 Costs of Issuance Fund shall be invested in Qualified Investments, as required by Section 13.06, and need not be invested in a Permitted Investment.

**Section 12.03. Series 2011 Account of the Redevelopment Fund.** There is hereby established the Hamilton Field Redevelopment Project Redevelopment Fund (the "Redevelopment Fund"), which is held by the Trustee in trust for the benefit of the Agency. There is hereby established within the Redevelopment Fund an account to be held by the Trustee and to be known as the "Series 2011 Account". On the Closing Date of the Series 2011 Bonds, \$13,100,000 of the amounts on deposit in the Series 2011 Account of the Redevelopment Fund shall be immediately disbursed to the City in order to repay the City for amounts previously loaned and advanced to the Agency for the purpose of aiding in financing redevelopment activities. The Trustee shall transfer such amounts to U.S. Bank National

Association, as depository (the "Depository") for the City under that certain Depository Agreement dated as of March 1, 2011 between the City and the Depository.

The remaining moneys on deposit in the Series 2011 Account of the Redevelopment Fund (\$1,463,041.40) shall be used in the manner provided by the Law solely for the purpose of aiding in financing redevelopment activities, as permitted by the Redevelopment Plan. The Trustee shall disburse the remaining amounts on deposit in the Series 2011 Account of the Redevelopment Fund upon receipt of a disbursement request of the Agency substantially in the form attached hereto as Exhibit B executed by the Executive Director or the Treasurer of the Agency. In no event shall the Trustee be responsible for the manner in which the Agency applies the moneys disbursed to it by the Trustee in accordance with any such disbursement request.

The Agency covenants that no funds on deposit in the Series 2011 Account of the Redevelopment Fund shall be applied for any purpose not authorized by the Law.

Notwithstanding anything in the Indenture to the contrary, amounts on deposit in the Series 2011 Account of the Redevelopment Fund shall be invested in Qualified Investments, as required by Section 13.06, and such amounts need not be invested in Permitted Investments.

Notwithstanding anything in the Indenture to the contrary, the Agency shall ensure that the City invest the amounts transferred to it from the Series 2011 Account of the Redevelopment Fund in Qualified Investments, as required by Section 13.06, and such amounts need not be invested in Permitted Investments.

**Section 12.04. Series 2011 Subaccount of the Reserve Account.** Pursuant to Section 4.03(c) of the Indenture and this Section 12.04, the Trustee shall establish, maintain and hold in trust, a separate subaccount within the Reserve Account designated as the "Series 2011 Subaccount". Amounts on deposit in the Series 2011 Subaccount shall be available to pay debt service only on the Series 2011 Bonds and any other Parity Debt hereafter issued that the Agency elects to be secured by the Series 2011 Subaccount. In the event that the Agency elects to secure additional Parity Debt with the Series 2011 Subaccount, the Agency shall establish additional sub-subaccounts within the Series 2011 Subaccount as needed. Amounts on deposit in the Series 2011 Subaccount are not available to pay debt service on the 2005 Bonds and are not pledged to the payment thereof.

## ARTICLE XIII

### TAX COVENANTS RELATING TO THE SERIES 2011 BONDS

**Section 13.01. No Arbitrage.** The Agency shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Series 2011 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series 2011 Bonds would have caused the Series 2011 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

**Section 13.02. Private Activity Bond Limitation.** The Agency shall assure that the proceeds of the Series 2011 Bonds are not so used as to cause the Series 2011 Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

**Section 13.03. Federal Guarantee Prohibition.** The Agency shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series 2011 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

**Section 13.04. Rebate Requirement.** The Agency shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Series 2011 Bonds.

**Section 13.05. Maintenance of Tax-Exemption.** The Agency shall take all actions necessary to assure the exclusion of interest on the Series 2011 Bonds from the gross income of the Owners of the Series 2011 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series 2011 Bonds.

#### **Section 13.06. Qualification of Series 2011 Bonds as Hedge Bonds.]**

(a) Qualified Investments. Beginning on the date of issuance of the Series 2011 Bonds, and at all times prior to the final maturity date of the Series 2011 Bonds, not less than 95% of the Net Proceeds of the Series 2011 Bonds will be invested in Qualified Investments (as defined below). For purposes of this Section 13.06, amounts derived from the disposition or redemption of Qualified Investments and held pending reinvestment or redemption of Series 2011 Bonds for a period of not more than 30 days will be treated as Qualified Investments.

(b) Recordkeeping and Monitoring of Net Proceeds.

(i) Information Regarding Qualified Investments. The Agency hereby covenants that it will record or cause to be recorded with respect to each Qualified Investment the following information:

- (A) purchase date,
- (B) purchase price,

- (C) information establishing the fair market value of such Qualified Investment,
- (D) face amount,
- (E) coupon rate,
- (F) periodicity of interest payments,
- (G) disposition price, and
- (H) disposition date.

(ii) Investment in Qualified Non-AMT Mutual Funds. The Agency covenants that, with respect to each investment of Net Proceeds of the Series 2011 Bonds in a Qualified Non-AMT Mutual Fund (as defined below), in addition to recording the information set forth in subsection (b)(i) above, it will retain a copy of each IRS information reporting form and account statement provided to it by such Qualified Non-AMT Mutual Fund. In the event any such reporting form or other document received by the Agency indicates that less than 97% of the income to the Agency derived from such Qualified Non-AMT Mutual Fund in any three-month period is derived from Non-AMT Bonds, the Agency will, within five business days after receipt of such notice, dispose of any investment in such Qualified Non-AMT Mutual Fund to the extent such investment is allocable to Net Proceeds of the Series 2011 Bonds.

(iii) Quarterly Monitoring of Qualified Investments. The Agency further covenants that it will monitor the investment of the Net Proceeds of the Series 2011 Bonds not less frequently than at the close of every three-month period during which any proceeds of the Series 2011 Bonds are invested in Qualified Investments.

(iv) Retention of Records. The Agency hereby covenants that it will retain the records referred to in subsection (b)(i) above, including each IRS information reporting form referred to in subsection (b)(i), with its books and records with respect to the Series 2011 Bonds until six years following the last date that any obligation comprising the Series 2011 Bonds is retired.

(c) Arbitrage Investment Restrictions. Proceeds of the Series 2011 Bonds and the amounts on deposit in the aforementioned funds and accounts may be invested as follows:

(i) Proceeds derived from the sale of the Series 2011 Bonds to be applied to pay Costs of Issuance that are not expended on the date of issuance of the Series 2011 Bonds and those Net Proceeds of the Series 2011 Bonds that are to be deposited into the Series 2011 Account of the Redevelopment Fund will be invested in Qualified Investments to the extent required by this Section 13.06 until such amounts are expended to pay Costs of Issuance or expended to pay costs of eligible projects.

(ii) Amounts in the 2011 Series A Costs of Issuance Fund that are not expended on the date of issuance of the Series 2011 Bonds will be invested in Qualified Investments until such amounts are expended or transferred to the Series 2011 Account of the Redevelopment Fund.

"Qualified Investments" shall mean (i) obligations the interest on which is excludable from gross income for federal income tax purposes under Section 103(a) of the Code and not treated as an item of tax preference under Section 57(a)(5)(C) of the Code ("Non-AMT Bonds"), and (ii) stock in a regulated investment company to the extent that at least 95% of the income of such regulated investment company is interest that is excludable from gross income under

Section 103 of the Code and not an item of tax preference under Section 57(a)(5)(C) of the Code (a "Qualified Non-AMT Mutual Fund"). A guaranteed investment contract or similar investment agreement (e.g., a forward supply contract, GIC, repo, etc.) does not constitute a Qualified Investment.

The Trustee shall not be responsible for monitoring the Agency's compliance with this Section 13.06.

**ARTICLE XV**  
**MISCELLANEOUS**

**Section 14.01. Security for Series 2011 Bonds.** The Series 2011 Bonds shall be Parity Debt within the meaning of such term in Section 1.02 of the Indenture and shall be secured in the manner and to the extent set forth in Article IV of the Indenture. As provided in Section 4.01 and Section 4.02 of the Indenture, the Series 2011 Bonds shall be secured on a parity with all other Bonds issued under this Indenture, including the Series 2005 Bonds, by a first pledge of and lien on all of the Tax Revenues in the Special Fund and all moneys in the Debt Service Fund and the accounts therein, including the Reserve Account.

Whenever in the Indenture there is a need to determine the aggregate principal amount of Series 2011 Bonds Outstanding, the principal amount of the Series 2011 Bonds shall be the Bond Obligations with respect thereto.

**Section 14.02. Continuing Disclosure.** The Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Agency to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any Participating Underwriter or any owner or beneficial owner of the Series 2011 Bonds may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Agency to comply with its obligations under this Section 14.02.

**Section 14.03. Benefits Limited to Parties.** Nothing in this First Supplement, expressed or implied, is intended to give to any person other than the Agency, the Trustee and the Owners of the Series 2011 Bonds, any right, remedy, claim under or by reason of this First Supplement. Any covenants, stipulations, promises or agreements in this First Supplement contained by and on behalf of the Agency shall be for the sole and exclusive benefit of the Trustee and the Owners of the Series 2011 Bonds.

**Section 14.04. Effect of this First Supplement.** Except as in this First Supplement expressly provided or except to the extent inconsistent with any provision of this First Supplement, the Series 2011 Bonds shall be deemed to be Bonds under and within the meaning thereof as set forth in Section 1.02 of the Indenture, and every term and condition contained in the other provisions of this Indenture shall apply to the Series 2011 Bonds with full force and effect, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this First Supplement.

**Section 14.05. Further Assurances.** The Agency will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Series 2011 Bonds and the rights and benefits provided in the Indenture.

**Section 14.06 Amendment to Section 5.20.**

Section 5.20 of the Indenture is hereby amended to read as follows:

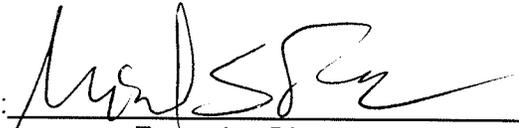
Section 5.20. **Covenant Relating to the 2005 Housing Bonds; Repayment of Loan.** The Agency agrees that, other than the Agency's Hamilton Field Redevelopment Project 2005 Tax Allocation Housing Bonds, Series A (the "2005 Housing Bonds"), or any debt issued to refund the 2005 Housing Bonds for the purpose of achieving annual debt service savings, until such time as the loan made to the Agency's Low and Moderate Income Housing Fund from the proceeds of the 2005 Bonds is repaid in full, the Agency shall not create a lien on the amounts required by law to be deposited in the Agency's Low and Moderate Income Housing Fund, whether from the Project Area or any other project area of the Agency, that is senior to or on a parity with the Agency's obligation to repay the loan made to the Agency's Low and Moderate Income Housing Fund from the proceeds of the 2005 Bonds. Further, the Agency agrees that it will use all amounts on deposit in its Low and Moderate Income Housing Fund derived from the Redevelopment Project to repay the loan made to the Agency's Low and Moderate Income Housing Fund from the proceeds of the 2005 Bonds prior to using any other amounts on deposit in the Low and Moderate Income Housing Fund, and it will use amounts on deposit in the Low and Moderate Income Housing Fund derived from the Downtown Redevelopment Project, prior to using amounts on deposit in the Low and Moderate Income Housing Fund derived from the Novato Redevelopment Project (as such terms are defined in Ordinance No. 1472 adopted by the City Council of the City on May 13, 2003). The Agency also agrees to repay such loan, in each Fiscal Year, in such amount as is necessary for the Agency to pay the debt service in full on the Bonds and to make the payments described in clauses (3) and (4) of the definition of Tax Revenues in Section 1.02, as amended.

**Section 14.07. Execution in Counterparts.** This First Supplement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

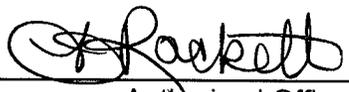
**Section 14.08. Governing Law.** This First Supplement shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO has caused this First Supplement to be signed in its name by its Executive Director, and U.S BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this First Supplement to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

**REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO**

By:   
Executive Director

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By:   
Authorized Officer

**EXHIBIT A**

**(FORM OF SERIES 2011 BOND)**

No. \_\_\_\_\_

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
COUNTY OF MARIN**

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO  
HAMILTON FIELD REDEVELOPMENT PROJECT  
TAX ALLOCATION BOND, SERIES 2011**

INTEREST RATE:      MATURITY DATE:      DATED DATE:      CUSIP:  
                                 September 1, \_\_\_\_\_      March 24, 2011      66988T

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM:      DOLLARS

The REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California (the "Agency"), for value received hereby promises to pay to the Registered Owner stated above, or registered assigns (the "Registered Owner"), on the Maturity Date stated above (subject to any right of prior redemption hereinafter provided for), the Principal Sum stated above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond, unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before the first Record Date, being August 15, 2011, in which event it shall bear interest from the Dated Date above; provided however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, until payment of such Principal Sum in full, at the Interest Rate per annum stated above, payable semiannually on each March 1 and September 1, commencing September 1, 2011 (each, an "Interest Payment Date"), calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal hereof and premium, if any, upon early redemption hereof are payable upon surrender of this Bond at the corporate trust office of U.S. BANK NATIONAL ASSOCIATION, in St. Paul, Minneapolis, as trustee (the "Trustee"), or at such other place designated by the Trustee (the "Principal Corporate Trust Office"). Interest hereon (including the final interest payment upon maturity or earlier redemption) is payable by check of the Trustee mailed by first class mail, postage prepaid, on the Interest Payment Date to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books maintained by the Trustee as of the Record Date for such Interest Payment Date; provided however, that payment

of interest may be by wire transfer to an account in the United States of America to any registered owner of Bonds in the aggregate principal amount of \$1,000,000 or more upon written instructions of any such registered owner filed with the Trustee for that purpose prior to the Record Date preceding the applicable Interest Payment Date.

This Bond is one of a duly authorized issue of bonds of the Agency designated as "Redevelopment Agency of the City of Novato Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2011" (the "Bonds"), of an aggregate principal amount of Seventeen Million Dollars (\$17,000,000), all of like tenor and date (except for such variation, if any, as may be required to designate varying series, numbers, maturities, interest rates, or redemption and other provisions) and all issued pursuant to the provisions of the Community Redevelopment Law, being Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code of the State of California (the "Law"), and pursuant to an Indenture of Trust, dated as of February 1, 2005, as amended by a First Amendment of Indenture of Trust dated as of September 1, 2007, as supplemented by a First Supplemental Indenture of Trust dated as of March 1, 2011, each between the Agency and the Trustee (collectively, the "Indenture"), providing for the issuance of the Bonds.

The Bonds are being issued on a parity with the Agency's Hamilton Field Redevelopment Project Tax Allocation Bonds, Series 2005 (the "2005 Bonds"), issued in the original principal amount of \$24,835,000. The Agency may issue additional bonds or other obligations on a parity with the Bonds and the 2005 Bonds, but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the Agency) and all indentures supplemental thereto and to the Law for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Tax Revenues (as that term is defined in the Indenture), and the rights thereunder of the registered owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Agency thereunder, to all of the provisions of which Indenture the Registered Owner of this Bond, by acceptance hereof, assents and agrees. Capitalized terms not otherwise defined herein shall have the meanings given them in the Indenture.

The Bonds have been issued by the Agency for the purpose of providing funds to refinance certain redevelopment activities and to pay certain expenses of the Agency in issuing the Bonds.

The Bonds are special obligations of the Agency and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Tax Revenues derived by the Agency from the Hamilton Field Redevelopment Project Area.

There has been created and will be maintained by the Agency, the Special Fund (as defined in the Indenture) into which Tax Revenues shall be deposited and from which the Agency shall transfer amounts to the Trustee for payment, when due, of the principal of and the interest and redemption premium, if any, on the Bonds and any additional Parity Debt as defined in the Indenture. As and to the extent set forth in the Indenture, all such Tax Revenues and the moneys in the Special Fund (as such terms are defined in the Indenture) are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture and the Law, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds and any additional Parity Debt. In addition, the Bonds shall be additionally secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys

in the Debt Service Fund, the Interest Account, the Principal Account, the Reserve Account and the Redemption Account (as such terms are defined in the Indenture). Except for the Tax Revenues and such moneys, no funds or properties of the Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Series 2011 Bonds maturing on or before September 1, 2021 are not subject to redemption at the option of the Agency prior to their stated maturities. The Series 2011 Bonds maturing on and after September 1, 2022 are subject to redemption prior to their stated maturities, at the option of the Agency on any date on or after September 1, 2021, as a whole or in part, by such maturities as shall be determined by the Agency, and by lot within a maturity, from any available source of funds, at the principal amount of the Series 2011 Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption without premium

The Bonds maturing on September 1, 2032, and September 1, 2040 (the "Term Bonds") shall also be subject to mandatory redemption in whole, or in part, by lot, on September 1 in each year, commencing September 1, 2027 and September 1, 2035, respectively, as set forth below, from sinking fund payments made by the Agency to the Principal Account at a redemption price equal to the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on September 1 in the respective years as set forth in the following table; provided however, that (x) in lieu of redemption thereof the Term Bonds may be purchased by the Agency pursuant to the Indenture, and (y) if some but not all of the Term Bonds have been redeemed pursuant to optional redemption, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments in integral multiples of \$5,000 (notice of which determination shall be given by the Agency to the Trustee).

Term Bonds maturing September 1, 2032

<u>September 1</u>	<u>Principal Amount</u>
2027	\$40,000
2028	40,000
2029	35,000
2030	35,000
2031	35,000
2032 (maturity)	35,000

Term Bonds maturing September 1, 2040

<u>September 1</u>	<u>Principal Amount</u>
2035	\$2,110,000
2036	2,255,000
2037	2,405,000
2038	2,015,000
2039	2,150,000
2040 (maturity)	2,225,000

As provided in the Indenture, notice of redemption shall be given by first class mail no less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective registered owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books maintained by the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

The Agency shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The Agency and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner and to the same recipients as the original notice of redemption was sent.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bond during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bond selected for redemption.

The Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Agency and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Agency and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided herein of any Bond without the express written consent of the registered owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any

such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Agency or the Trustee for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

This Bond is not a debt, liability or obligation of the City of Novato, the State of California, or any of its political subdivisions, and neither said City, said State, nor any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than those pledged by the Agency. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time and manner as required by the Law and the laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Agency, does not exceed any limit prescribed by the Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Redevelopment Agency of the City of Novato has caused this Bond to be executed in its name and on its behalf with the facsimile signatures of its Executive Director and its Secretary, all as of the Dated Date set forth above.

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By: \_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Secretary

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Authorized Signatory

**ABBREVIATIONS**

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or Tax Regulations:

TEN COM --	as tenants in common	UNIF GIFT MIN ACT _____	Custodian _____
TEN ENT --	as tenants by the entireties		(Cust.) (Minor)
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts to Minors Act _____	(State)
COMM PROP --	as community property		

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED  
THOUGH NOT IN THE LIST ABOVE

**(FORM OF ASSIGNMENT)**

For value received the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)  
the within-registered Bond and hereby irrevocably constitute(s) and appoints(s)

\_\_\_\_\_ attorney,  
to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signatures Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor.

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

**EXHIBIT B**

**FORM OF SERIES 2011 ACCOUNT OF THE REDEVELOPMENT FUND DISBURSEMENT  
REQUEST**

**DISBURSEMENT REQUEST NO.:** \_\_\_\_\_

U.S. Bank National Association  
One California Street, Suite 2550  
San Francisco, California 94111  
Attention: Corporate Trust Services

Re: \$17,000,000 Redevelopment Agency of the City of Novato Hamilton Field  
Redevelopment Project Tax Allocation Bonds, Series 2011

Ladies and Gentlemen:

In accordance with the terms of an Indenture of Trust, by and between you and the undersigned, dated as of February 1, 2005, as amended by a First Amendment to Indenture of Trust dated as of September 1, 2007 and as amended and supplemented by a First Supplemental Indenture of Trust dated as of March 1, 2011 (collectively, the "Indenture"), you are hereby authorized and requested to make immediate disbursement of funds held by you in the Series 2011 Account of the Redevelopment Fund for costs of refinancing redevelopment activities pursuant to Section 12.03 of the Indenture.

You are hereby requested to pay to the person(s), corporation(s) or other entity(ies) designated on Schedule A attached hereto as Payee(s), the sum set forth on said Schedule, in payment of all or a portion of the costs of the redevelopment activities described on said Schedule.

Dated: \_\_\_\_\_, 20\_\_

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By: \_\_\_\_\_  
[Executive Director/Treasurer]

**SCHEDULE A**  
**TO**  
**REDEVELOPMENT FUND DISBURSEMENT REQUEST**

Payee

Amount

Purposes

#R-30

Return to:  
City Clerk  
900 Sherman Ave  
City of Novato, CA  
Novato, CA 94945

91-039361		Total	.00
Recorded			
Official Records			
County of			
MARIN			
JAMES DAL BON			
Recorder			
10:30am 27-Jun-91			AL 123

**OWNER PARTICIPATION AGREEMENT**

By and Between

**REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO**

and

**HNH ASSOCIATES**

**Vintage Oaks at Novato  
Regional Retail Center**

**Novato Redevelopment Project  
City of Novato, California**



Return to:  
City Clerk  
900 Sherman Ave  
City of Novato, CA  
Novato, CA 94945

91-039361		Total	.00
Recorded			
Official Records			
County of			
MARIN			
JAMES DAL BON			
Recorder			
10:30am 27-Jun-91			AL 123

**OWNER PARTICIPATION AGREEMENT**

By and Between

**REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO**

and

**HNH ASSOCIATES**

**Vintage Oaks at Novato  
Regional Retail Center**

Novato Redevelopment Project  
City of Novato, California



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## OWNER PARTICIPATION AGREEMENT

This OWNER PARTICIPATION AGREEMENT (hereinafter referred to as the "Agreement") entered into as of the 17th day of January, 1991, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF NOVATO (the "Agency") and HNH ASSOCIATES, a California limited partnership in which EWH 1979 Development Company, L.P., a California limited partnership, is the sole general partner (the "Participant"). The Agency and the Participant agree as follows:

I.     [§100]            SUBJECT OF AGREEMENT

A.     [§101]            Purpose of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan (the "Redevelopment Plan") for the Novato Redevelopment Project (the "Project") by providing for the development of the hereinafter defined "Site". The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Novato (the "City") and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

This Agreement provides for the method to finance certain off-site public improvements and other payments required for the development of the Site. It provides a mechanism for the Agency to participate in a portion of the costs of certain of the off-site improvements. Accordingly, this Agreement constitutes a contract, obligation and evidence of indebtedness within the meaning of Section 53511 of the California Government Code.

B.     [§102]            The Redevelopment Plan

The Redevelopment Plan has been approved and adopted by the City Council of the City by Ordinance No. 1040 on November 29, 1983, which Ordinance and Redevelopment Plan, copies of which are on file with the City Clerk, are incorporated herein by this reference and made a part hereof as though fully set forth herein.

No amendment to the Redevelopment Plan which affects the development or proposed use of the Site contemplated by this Agreement or the rights and obligations of Participant hereunder or with respect to the Site shall be effective unless consented to in writing by Agency and Participant, which consent may be withheld by Participant in Participant's sole and absolute discretion.

C. [§103] The Project Area

The "Project Area" is located in the City and the exact boundaries thereof are specifically described in the Redevelopment Plan, and specifically described in an instrument recorded December 5, 1983, in Book 83-60616, Official Records of the County of Marin, which instrument is incorporated herein by reference and made a part hereof.

D. [§104] The Site

The "Site" is more specifically described on the "Site Map" (which Site Map is incorporated herein and attached to this Agreement as Attachment No. 1). The Site is comprised of real property owned by the Participant.

The Site shall be developed as a regional retail center (the "Retail Complex") as provided in the "Scope of Development", incorporated herein and attached to this Agreement as Attachment No. 2, in accordance with and subject to the terms, conditions, and provisions of this Agreement. Development of the Site shall include off-site improvements, wetlands dedications and mitigations, and on-site improvements including streets and landscaping and other requirements as set forth in the Precise Development Plan referred to in Section 203 hereof.

E. [§105] Previous OPA

The Participant and Agency previously entered into an Owner Participation Agreement dated November 15, 1985 (the "Previous OPA"), which provided, among other things, for the development by Participant on the Site of a regional shopping center and for certain financial assistance to be provided to the Participant by the Agency related to construction of certain off-site improvements in the vicinity of the Site. The Participant and Agency have determined that the development of a regional shopping center on the Site of the type originally proposed is not feasible, and, as a result, they have terminated the Previous OPA. The Participant and Agency are entering into this Agreement as the "alternative agreement" referred to in Section 508 of the Previous OPA.

F. [§106] Proposed Uses

Since terminating the Previous OPA, the Participant and Agency have discussed various alternative uses for the Site, and it has been determined by the parties that the Site is best suited for development as a regional retail center, of a smaller scale than the regional shopping center provided for in the Previous OPA, which will combine a variety of retail/commercial uses, as well as certain public amenities, all as provided in the Scope of Development.

G. [§107] Funds Previously Advanced

Pursuant to the Previous OPA, the Participant advanced approximately One Hundred Thousand Dollars (\$100,000.00) to the City and Agency for certain agreed upon purposes. Neither the City nor Agency have any obligation to repay such sum advanced by the Participant. In addition, the Participant advanced the sum of Fifty Thousand Dollars (\$50,000.00) to the Agency to be used by the Agency to pay a portion of the Agency's administrative costs, feasibility studies, and the Agency's attorney's fees and other costs and expenses related to the preparation and negotiation of the Previous OPA ("Previous OPA Funds"). Pursuant to the Reimbursement Agreement dated May 16, 1984, between the Agency and the general partner of the Participant ("First OPA Funds Agreement"), the Agency has repaid the Previous OPA Funds advanced by the Participant. The Participant has also advanced to the City and/or Agency and/or the California Department of Transportation ("Cal Trans") funds required by the City, Agency and/or Cal Trans for appropriate engineering services, plans and related costs in order to complete the preliminary design for all of the off-site improvements ("Off-Site Improvements") described in Section II.D. of the Scope of Development ("Off-Site Engineering Funds"). The Participant has also advanced the sum of Twenty Thousand Dollars (\$20,000.00) ("Feasibility Study Funds") to the City and Agency to pay all of the City's and Agency's costs in conducting a feasibility study to verify that development of the Site as the regional shopping center described in the Previous OPA is not feasible. This feasibility study, performed by Keyser Marston Associates, Inc., resulted in a report dated February 1988, which concludes that development of the Site as a regional shopping center as described in the Previous OPA is not feasible. Finally, the Participant has advanced, for costs incurred through December 31, 1990, the sum of One Hundred Ninety-One Thousand Seven Hundred Dollars (\$191,700.00) pursuant to the Reimbursement Agreement dated December 19, 1989, as amended ("Second OPA Funds Agreement") to pay the Agency's consultant's and attorneys' fees and costs related to previous negotiation of this Agreement ("Current OPA Funds"). The Off-Site Engineering Funds, Feasibility Study Funds and Current OPA Funds shall, to the extent legally permissible, be repaid to the Participant out of the proceeds of the Financing District Bonds (as defined in and issued in the manner set forth in Section VIII of the "Method of Financing", incorporated herein and attached to this Agreement as Attachment No. 3).

H. [§108] Funds to be Advanced

The Participant has agreed, pursuant to the Second OPA Funds Agreement, to advance, in addition to the amounts set forth in Section 107 hereof, an additional Eighty Three Thousand Three Hundred Dollars (\$83,300.00) to the City and Agency to be used by the City and Agency to pay all or a portion of the City's and Agency's consultant's and attorneys' fees and other costs and expenses related to the preparation, negotiation and administration of this Agreement, and the establishment of the Financing District. The Participant shall advance such further funds as the Agency and Participant mutually agree are reasonable administrative

costs of the Agency in the administration of this Agreement. The Participant has further agreed that in the event any third party litigation is filed prior to January 1, 1994, challenging this Agreement or any provision, action or approval necessary to carry out this Agreement (including, but not limited to, any aspect of private or public financing, bond issuance, the Precise Development Plan [as herein defined] or any amendment thereto, any subsequent planning or use permit approval, any City lease, or other action of the City or Agency in furtherance of this Agreement, or any environmental determination in connection therewith), the Participant shall advance to the Agency and City, as necessary, reasonable attorneys' fees and court costs and other costs in the defense and prosecution of such litigation. Such sums, as and when advanced by the Participant to Agency, shall be included within the definition of "Current OPA Funds." Neither the Agency nor City shall be under any obligation to repay any such sums to be advanced by the Participant, except that such sums shall, to the extent legally permissible, be repaid as Current OPA Funds in the manner set forth in Section 107 hereof.

The Agency shall furnish the Participant with copies of its annual budget, as approved, and as amended from time to time.

I. [§109] Objective of Agreement

The objective of this Agreement is to effectuate the parties' present intention with respect to the following: (a) provide for development of the Site as a regional retail center, (b) provide for development of the Site within the framework of and subject to the terms and conditions of a Precise Development Plan (as defined in Section 203 hereof) approved by the City, (c) establish a time schedule for actions to be taken by the Participant and Agency with respect to the development of the Site and the construction of the Off-Site Improvements (as defined in Sections 204 and 206 hereof) in accordance with the rights and obligations of the parties as set forth herein, and (d) provide a method whereby Agency will make available certain financial assistance to the Participant in connection with the design and construction of certain specified Off-Site Improvements which upon completion by Participant and acceptance by City will become public improvements.

J. [§110] Parties to the Agreement

1. [§111] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California (Health and Safety Code, Section 33000 et seq.).

The principal office of the Agency is located at 900 Sherman Avenue, Novato, California 94945.

"Agency", as used in this Agreement, includes the Redevelopment Agency of the City of Novato, and any public entity assignee of or successor to its rights, powers and responsibilities.

2.     [§112]           The Participant

The Participant is HNH Associates, a California limited partnership in which EWH 1979 Development Company, L.P., a California limited partnership, ("EWH") is the sole general partner. Ernest W. Hahn, Inc., a California corporation doing business as "The Hahn Company," ("Hahn") is the sole general partner of EWH. The principal office of the Participant for purposes of this Agreement is c/o The Hahn Company, 4350 La Jolla Village Drive, Suite 700, San Diego, California 92122-1233, Attention: Legal Department-Vintage Oaks at Novato.

The Participant, as the owner of real property within the Project Area, qualifies as an "owner participant" as that term is used in the Redevelopment Plan and the California Community Redevelopment Law.

The qualifications and identity of the Participant and its general partner are of particular concern to the City and the Agency, and it is because of such qualifications and identity that the Agency has entered into this Agreement with the Participant. No voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement except as expressly permitted herein. Except as otherwise expressly permitted in Sections 219 and 221 hereof, neither the Participant nor Hahn shall assign all or any part of this Agreement without the prior written approval of the Agency, which approval, following the issuance of Financing District Bonds (as defined in and issued in the manner set forth in Section VIII of the Method of Financing [Attachment No. 3]) or, if the Off-Site Improvements are privately financed, following the completion of all the Off-Site Improvements as certified by the Agency, will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Participant may assign its interest in this Agreement to a wholly owned subsidiary or to an entity in which Hahn is the majority and controlling owner thereof upon providing the Agency, to the reasonable satisfaction of the Agency, with (a) an assignment and assumption agreement whereby such assignee of Participant expressly assumes the obligations of Participant under this Agreement, and (b) a guarantee by Hahn of the performance of such assignee of Participant.

K.     [§113]           Consideration for Agreement

In adopting the Redevelopment Plan for the Project Area and obtaining the cooperation of the County of Marin (the "County") and other taxing agencies therefor, the Agency entered into an agreement with the County, for itself and other taxing agencies, limiting the property tax allocations payable to the Agency from the Project Area, the effect of which is to severely limit the financial benefits to the Agency from the development of the Site. Agency agrees that such agreement shall

not be modified without the written approval of Participant if the result of such modification would be to (a) further reduce the amount of property tax allocations payable to the Agency from the Project Area, or (b) change the term specified in said agreement during which such allocations are payable to the Agency. However, the City and the Agency recognize that the implementation of this Agreement will further the goals and objectives of the Redevelopment Plan and City's General Plan by strengthening the City's commercial uses and providing a catalyst for additional private investment in the Project Area and increased public use of and access to additional commercial facilities. The financial contribution by the Participant toward the costs of the Community Facilities and Future Community Facilities (as defined in Section 206 hereof) and the Off-Site Improvements (as described in Section II.D. of the Scope of Development [Attachment No. 2]) is also a material consideration for the Agency to enter into, and the City to consent to, this Agreement.

L. [§114] Consent and Agreement of City

As an inducement to the Agency to enter into this Agreement, and in furtherance of aid and cooperation to the Agency pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code, Section 33000 et seq.), the City has consented to this Agreement and agreed to undertake certain actions and assume certain obligations, as set forth in the "Consent and Agreement of the City of Novato," attached hereto and incorporated herein by reference, which document shall be executed by City concurrently with Agency's execution of this Agreement.

M. [§115] Relationship of Parties

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by Agency and Participant and that Participant is an independent contractor and not the agent of City or Agency.

Agency and Participant hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Agency and Participant joint venturers or partners.

II. [§200] DEVELOPMENT OF THE SITE

A. [§201] Development of the Site

1. [§202] Scope of Development

Subject to the terms and conditions of this Agreement, the Site shall be developed by the Participant as provided in the Scope of Development (Attachment No. 2).

2. [§203] Precise Development Plan

The Site shall also be developed subject to and in accordance with the Precise Development Plan, including the conditions of approval (the "Precise Development Plan") for the Project approved by the City on December 11, 1990, by Resolution No. 128-90, which Precise Development Plan is identified in Attachment No. 6 and incorporated herein by reference.

3. [§204] Off-Site Improvements

A condition precedent to the development of the Site by the Participant is (a) the formation of a Financing District and the issuance of tax-exempt Financing District Bonds (as defined and set forth in Section VIII of the Method of Financing [Attachment No. 3]), or (b) the private financing by the Participant to provide the Off-Site Improvements. Participant shall be responsible for developing the Off-Site Improvements described in Section II.D. of the Scope of Development (Attachment No. 2). The costs for the Off-Site Improvements shall be paid by the Participant, such costs to be financed through Financing District Bonds, to the extent legally eligible, as set forth in Section VIII of the Method of Financing (Attachment No. 3) or borne by the Participant through private financing. The costs of the Off-Site Improvements to be paid by the Participant shall include costs of all engineering services, preparation of plans, land for the Off-Site Improvements, design, final working drawings, and construction of the Off-Site Improvements. Said design and final working drawings of the Off-Site Improvements shall be subject to the approval of the Agency and City consistent with the terms and requirements of this Agreement and the Precise Development Plan.

4. [§205] Procedure for Development

Within the time specified in the "Schedule of Performance," incorporated herein and attached to this Agreement as Attachment No. 4, and subject to applicable procedures (including requirements governing a Financing District), the Participant shall (i) obtain bids for and commence and complete construction of the Off-Site Improvements; (ii) complete grading of the Site and, subject to Section 207 below, bring necessary utilities to the boundaries of the Site to allow for development and construction of the Site; and (iii) dedicate the Off-Site Improvements constructed by the Participant to the City and any other applicable governmental authority upon Satisfactory Completion (as defined in Section 224) of the Off-Site Improvements.

5. [§206] Community Facilities

As referred to in Section II of the Scope of Development (Attachment No. 2), the Participant shall (a) provide at its sole cost certain public amenities on the Site; (b) pay Three Million Dollars (\$3,000,000) to the Agency toward the cost of off-site

community facilities (the "Community Facilities"), and (c) pay Three Million Dollars (\$3,000,000) to the City toward the cost of future off-site community facilities, which may, at the sole election of the City, constitute part of the Community Facilities or constitute other recreational lands or public facilities of a community benefit (the "Future Community Facilities").

Upon completion of construction of the Community Facilities, the Agency will lease the Community Facilities to the City for its use and operation pursuant to a lease (the "Community Facilities Lease") in form reasonably acceptable to the Agency and complying with the provisions set forth in Attachment No. 5 hereto and incorporated herein by reference.

6. [§207] Utilities

The Agency hereby agrees to cooperate with the Participant, and shall use its reasonable efforts to cause the City to cooperate with the Participant, in obtaining an agreement from the public utility companies providing utilities to the Site whereby such public utility companies would pay for, or share in the cost of, placing utility lines underground up to the boundaries of the Site. The failure to obtain such an agreement shall not affect the Participant's obligations under this Agreement.

7. [§208] Cost of Development

Subject to Agency's obligations under the Method of Financing (Attachment No. 3) to participate in the costs of certain of the Off-Site Improvements, the cost of developing the Site and constructing all the improvements thereon shall be borne by Participant or the Major Retail Anchor Stores (as defined in Section 210 hereof) and/or other tenants of the Project, except for work expressly set forth in this Agreement to be performed or paid for by the Agency or others.

8. [§209] Submittal, Review and Approval of Construction Drawings and Related Documents

The development of the Site including the Off-Site Improvements shall be undertaken in accordance with the Precise Development Plan and preliminary and final construction and landscaping plans therefor approved by the City pursuant to City's plan review processes. Participant shall prepare and submit such plans, construction drawings and related documents, and in such form and detail, as required by City's plan review processes and the Precise Development Plan and within the times set forth in the Schedule of Performance (Attachment No. 4). The Participant shall have the appeal rights granted applicants under City's plan review processes.

In implementation of and pursuant to previous approvals issued for the development of the Site, including but not limited to the Previous OPA and other subsequent approvals issued, the City has approved and issued permits for and the

Participant has proceeded with preliminary filling and grading of, and installation of wick drains on, a portion of the Site.

If any revisions or corrections of plans approved by the Agency and/or City, including but not limited to the Precise Development Plan, shall be required by any governmental official, agency, department or bureau having jurisdiction, or by any of the Major Retail Anchor Stores that will be constructing and/or operating stores in the Retail Complex (whether as a fee owner or as a tenant), or by any lending institution involved in financing all or any portion of the Retail Complex, the Participant, Agency and City shall cooperate in reasonable efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative; provided that the foregoing shall not be construed as a limitation on the discretion of the Agency or City or officials thereof with respect to review and approval of plans for development of the Site.

Agency recognizes and agrees that the Major Retail Anchor Stores, or the Participant on behalf of the Major Retail Anchor Stores, shall have the right to submit any drawings and related documents concerning the improvements of such Major Retail Anchor Stores, which are required to be submitted to the City pursuant to this Section 209 (or any other provision of this Agreement), and such documents and related drawings may be submitted, subject to the applicable requirements of City's plan review processes, by such Major Retail Anchor Stores or by the Participant either together with or separately from any such submittals concerning the improvements to be developed and constructed by the Participant.

9. [§210] Certification of Major Retail Anchor Store Commitments

Within the time established therefor in the Schedule of Performance (Attachment No. 4), the Participant shall submit to the Agency a certification, signed by a responsible officer of the general partner of the Participant, certifying that: (1) the Participant has obtained executed business letters from not less than three major retail stores (the "Major Retail Anchor Stores"), in the usual form relied on by the Participant, to develop, construct, operate and maintain Major Retail Anchor Stores in the Retail Complex in the locations shown on the Precise Development Plan consistent with the terms of this Agreement; (2) to Participant's knowledge, each of said Major Retail Anchor Stores is committed to the Retail Complex to be developed on the Site; and (3) the Participant will expeditiously negotiate to conclude the REA and/or, at the sole election of the Participant, the CC&R's (defined in Section 601 hereof) and other final documents with such Major Retail Anchor Stores consistent with the provisions of this Agreement.

10. [§211] Schedule of Performance

Subject to the terms and conditions of this Agreement, the Participant shall promptly begin and thereafter diligently prosecute to completion the construction of

all of the improvements on the Site and the development thereof, in phases, as provided in the Scope of Development (Attachment No. 2), within the times specified in the Schedule of Performance (Attachment No. 4). Any extension of time for performance agreed upon by both parties, or any delay in performance by one party which is caused by delay or failure to act of the other party, shall effect an extension of all subsequent dates of the Schedule of Performance by the number of days of each such agreed upon extension and/or caused delay. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Participant and the Agency.

The Agency agrees that upon receipt of written request(s) from the Participant, it will grant reasonable extensions for the periods requested by the Participant of the dates specified in the Schedule of Performance for the various actions required of Participant if the need for such extensions is either due to (a) Participant's inability to secure adequate financing on reasonable terms, (b) Participant's inability to secure business letters from the Major Retail Anchor Stores, (c) other delays caused by third parties (such as lenders or Major Retail Anchor Stores), or (d) delays caused by the physical condition of the Site such as but not limited to soil conditions, land settlement and/or site compaction conditions; provided, however, that the total of such extension(s) to which Participant is entitled hereunder shall not exceed a combined total of twelve (12) months; and provided, further, that the other provisions of this Agreement, including but not limited to the timing and calculation of Agency payments under the Method of Financing (Attachment No. 3), and Promissory Note and Agreement (Exhibit B to Attachment No. 3) shall not be modified as a result of any such extension. The Participant expressly acknowledges that the amount of the Agency's payments under the Method of Financing (Attachment No. 3), and Promissory Note and Agreement (Exhibit B to Attachment No. 3) is directly dependent upon the generation of specified levels of both property taxes and City sales taxes from the Site as projected in the Payment Schedule (attached as Exhibit A to Attachment No.3 and as Schedule A of Exhibit B to Attachment No. 3), and that the failure or inability of the Participant to commence and complete development of the Site for whatever reason in time to generate such specified levels of property taxes and City sales taxes, irrespective of the times for performance set forth in this Agreement, may adversely impact the amount of the payments due to the Participant from the Agency as set forth in the Method of Financing (Attachment No.3) and the Promissory Note and Agreement (Exhibit B to Attachment No. 3).

During the period of construction, and not less frequently than once each calendar quarter, the Participant shall submit to the Agency a written report of the progress of the construction. The report shall be in such form and detail as may be reasonably required by the Agency, and shall include a reasonable number of construction photographs (if any) taken since the last report by the Participant.

11. [§212] Indemnification During Construction;  
Bodily Injury, Property Damage and  
Workers' Compensation Insurance

During the periods of construction on the Site and until such time as the Agency has issued a Certificate of Completion with respect to the construction of all of the improvements thereon, the Participant agrees to and shall indemnify and hold the Agency and the City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Site and which shall be caused by any acts done thereon or any errors or omissions of the Participant or its agents, servants, employees, or contractors. The Participant shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Agency or the City, or their respective agents, servants, employees, or contractors. The Agency and the City shall not be responsible for any acts, errors, or omissions of any person or entity except the Agency and the City and their respective agents, servants, employees, or contractors.

Prior to commencing any work on the Site, the Participant shall furnish, or cause to be furnished, to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$2,000,000 combined single limit coverage with respect to bodily injury or death to any one or more persons and with respect to damage to property, naming the Agency and the City and their respective officers, agents and employees, as additional insureds. The Participant shall also furnish or cause to be furnished to the Agency evidence reasonably satisfactory to the Agency that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by applicable laws. The obligations set forth in this Section 212 shall remain in effect until the Agency has issued a Certificate of Completion with respect to the construction of all of the improvements to be developed by Participant on the Site, as provided in the Scope of Development (Attachment No. 2).

The requirements of this Section 212 shall be in addition to, and not in lieu of, indemnification and insurance requirements imposed under any governmental approval or permit, including those imposed by the City in and in furtherance of the Precise Development Plan, or imposed by any financing mechanism participated in by the Participant.

12. [§213] City and Other Governmental Agency  
Permits

Before commencement of construction or development of any buildings, structures or other work or improvement upon the Site, the Participant shall secure,

or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work thereon. The Agency and City shall cooperate with the Participant, and use their reasonable efforts to assist the Participant, to enable the Participant to obtain any and all permits, governmental entitlements or agreements from public agencies or private entities or persons, as the Participant and Agency deem appropriate in order to carry out the Participant's proposed development of the Site. Subject to the provisions set forth below in this Section 213, the costs of securing such permits shall be paid by the Participant except as otherwise provided for in the Method of Financing (Attachment No. 3).

In the event any proposed change in the plans for the development of the Site would require additional or supplementary environmental impact reports or analysis, the Agency shall, at the Participant's expense, take such steps as shall be necessary to prepare the same and to cause it to be considered and certified as required by the California Environmental Quality Act and all applicable state regulations and local ordinances and regulations enacted pursuant thereto.

In consideration for the undertakings of the Participant on behalf of the Agency and City pursuant to this Agreement, including the advances made to the City and Agency under the terms of this Agreement, the City agrees that (except as otherwise mandated by State or Federal requirements) it will not increase its existing schedule of fees or adopt ordinances, regulations or other requirements which would result in the Participant having to pay fees or other processing costs in connection with the development of the Site or the Off-Site Improvements that are discriminatory (not based on a full cost recovery system) and are not of general application to other commercial properties in the City. The foregoing limitations shall not apply to the financing contemplated hereunder from the proceeds of Financing District Bonds, nor shall they apply to the establishment by the City of a benefit assessment district or community facilities district to provide for lighting, landscaping and maintenance of the Off-Site Improvements in whole or in part.

13.     [§214]           Rights of Access

For the purpose of assuring compliance with this Agreement, representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the improvements; provided that such representatives shall first have come to the Participant's construction office located thereon, have identified themselves, are accompanied by a representative of the Participant while on the Site and shall follow such reasonable safety precautions as required by the Participant's representatives. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. The Agency and the City shall indemnify and defend Participant and its partners, officers, directors, agents and/or

employees and hold them harmless from any claim, loss, damage or injury caused or liability, costs or expenses (including reasonable attorneys' fees and court costs) arising out of the negligence or willful misconduct of the Agency or City or their representatives in the exercise of this right to access.

14. [§215] Local, State and Federal Laws

The Participant shall carry out the construction of all of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards. The Participant understands and agrees that all work on public improvements and facilities, whether or not paid for with public funds, will be subject to prevailing wage requirements.

15. [§216] Antidiscrimination During Construction

The Participant, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Participant shall not discriminate against any employer or applicant for employment because of race, color, creed, religion, sex, marital status, age, handicap, ancestry or national origin.

B. [§217] Responsibilities of the Parties

The responsibilities of the Agency and the Participant for work to be performed pursuant to this Agreement are further set forth in the Scope of Development (Attachment No. 2) and the Method of Financing (Attachment No. 3).

Subject to obtaining adequate financing therefor and the satisfaction of other conditions of this Agreement, the Participant will cause the Off-Site Improvements to be developed in the manner set forth in the Scope of Development (Attachment No. 2) and within the time set forth in the Schedule of Performance (Attachment No. 4). Such improvements shall be financed in the manner set forth in the Method of Financing (Attachment No. 3).

The Participant shall commence substantial construction (as defined below) of its improvements on the Site in accordance with the Schedule of Performance (Attachment No. 4).

"Substantial construction", as used in this Section 217, shall mean commencement of the construction of Phase 1 (as described in the Scope of Development [Attachment No. 2]) of the Retail Complex improvements (consisting of not less than the Site parking and retail store shells) for which building permits have been issued; provided, however, construction shall commence on, and building permits shall be issued for, those Major Retail Anchor Stores which are to open for business with the Phase 1 (as described in the Scope of Development [Attachment No. 2]) opening of the Retail Complex not later than eight (8) months

after Participant has commenced construction of its Phase 1 Retail Complex improvements; and provided further, however, that a default by a Major Retail Anchor Store as to its parcel, after a transfer to it permitted by Section 219, shall not be deemed a default by the Participant if the Participant is pursuing its remedies for such default as required by Section 219.

C. [§218] Taxes, Assessments, Encumbrances and Liens

The Participant shall pay when due all real estate taxes and, in the manner set forth in Section VIII of the Method of Financing, all special taxes or special assessments on the Site. Nothing herein contained shall be deemed to prohibit the Participant from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Participant in respect thereto; provided, however, the Participant shall not contest the validity or enforceability of the Financing District proceedings, bonds, special taxes or assessments levied pursuant thereto. The Agency agrees that upon request of the Participant, it shall cause, to the extent legally permissible, the necessary action to be taken to allocate or reallocate to the remainder of the Site the lien of the Financing District Bonds from the portions of the Site owned by or leased to the Major Retail Anchor Stores, as provided in Section VIII of the Method of Financing.

D. [§219] Limitations on Transfer of Site or of Improvements to be Constructed Thereon; Limitations on Assignment of Agreement

The Participant shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights herein; nor sell, transfer, convey, assign or lease the whole or any part of the Site or of the improvements to be constructed thereon without the prior written approval of the Agency. This prohibition shall not apply, after issuance of the Financing District Bonds as provided for in Section VIII of the Method of Financing or, if the Off-Site Improvements are privately financed, following the completion of all the Off-Site Improvements as certified by the Agency, to (a) conveyances of portions of the Site (but not the entire Site) so long as the transferee of each such portion agrees to be bound by the terms of this Agreement and assumes the obligations of this Agreement with respect to the portion of the Site conveyed to such transferee, and so long as Participant remains fully responsible for performance of the obligations under this Agreement until the issuance of the Certificate of Completion as to such conveyed portions of the Site, (b) a conveyance of the Site (or any portion thereof) subsequent to the issuance of the Certificate of Completion with respect to the construction of the improvements thereon, or a portion thereof, nor (c) a disposition of the Site (or portion thereof) at foreclosure (or a conveyance thereof in lieu of a foreclosure) pursuant to a foreclosure by a lender making loans under Section 221 of this Agreement or to any disposition subsequent to such foreclosure or conveyance in lieu thereof. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site. Nothing

in this Section 219 prohibits the Participant from entering into ground leases or leasing space for occupancy in the Retail Complex, or prohibits the Participant from selling, transferring, conveying or leasing a portion or portions of the Site to the Major Retail Anchor Stores or any other entity of the type which generally acquires an interest in a retail center for the purposes of erecting, constructing, maintaining and operating (or causing to be erected, constructed, maintained and operated) retail store improvements thereon. The Major Retail Anchor Stores and such other retail entities may hereinbefore and hereinafter be collectively referred to as the "Retail Stores." At the time of such transfer to a Retail Store, the transferee must have agreed (or have taken title subject to the obligation to do so) either in the instrument conveying title, or by separate recorded instrument, to erect and construct (or to cause the erection or construction of) such Retail Store improvements upon the portion of the Site so conveyed in accordance with the Scope of Development (Attachment No. 2) and the Precise Development Plan and within the times set forth in the Schedule of Performance (Attachment No. 4) and to be bound by the terms of this Agreement as to the portion of the Site so conveyed.

In the absence of specific written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve the Participant or any other party from any obligations under this Agreement as to the Site (or any portion thereof) until satisfactory completion of development and construction of the improvements thereon as evidenced by a Certificate of Completion issued therefor. If that portion of the Site conveyed to a Major Retail Anchor Store as provided in the preceding paragraph of this Section 219 is either (a) conveyed concurrently with or subsequent to the recordation of an REA or CC&R's approved by the Agency pursuant to Section 601 hereof, which REA or CC&R's binds said Major Retail Anchor Store to commence and complete its improvements within the time set forth in the Schedule of Performance (Attachment No. 4) for completion of Phase 1 of the Retail Complex, or (b) conveyed subject to a right on the part of the Participant to reenter and repossess such conveyed portion of the Site if said Major Retail Anchor Store does not commence and complete its improvements within the time set forth in the Schedule of Performance for Phase 1 of the Retail Complex, with the wording of any such right to reenter and repossess to be included in the instrument of reconveyance and subject to the prior approval of the Agency, then, in such event, the Participant shall be relieved of its obligations hereunder pertaining to the commencement and construction of the improvements to be undertaken by such Major Retail Anchor Store, including the provisions of this Section 219 and Sections 220 through 224 of this Agreement as it pertains to such improvements and the portion of the Site conveyed to such Major Retail Anchor Store; provided, however, that the Participant shall continue to be bound by the provisions of Section 215 hereof as it pertains to the entire Site, including the portion of the Site conveyed to such Major Retail Anchor Store. Participant agrees that if the conveyance to such Major Retail Anchor Store has been made concurrently with or subsequent to the recordation of the REA or CC&R's it will exercise reasonable good faith efforts, consistent with prudent business judgment, to enforce the obligations of such Major Retail Anchor Store under the REA or CC&R's

to commence and complete construction of its improvements as provided therein. The Participant further agrees that if the conveyance to such Major Retail Anchor Store has been made prior to the recordation of the REA or CC&R's but is made subject to a right of reentry reasonably approved by the Agency, that, if requested in writing by the Agency to do so, Participant will use its reasonable good faith efforts to exercise its right to reenter and repossess the conveyed portion of the Site in the event such Major Retail Anchor Store fails to comply with the provisions of this Agreement which relate to such conveyed portion of the Site and the improvements to be developed thereon by such Major Retail Anchor Store. Sections 301 through 305 and 401 through 411 of this Agreement inclusive, shall be applicable to and shall include such Major Retail Anchor Stores.

E. [§220] Security Financing; Right of Holders

1. [§221] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development

Notwithstanding Section 219, mortgages, deeds of trust, sales and leases-back, or any other form of conveyance required by Participant and/or by any entity permitted under Section 219 of this Agreement to acquire an interest in the Site (a "Permitted Transferee") for any typical method of financing are permitted before issuance of a Certificate of Completion of the construction of the improvements on the Site, but only for the purpose of securing loans of funds used or to be used to develop the Site, to construct the improvements on the Site, to construct the Off-Site Improvements and for any other expenditures necessary and appropriate to develop the Site under this Agreement. The Participant and/or any such Permitted Transferee shall notify the Agency in advance of any mortgage, deed of trust, sale and lease-back, or other form of conveyance for financing if the Participant or such Permitted Transferee proposes to enter into the same before issuance of a Certificate of Completion of the construction of the improvements thereon or on the portion thereof to be subject to such financing arrangement. The Participant or such Permitted Transferee may enter into such financing transaction with any responsible financial or lending institution or institutions, or a responsible institutional investor, who will finance the development of the Site or portions thereof in a manner consistent with the terms of this Agreement and not restrict or impair the ability of the Participant or such Permitted Transferee to carry out the obligations of the Participant hereunder without any prior approval of the Agency. The Participant and/or such Permitted Transferee must obtain the Agency's prior written approval of any proposed lender other than a lender of the type described in the immediately preceding sentence of this Section 221. Whenever approval of a proposed lender is required, such lender shall be deemed approved unless rejected in writing by the Agency within ten (10) days after receipt of notice thereof by the Agency. Any lender authorized pursuant to this Section 221 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to the making of its loan without such lender giving its prior written consent thereto.

Whenever Agency's approval is required hereunder, any disapproval by the Agency shall effect an extension of all subsequent dates of the Schedule of Performance (Attachment No. 4) by the number of days necessary to obtain a lender satisfactory to the Agency, but in no event shall any such extension exceed such period of time as shall be reasonable under the circumstances, subject to the provisions of Section 211.

The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development.

2. [§222] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest and the lessor under a lease-back or grantee under any other conveyance for financing authorized by this Agreement (such holder, lessor or grantee herein sometimes called a "Mortgage Holder") shall in no way be obligated by the provisions of this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such Mortgage Holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

F. [§223] Notice of Default to Mortgage Holders; Right to Cure

Whenever the Agency shall deliver any notice or demand to the Participant with respect to any breach or default by the Participant in connection with this Agreement, the Agency shall at the same time deliver a copy of such notice or demand to each Mortgage Holder who has previously made a written request to the Agency therefor. Each such Mortgage Holder or its nominee (the "Curing Party") shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest or to the obligation of the lessee under any lease-back, or of the grantor under any other conveyance for financing. If such default shall be a default which can only be remedied or cured by such Mortgage Holder upon obtaining possession, such Mortgage Holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided, that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such ninety (90) day period, such Mortgage Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further, that such Mortgage Holder shall not be required to remedy or cure any noncurable default of the Participant. In the event there is more

than one such Mortgage Holder, the right to cure or remedy a breach or default of the Participant under this Section 223 shall be exercised by the Mortgage Holder first in priority or as the Mortgage Holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Participant under this Section 223.

The provisions of this Section 223 are discretionary and no Mortgage Holder shall be required to exercise such rights. The provisions of this Section 223 shall not be deemed to prevent any Mortgage Holder who has not exercised such right from pursuing any or all rights it may have by reason of a breach of Participant's obligations to such Mortgage Holder, even if another Mortgage Holder has exercised such right.

G. [§224] Certificate of Completion

From time to time as herein provided, the Agency shall furnish the Participant or a Permitted Transferee, as the case may be, with a Certificate of Completion, upon written request by the Participant or such Permitted Transferee. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the Recorder of Marin County.

The Agency shall not unreasonably withhold any such Certificate of Completion, and such Certificate of Completion shall be issued upon Satisfactory Completion (as hereinafter defined) of the improvement in question. For purposes of this Agreement, "Satisfactory Completion" shall be deemed to have occurred upon the issuance by the City of a Certificate of Occupancy for such improvements or, in the case of Off-Site Improvements, acceptance thereof by the City or other appropriate governmental entity, provided that the City shall not unreasonably withhold acceptance of the Off-Site Improvements to be accepted by the City upon receipt by the Agency of an accurate written verification by the architect for the Participant or such Permitted Transferee, as the case may be, that the improvements to be developed by the requesting party on the relevant portion of the Site have been completed in accordance with plans and specifications prepared and approved as provided in this Agreement, except for customary punch list items and interior common area finishes (collectively referred to as "Deferred Items") if the Agency receives a bond from a surety company in form and substance reasonably satisfactory to the Agency for an amount equal to one hundred ten percent (110%) of the cost of completion of such Deferred Items, as such costs are reasonably determined by the Agency. All Deferred Items must be completed with due diligence. Such Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development required by this Agreement upon the Site or upon such portion thereof (as the case may be) except for completion of Deferred Items as provided herein, and of compliance with the terms of this Agreement with respect thereto.

With respect to the Site, if the Participant or the Permitted Transferee requesting the Certificate of Completion is not in default under this Agreement with respect thereto, the Agency shall also furnish the Participant or the requesting Permitted Transferee with a Certificate of Completion pertaining to the construction of any Major Retail Anchor Store improvements and/or the Retail Store improvements (as such improvements are described in the Scope of Development [Attachment No. 2]), if such improvements are properly completed (in accordance with plans approved by the City as herein provided) and ready to use, and if such improvements and the portion of the Site upon which such improvements are constructed have been or are proposed to be conveyed or encumbered separate and apart from the remainder of the Site as permitted under this Agreement.

After issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site (or portion thereof) for which such Certificate of Completion was issued, shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to the commencement and completion of construction for which such Certificate of Completion is issued except, (i) for recourse under the bond provided hereunder for Deferred Items and (ii) that such party shall be bound by and be liable for the payment of taxes and assessments as set forth in Section 218 and the Method of Financing (Attachment No. 3) (including, as applicable, special taxes and/or assessments of any Financing District) and the covenants set forth in Sections 301 through 305, inclusive, hereof. After the issuance of a Certificate of Completion for the Site or relevant portion thereof, neither the Agency (except for recourse under the bond provided hereunder), the City nor any other person shall have any rights, remedies or controls with respect to the Site or such portion thereof that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement relating to the commencement or completion of construction on the Site, and the limitations on transfer set forth in Section 219 shall cease and no longer be in force and effect.

If the Agency refuses or fails to furnish a Certificate of Completion after a written request therefor by any entity entitled thereto pursuant to this Section 224, the Agency shall, within ten (10) days after such written request, provide the requesting party with a written statement of the reasons why the Agency refuses or fails to furnish such Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Participant or such requesting party must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping or fine arts, the Agency will issue its Certificate of Completion upon the posting of a bond by such requesting party with the Agency in an amount representing the cost of the work not yet completed. If the Agency shall have failed to provide such written statement within said 10-day period, the requesting party shall automatically be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall constitute evidence of compliance with and satisfaction of the obligations of (a) the Participant, or, as applicable, (b) any Permitted Transferee, that the improvements covered by such Certificate of Completion have been completed in accordance with the requirements of this Agreement. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code, Section 3093.

III. [§300] USE OF THE SITE

A. [§301] Uses

The Participant covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Participant, such successors, and such assignees shall devote the Site to the uses respectively specified therefor in the Redevelopment Plan and this Agreement for the periods of time specified therein. The foregoing covenants shall run with the land.

B. [§302] Obligation to Refrain from Discrimination

The Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, age, handicaps, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof. The foregoing covenants shall run with the land.

C. [§303] Form of Nondiscrimination and Nonsegregation Clauses

The Participant shall refrain from restricting the rental, sale or lease of the Site or any portion thereof, on the basis of sex, age, handicaps, marital status, race, color, religion, creed, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, age, handicaps, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of

the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with respect to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, age, handicaps, color, religion, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.

3. In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of sex, marital status, race, age, handicaps, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

D. [§304] Effect and Duration of Covenants

After issuance of a Certificate of Completion of the improvements constructed on the Site or any portion thereof, all of the terms, covenants, agreements and conditions set forth in this Agreement pertaining thereto shall cease and terminate excepting only the following provisions which shall survive as follows in accordance with their provisions:

1. Sections 217, 218 and Section VIII of the Method of Financing (relating to the method of financing the Off-Site Improvements and payments by the Participant toward the cost of the Community Facilities and Future Community

Facilities) shall remain in effect so long as the indebtedness incurred for construction of such Off-Site Improvements and such payments for the Community Facilities and Future Community Facilities exists.

2. Section 301 (relating to Uses) shall remain in effect until November 29, 2013 (the termination date of the Redevelopment Plan).

3. Sections 302 and 303 (relating to Nondiscrimination) shall remain in effect in perpetuity.

4. Sections 401 to 411, inclusive, (relating to Defaults and Remedies) shall remain in effect so long as the Retail Complex shall be operated on the Site to the extent necessary to enforce other provisions of this Agreement.

5. Such easements of ingress and egress as are granted between the Agency and the Participant shall remain in effect for the term specified in each such grant.

E. [§305] Public Agency Rights of Access for Construction, Repair and Maintenance of Public Improvements and Facilities

The Agency for itself, and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible to the owners and occupants of the Retail Complex, for the purposes of construction, reconstruction, maintenance, repair or service of public improvements or public facilities located thereon, if any. Any such entry shall be made only after reasonable notice to Participant or any Permitted Transferee under this Agreement. The Agency and City shall indemnify, defend and hold Participant, its partners, officers, directors, agents and employees and/or any Permitted Transferee harmless from any claims or liabilities pertaining to any entry or work. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry. Except for emergencies, the following times shall not be considered reasonable for purposes of this Section 305:

1. November 1 - January 15 of each year.
2. The four (4) weeks immediately preceding Easter Sunday.

IV. [§400] DEFAULTS, REMEDIES AND TERMINATION

A. [§401] Defaults - General

Subject to the extensions of time pursuant to Sections 211 and 505, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement; provided, however, that no party shall be deemed to be in default under this Agreement unless and until such party has received notice of default as provided in the following paragraph and the applicable cure period has expired without a cure being effected, except that notice of default need not be given as to a default which cannot be cured by the defaulting party or for which no cure period is specified under Sections 410 and 411 hereof. Except as may be provided in Sections 410 and 411, which provisions shall be controlling in accordance with their terms, the party who receives such notice of failure or delay must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence or within any specifically allowed cure period under this Agreement, and during any period of curing shall not be in default. It is the intent of this Section 401, as well as Sections 407 and 408, not to add additional cure periods to those which are expressly set forth in certain paragraphs of Sections 410 and 411.

The injured party shall give written notice of default to the party alleged to be in default, specifying the default complained of by the injured party. Subject to the provisions of Sections 410 and 411 which shall control as to events of termination thereunder, after the giving of such notice to cure any default, the party in default shall have: (1) ten (10) days to cure a default in the payment of taxes, assessments or other sums of money; (2) thirty (30) days to cure a default in the submission of plans, drawings or related documents; and (3) ninety (90) days to cure any other default, plus such additional time as may be reasonably necessary if the defaults described in subparts (2) and (3) above cannot be cured within such stated time periods and the party allegedly in default is diligently and continuously proceeding to cure; during any cure period, the injured party may not initiate proceedings against the party in default. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time allowed for curing such default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies; provided, however, that the right of the Participant to terminate this Agreement for the failure of any condition precedent to the issuance of Financing District Bonds to finance the costs of the Off-Site Improvements and payments by the Participant for the Community Facilities and Future Community Facilities, as specified in the Scope of Development (Attachment No. 2), shall be deemed waived upon the issuance of such bonds if they are issued prior to Participant having delivered to

Agency a notice of termination pursuant to Section 410(a). In the event a default of the Participant is claimed by the Agency with respect to the development of any portion of the Site, in addition to notice to the Participant as provided for in this Agreement, the Agency also shall furnish copies of such written notice of default to each party to the REA or CC&R's (as defined in Section 601) other than the Participant, at the address specified in the REA or CC&R's for service of notice upon such party. Any party to the REA or CC&R's entitled to copies of such written notice shall have the right, but not the obligation, to cure any default of the Participant within the time period set forth in the notice or this Agreement.

B. [§402] Legal Actions

1. [§403] Institution of Legal Actions

Subject to the provisions of Sections 407 and 408 of this Agreement, in addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Marin, State of California, an appropriate municipal court in that County, or in the Federal District Court in the Northern District of California. The prevailing party in any such legal action may recover its reasonable attorneys' fees.

2. [§404] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§405] Acceptance of Service of Process

In the event that any legal action is commenced by the Participant against the Agency, service of process on the Agency shall be made by personal service upon the Chairman, Executive Director or Secretary of the Agency, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Participant, service of process on the Participant shall be made in such manner as may be provided by law, whether made within or without the State of California.

C. [§406] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§407] Damages

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. Subject to the provisions of Sections 410 and 411 which shall control as to specific events of termination thereunder and subject to the limitations set forth in this Section 407, if, after the giving of notice to cure any default such default is not cured within the applicable cure period specified in Section 401, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Notwithstanding any provision of this Agreement to the contrary, the liability of the Participant to the Agency for monetary damages shall be limited to an amount which shall not exceed the costs incurred by the Agency and City in proceedings to establish and issue Financing District Bonds less the advances made by Participant pursuant to Sections 107 and 108, and the liability of the Agency to the Participant for monetary damages shall not exceed in any year the then current past due amounts then owed by the Agency under the Promissory Note and Agreement (Exhibit B to the Method of Financing [Attachment No. 3]), plus interest thereon as specified or otherwise determined by the court.

E. [§408] Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. Subject to the provisions of Sections 410 and 411 which shall control as to specific events of termination thereunder, if, after the giving of notice to cure any default such default is not cured within the applicable cure period specified in Section 401, the nondefaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default to the extent that specific performance as a remedy to such default is applicable under California law; provided, however, the remedy of specific performance shall not be available as it relates to any of Participant's obligations under this Agreement to construct or to cause the construction of any improvements including, but not limited to, the Off-Site Improvements.

F. [§409] Remedies and Rights of Termination

1. [§410] Termination by the Participant

(a) In the event that the Agency, after and despite diligent efforts and within the time established therefor in the Schedule of Performance (Attachment No. 4), is unable to (i) cause the formation of a Financing District as set forth in Section VIII of the Method of Financing (Attachment No. 3), or (ii) issue or

cause to be issued Financing District Bonds or obtain other financing as set forth in Section VIII of the Method of Financing (Attachment No. 3) to finance the costs related to the Off-Site Improvements specified in the Scope of Development (Attachment No. 2) and in this Agreement, then the Participant may, at its option and upon written notice thereof to the Agency, terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon. Upon receiving the notice of termination from Participant herein provided for, the Agency or City shall promptly take all action required in order to remove the lien of the Financing District from the Site.

(b) In the event the Participant, within the time established therefor in the Schedule of Performance (Attachment No. 4), does not, in its opinion, have adequate financing for construction of the improvements specified in the Scope of Development (Attachment No. 2) and in this Agreement for the Site, then the Participant may, at its option and upon written notice thereof to the Agency, terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon.

(c) In the event that on the date established therefor in the Schedule of Performance (Attachment No. 4), the Participant is unable to make the certification required under Section 210, then the Participant may, at its option and upon written notice thereof to the Agency, terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon.

2. [§411] Termination by the Agency

(a) In the event that the Agency, after and despite diligent efforts and within the dates established therefor in the Schedule of Performance (Attachment No. 4), is unable to (i) cause the formation of a Financing District as set forth in Section VIII of the Method of Financing (Attachment No. 3), or (ii) issue or cause to be issued Financing District Bonds or obtain other financing as set forth in the Method of Financing (Attachment No. 3) to finance the costs related to the Off-Site Improvements specified in the Scope of Development (Attachment No. 2) and in this Agreement, and the Participant has not elected to privately finance such costs, then the Agency may, at its option and upon written notice thereof to the Participant, terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon. Upon such

termination, the Agency or City shall promptly take all action required to remove the lien of the Financing District from the Site.

(b) In the event the Participant, on or before the date established therefor in the Schedule of Performance (Attachment No. 4), notifies the Agency, in writing, that Participant does not have adequate financing for construction of the improvements specified in the Scope of Development (Attachment No. 2) and in this Agreement for the Site, then the Agency may, at its option and upon written notice thereof to the Participant, terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon.

(c) In the event that the Participant shall assign or attempt to assign this Agreement (or any rights herein), or shall sell, transfer, convey, assign, or lease the whole or any part of the Participant and/or the Site or the improvements to be constructed thereon, in violation of this Agreement, then the Agency shall deliver a written demand to the Participant to void, cancel, rescind, and terminate such assignment, sale, transfer, conveyance, or lease within ninety (90) days after the date of receipt of such demand. If such assignment, sale, transfer, conveyance, or lease is not voided, cancelled, rescinded, and terminated within said 90-day period, then the Agency, at its option and upon written notice to the Participant, may terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site or portions thereof and the development of the improvements to be developed and constructed thereon.

(d) In the event that the Participant shall fail to (i) submit to the City the plans, construction drawings and related documents (or any proposed changes thereto) as referred to in Section 209 hereof, and in the form and manner provided in said section, or (ii) obtain City's approval of such plans, construction drawings and related documents, within the times respectively established therefor in the Schedule of Performance (Attachment No. 4), as the same may be extended or modified in accordance with the provisions of this Agreement, then the Agency shall deliver a written demand to the Participant to cure such failure within thirty (30) days after the date of receipt of such demand. In the event that such failure is not cured within said thirty (30) day period, then the Agency, at its option and upon written notice to the Participant, may terminate this Agreement. Subject to Section 508 hereof, in the event of any such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon.

(e) In the event that on the date established therefor in the Schedule of Performance (Attachment No. 4) the Participant shall fail to submit to Agency the certification required under Section 210, then the Agency may, at its option and upon written notice thereof to the Participant, terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon.

(f) In the event that the Participant shall fail to perform its obligations as required in the Method of Financing (Attachment No. 3), and as a result of such failure Agency is unable to (i) cause the formation of a Financing District as provided in Section VIII of the Method of Financing, or (ii) issue or cause to be issued Financing District Bonds as set forth in the Method of Financing (Attachment No. 3) to finance the costs related to the Off-Site Improvements within the times respectively established therefor in the Schedule of Performance (Attachment No. 4), and (iii) the Participant does not elect to privately finance such costs, then the Agency, at its option and upon written notice to Participant, may terminate this Agreement. Subject to Section 508 hereof, in the event of such termination pursuant to this paragraph, neither the Agency nor the Participant shall have any further rights against or liability to the other with respect to the Site and any improvements to be developed and constructed thereon.

V. [§500] GENERAL PROVISIONS

A. [§501] Notices, Demands and Communications  
Between the Parties

Formal notices, demands and communications between the Agency and the Participant shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and the Participant as set forth in Section 110 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 501.

B. [§502] Conflict of Interest

No member, official or employee of the Agency shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

C. [§503] Warranty Against Payment  
of Consideration for Agreement

The Participant warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

D. [§504] Nonliability of Agency Officials

No member, official or employee of the Agency shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Participant or any successor in interest or on any obligation under the terms of this Agreement.

E. [§505] Enforced Delay; Extension of Times of  
Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; soil or other physical conditions of the Site; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (other than condemnation actions or litigation initiated by the party seeking an enforced delay as a result of such litigation); unusually severe weather; inability (when the party seeking the enforced delay is faultless) to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act, of any public or governmental agency or entity (other than those acts, or such failure to act, of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. The provisions of this Section 505 shall have no application unless the party seeking an extension of time pursuant to the provisions of this Section 505 shall, within thirty (30) days after knowledge of the beginning of such enforced delay have first notified the other party thereof in writing and the cause or causes thereof. If notification is not given within such 30-day period, the period of enforced delay shall commence to run from 30 days prior to notification of such delay.

F. [§506] Inspection of Books and Records

The Agency has the right (at the Participant's office, upon not less than seventy-two [72] hours' notice, and at all reasonable times) to inspect the books and records of the Participant pertaining to Participant's proceeding to construct the Off-

Site Improvements and any other monetary obligations of Participant provided for in this Agreement. The Participant also has the right (at the Agency's office, upon not less than seventy-two [72] hours' notice, and at all reasonable times) to inspect the books and records of the Agency pertinent to the purposes of this Agreement.

G. [§507] Approvals by the Agency and the Participant

Wherever this Agreement requires the Agency and/or the Participant to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably delayed (and in no event shall exceed the time provided for such action in the Schedule of Performance [Attachment No. 4]) and, except where such approval is expressly reserved to the sole discretion of the approving party, shall not be unreasonably withheld.

H. [§508] Covenant Upon Termination

In recognition of the fact that the Participant has made a substantial investment in property and in plans and preparation for development of the Site in anticipation of this Agreement, the Agency and Participant mutually covenant and agree that if this Agreement is terminated by either party for any reason, then notwithstanding such termination, the Agency and the Participant shall negotiate in good faith for a period of 120 days or such additional period as they may mutually determine, with the objective of entering into an alternative agreement for the development of the Site. This covenant shall survive and be effective upon the termination of this Agreement.

I. [§509] Counterparts

This Agreement may be executed in any number of counterparts, all of which counterparts, when taken together, shall constitute one and the same Agreement.

J. [§510] Severability

The unenforceability, invalidity or illegality of any provision, covenant, condition or term of this Agreement, which does not affect the substantial rights of a party hereunder or the City, shall not render the other provisions hereof unenforceable, invalid or illegal; provided, however, that the Participant, Agency and City agree, for themselves and their successors and assignees, that they will not contest the enforceability, validity or legality, or assert the unenforceability, invalidity or illegality, of any provision, covenant, condition or term of this Agreement or the Precise Development Plan.

VI. [§600] SPECIAL PROVISIONS

A. [§601] Reciprocal Easement Agreement  
(Retail Complex)

The Participant, at its sole election, may enter into a Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as the "REA") with Major Retail Anchor Stores to be located in the Retail Complex to be developed on the Site and/or, at its sole election, Covenants, Conditions, and Restrictions (hereinafter referred to as "CC&R's") governing portions of the Site not subject to an REA. The REA and/or CC&R's may cover, among other things, the reciprocal easements in the properties; preparation of plans and specifications for construction of improvements; the construction of common area improvements and Retail Stores by the Participant, as well as the construction of improvements by the Major Retail Anchor Stores; the construction of the parking facilities, and the operation, maintenance, and use of such parking facilities to provide parking for the Retail Complex; the construction of other amenities as shown on the site plans, construction drawings and related documents as approved by Participant and the City, and the operation, maintenance and use of such amenities; area, use, size and height limitations; standards of operation and maintenance; public liability, fire and extended coverage insurance; provisions regarding repair, maintenance, alteration and reconstruction; condemnation clause; sign requirements; rules and regulations; limited operating covenants by the Participant and each Major Retail Anchor Store; and other items generally covered in so-called REA's and CC&R's in similar retail centers in Northern California. The Participant intends to subject Phase 1 of the Retail Complex to an REA and may, at the election of the Participant in its sole and absolute discretion, subject Phase 2 and the remainder of the Site to CC&R's. References in this Agreement to the REA or CC&R's shall be applicable only to the extent the Participant has elected, in its sole and absolute discretion, to subject the Site or portions thereof to an REA or CC&R's.

Prior to execution, the REA and any CC&R's shall be submitted to the Agency for its approval as consistent with this Agreement. Provided the REA and any CC&R's are consistent with the provisions of this Agreement, the Agency shall approve the terms and conditions of the REA and any CC&R's and shall execute such documents as the Participant reasonably requests in order to evidence such approval. Approval of the REA and any CC&R's by the Agency shall constitute a determination that the REA and any CC&R's are consistent with this Agreement pertaining to the development of the Site, and performance of the covenants of the REA and any CC&R's and such other agreements shall be deemed for all purposes to constitute performance of the covenants provided herein in regard to development, construction and time of performance.

The REA and any CC&R's shall be recorded in the Recorder's Office for Marin County, California.

Subject to the provisions of Section 219 hereof, the Participant intends to, or may (pursuant to the REA), transfer or convey (by deed or by long term ground lease) portions of the Site to the Major Retail Anchor Stores for the purpose of erecting, constructing, maintaining and operating major retail anchor store improvements thereon. It is hereby agreed that after any such transfer or conveyance, any default or breach by the Participant under this Agreement shall not apply to such transferees of such portions, if such transferees are not in default under the REA, and any default or breach by such transferee shall not be a default by Participant hereunder. Subject to the provisions of the final paragraph of Section 219, effective with such transfer, Participant shall be relieved from the obligations pertaining to such portions of the Site separately conveyed. Subject to the provisions of the final paragraph of Section 219, it is hereby agreed that after any such conveyance, no rights shall arise in the Agency or any other person against any such conveyee, or against its parcel, as a result of any default or breach of this Agreement with respect to such parcel by any other person except such conveyee or its transferees, assignees or lessees.

B. [§602] Submission of Documents for Approval

Whenever this Agreement requires one party to submit plans, drawings or other documents to the other party for approval, which shall be deemed approved if not acted on by the receiving party within the time specified in this Agreement, said plans, drawings, or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected within the stated time. If there is no time specified herein for such action, the submitting party may submit a letter requiring approval or rejection by the other party of documents within thirty (30) days after submission to the other party or such documents shall be deemed approved. Except where such approval is expressly reserved to the sole discretion of the approving party, all approvals required hereunder by either party shall be reasonable and not unreasonably withheld or delayed.

VII. [§700] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 34 and Attachment Nos. 1 through 6, inclusive, which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Except for approvals which are deemed given by a party due to such party's failure to respond within a specified time period, all waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the

Agency or the Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Participant.

VIII. [§800] FURTHER ASSURANCES TO LENDERS; ESTOPPEL CERTIFICATES

Agency and Participant will in good faith consider making such reasonable modifications to this Agreement, and/or executing such further instruments and agreements, as a lender or a Major Retail Anchor Store or a proposed joint venturer or partner of Participant or Agency's financial consultants or bond counsel may reasonably request, provided such modifications, instruments and agreements do not materially adversely affect a party's rights or obligations hereunder (without the written approval of the affected party).

From time to time during the term of this Agreement, the Agency and the Participant shall deliver such estoppel certificates as the other party, any lender or proposed lender of Participant, any Major Retail Anchor Store leasing or purchasing space in the Project, or any joint venturer or partner of Participant, or proposed joint venturer or partner of Participant, may require, stating that (a) this Agreement is in full force and effect and unamended (except as set forth therein), (b) to the best of such party's knowledge, no default exists hereunder (except as set forth therein), and (c) such other information as may be reasonably requested.

A party receiving a request hereunder shall execute and return such estoppel certificate to the requesting party, or give a detailed written response explaining why it will not do so, within ten (10) days following receipt of a request therefor. The Executive Director of Agency shall be authorized to execute any certificate requested by Participant from Agency. Failure to so execute an estoppel certificate shall not be deemed a default, but if the party receiving a request hereunder fails to so execute an estoppel certificate, the requesting party and any lender or proposed lender, Major Retail Anchor Store leasing or purchasing space in the Project, or any joint venturer or partner or proposed joint venturer or partner may conclusively presume and rely upon the following facts: (i) that this Agreement is in full force and effect and represents a binding obligation of the party receiving the request, (ii) that this Agreement has not been amended or modified either orally or in writing except as otherwise represented by the requesting party, and (iii) no default exists in the performance of either party's obligations under this Agreement. In such event, the party receiving the request shall be estopped from denying the truth of such facts.

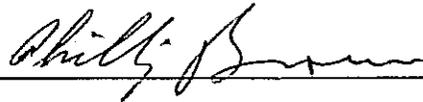
IX. [§900] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency within thirty (30) days after date of signature and submission by the Participant to the Agency, or such later time as the parties may agree, or this Agreement may be terminated by the



Participant on written notice to the Agency. The effective date of this Agreement shall be the date when this Agreement shall have been approved by the Agency (which date is the date first set forth on page 1 of this Agreement).

REDEVELOPMENT AGENCY OF THE CITY  
OF NOVATO

By: 

Name: Phillip J. Brown

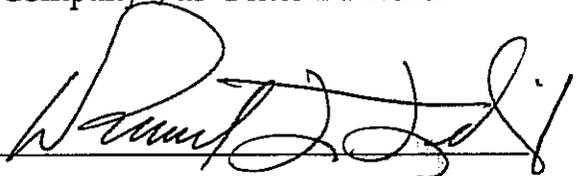
Title: Executive Director

"AGENCY"

HNH ASSOCIATES,  
a California limited partnership

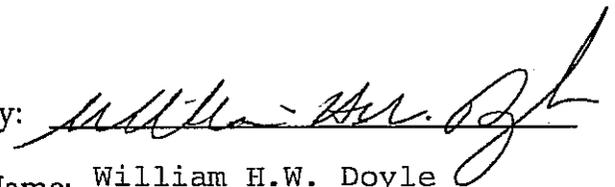
By: EWH 1979 Development Company, L.P.,  
a California limited partnership, as  
General Partner

By: Ernest W. Hahn, Inc., a California  
corporation dba "The Hahn  
Company", as General Partner

By: 

Name: Daniel T. Felix

Title: Vice President

By: 

Name: William H.W. Doyle

Title: Senior Vice President

"PARTICIPANT"

## CONSENT AND AGREEMENT OF THE CITY OF NOVATO

Pursuant to both the provisions of the Community Redevelopment Law and its authority as a municipal corporation, and in aid and cooperation to the Redevelopment Agency of the City of Novato (the "Agency") in carrying out the Redevelopment Plan for the Novato Redevelopment Project (the "Redevelopment Plan"), the City of Novato hereby consents to the Owner Participation Agreement (the "OPA") entered into as of January 17, 1991, by and between the Redevelopment Agency of the City of Novato and HNH Associates (the "Participant"). In furtherance of the purposes of said Redevelopment Plan and the OPA, the City hereby agrees as follows:

1. To cooperate with the Agency and the Participant, subject to applicable legal procedures, in the formation of a Financing District and the issuance of tax exempt Financing District Bonds, to finance the costs of the Off-Site Improvements and other eligible costs of the Participant, all as set forth in the OPA, and in connection therewith, to adjust its required lien to value ratio for such bonds to that ratio determined to be adequate for marketability of said bonds;

2. Subject to applicable legal procedures, to enter into a lease with the Agency of the Community Facilities for rent and on terms consistent with Attachment No. 5 to the OPA; and, if necessary for the period prior to the time that such lease becomes effective, to cooperate with the Agency, in the manner provided in the OPA, in providing the assurances to the Participant of the Agency's ability to make its payments in accordance with the Method of Financing, Attachment No. 3 to the OPA;

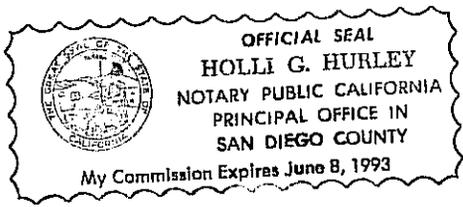
3. Subject to applicable legal procedures, to perform all covenants, obligations and agreements contemplated to be performed by City in the OPA, and to otherwise assist the Agency and the Participant, as contemplated by the OPA, subject to the provisions of and conditions of approval of the Precise Development Plan, and reserving the City's full discretion with respect to use permits, design review, any future amendments to the Precise Development Plan and other actions in which the City is required to exercise its discretion; and



STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN DIEGO ) ss.

On June 20, 19 91, before me, the undersigned, a Notary Public in and for said State, personally appeared William H.W. Doyle and Daniel T. Felix, personally known to me to be the persons who executed the within instrument as Senior Vice President and Vice President, respectively, on behalf of ERNEST W. HAHN, INC., a California corporation, doing business as "The Hahn Company", the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors, said corporation being known to me to be the sole General Partner/~~one of the Partners~~ of ENH 1979 Development Company, L.P., a California limited partnership, as General Partner of HNE Associates, a California limited partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partnership executed the same.

WITNESS my hand and official seal.



Holli G. Hurley  
Notary Public

(Seal)



4. To direct City staff, commissions, boards and consultants to treat the Project contemplated in the OPA and Precise Development Plan as a priority project for the City and Agency, with a need for expeditious processing of plan reviews, permit applications, appeals and other approvals.

Nothing in this Consent and Agreement shall subject the City to monetary liability or damages under the OPA, or otherwise, except as City shall expressly agree to pursuant to the lease of the community facilities (Attachment No. 5 to the OPA).

Authorized by City Resolution No. 5-91, adopted on January 17, 1991.

CITY OF NOVATO

By: Phillip Brown

ATTEST:

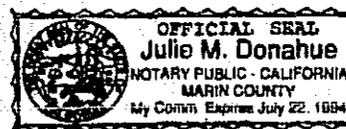
Shirley Gremmels  
City Clerk

State of California)  
County of Marin )<sup>SS</sup>

On June 24, 1991, before me, the undersigned, a Notary Public, personally appeared Phillip Brown and Shirley Gremmels known to me to be the Executive Director of Redevelopment Agency and City Clerk of the City of Novato and known to me to be the person(s) who executed the within instrument on behalf of the City of Novato, and acknowledged to me that the City of Novato executed the same.

WITNESS my hand and official seal.

Julie M. Donahue  
Julie M. Donahue



[ATTACH ACKNOWLEDGMENTS]

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## ATTACHMENT NO. 2

### SCOPE OF DEVELOPMENT

#### I. GENERAL

The Site shall be designed and developed as an integrated regional retail center in which the buildings will have a high quality architectural design.

The open spaces and parking areas where they exist shall be designed, landscaped and developed with the same degree of high quality.

The Site shall be developed in conformity with the Precise Development Plan (including Conditions of Approval).

In the event of any conflict or inconsistency between this Agreement and the Precise Development Plan (including Conditions of Approval), the Precise Development Plan shall govern and control.

The Agency, City and Participant will cooperate and direct their staff, employees, consultants, architects, and/or engineers to cooperate so as to ensure the continuity and coordination vitally necessary for the proper and timely completion of the development of the Site.

#### II. PARTICIPANT'S RESPONSIBILITIES

##### A. Participant's Retail Improvements ("Retail Complex")

The Participant shall construct, or cause to be constructed, on the Site a regional retail center (the "Retail Complex") of approximately 600,000 square feet of gross leaseable area. The improvements to be developed as part of the Retail Complex shall include: three (3) Major Retail Anchor Stores of not less than 45,000 square feet each and a number of smaller Retail Stores totalling approximately 300,000 square feet; surface automobile parking area serving the Retail Complex; such other ancillary or freestanding businesses customarily located in retail centers; such other amenities determined to be reasonable and appropriate by the Participant and approved by the City; and, at Participant's option, may include a hotel containing approximately 200 rooms and related facilities (all of the foregoing improvements being hereinafter collectively referred to as the "Participant's Retail Improvements"). Agency agrees to support application by the Participant to the City to amend the Precise Development Plan to substitute retail use for the hotel use as currently shown on the Precise Development Plan.

Participant intends to impose covenants on Pad BB as shown on the Site Map (Attachment No. 1) to prohibit package sale of alcoholic beverages on said parcel. If legally binding covenant restrictions are so imposed by the Participant on Parcel BB, Agency agrees to support an application by the Participant to amend the Precise Development Plan for a mini-mart to be included with gas station use on said parcel, subject to a Use Permit.

In addition to the Participant's Retail Improvements, the Participant shall construct within the Retail Complex the public amenities set forth below in this Part II, and shall make payments for off-site Community Facilities and Future Community Facilities as defined and set forth below in this Part II.

B. Public Amenities

The Participant shall also provide within the Retail Complex the following public amenities:

1. A law enforcement office of not less than one hundred twenty (120) square feet for use by the City's law enforcement department and other public safety personnel (which space could be included within and as part of the management and/or security offices for the Retail Complex); and

2. A community information center in a centrally located area of the Retail Complex, which includes one electronic interactive computer terminal or other appropriate networking services as approved by the City; provided, however, the total cost of such community information center including installation and materials shall not exceed \$25,000 and subsequent to installation the City and/or Agency shall be responsible for the costs associated with operating and maintaining the community information center.

The design and location of the public amenities referred to above to be included as part of the Retail Complex are subject to the final design plans of the Retail Complex and subject to the reasonable approval of the City.

C. Phasing of Development

Subject to all the other terms and conditions of this Agreement, the Retail Complex may be developed in phases, as follows:

1. Phase 1 shall consist of development of the approximately 34 southerly acres of the Retail Complex and the wetlands area, as shown generally on the Site Map (Attachment No. 1) plus all of the Off-Site Improvements as set forth in Section II.D. of this Attachment No. 2.

2. Phase 2 shall consist of the development of the balance of the Retail Complex.

D. Off-Site Improvements

On or before the date set forth in the Schedule of Performance (Attachment No. 4), the Participant shall, if it so elects to proceed with the development of the Site pursuant to this Agreement and the Precise Development Plan, construct or cause to be constructed certain off-site improvements (the "Off-Site Improvements") as specified in, and which shall be constructed in accordance with, the Precise Development Plan (including Conditions of Approval). In addition to the Off-Site Improvements specified in the Precise Development Plan (including Conditions of Approval), the Participant shall design and reconstruct to City specifications the hinge slab at the westerly section of the Rowland Boulevard Overpass and associated road transfer areas affected thereby.

E. Off-Site Community Facilities

In accordance with the Conditions of Approval of the Precise Development Plan, which the Participant has accepted and agreed to, the Participant shall make a payment to the Agency in the amount of Three Million Dollars (\$3,000,000.00) for application by the Agency toward the cost of certain off-site community facilities (the "Community Facilities"). Such payment shall be made in the manner and at the time set forth in the Method of Financing (Attachment No. 3) as a condition precedent to the development of the Site by the Participant. The location, size, nature and use of the Community Facilities shall be determined in the sole and absolute discretion of the Agency and City.

In addition, the Participant has agreed to make a payment in the amount of Three Million Dollars (\$3,000,000.00) to the City in the manner and at the time set forth in the Method of Financing (Attachment No. 3) which the City shall apply toward the cost of future off-site recreational lands or community facilities as shall be designated by the City (the "Future Community Facilities"). The location, size, nature and use of the Future Community Facilities shall be determined in the sole and absolute discretion of the City and may include additions or enhancements to the Community Facilities.

F. Additional Requirements

The Participant and Agency agree that this Agreement and the Precise Development Plan set forth the Participant's obligations with respect to the development of the Site, and that additional requirements for the Participant to fund or construct off-site public improvements, in whole or in part, that are not identified in this Agreement and the Precise Development Plan would jeopardize the economic feasibility of the Project. Accordingly, if any such additional requirements are imposed by the City prior to the issuance of Financing District Bonds (as defined in the Method of Financing [Attachment No. 3]) to fund the acquisition or construction of off-site public improvements, in whole or in part, that

are not identified in this Agreement and the Precise Development Plan, the Participant, in its sole and absolute discretion, may elect not to proceed with the development of the Site and may terminate this Agreement as provided in Section 410 hereof. If any such additional requirements are imposed by the City after the issuance of Financing District Bonds, the Agency or City may elect to be responsible for the costs of such additional requirements and, if the Agency or City elect not to be responsible for such costs, such additional requirements shall not apply.

Notwithstanding the foregoing, this Section II.F. shall not apply to the following, which shall be applicable to the Project according to their terms and conditions:

- (1) costs reasonably related to compliance with this Agreement and the Precise Development Plan (including Conditions of Approval);
- (2) inclusion of the Site, together with other benefitted properties, in a lighting, landscaping and maintenance assessment district or community facilities district for the Off-Site Improvements, in whole or in part;
- (3) requirements lawfully imposed by governmental entities other than the City, or lawfully imposed by private utilities;
- (4) requirements lawfully imposed by the City and resulting from changes requested by the Participant in this Agreement or the Precise Development Plan and approved by Agency and/or City, as the case may be; and
- (5) feasible environmental mitigation measures resulting from subsequent legally required environmental studies or analysis undertaken with respect to the development of the Site by the Participant.

#### G. Architecture and Design

The Participant's Retail Improvements and all other improvements to be constructed by the Participant pursuant to this Agreement shall be of high architectural quality, shall be well-landscaped, and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design, and exterior finish of each building must be consonant with, visually related to, physically related to, and an enhancement to each other. The Participant's plans and proposals submitted to the Agency and the City for approval shall describe in reasonable detail the architectural character intended for the exterior of the Participant's Retail Improvements.

#### H. Landscaping

All open spaces within the Site (including setback areas) as shown on the approved Site Map, shall include adequate landscaping. Landscaping includes such

materials as paving, trees, shrubs, and other plant materials, landscape containers, outdoor furniture, top soil preparation, automatic irrigation, landscape and pedestrian lighting and water elements, if applicable.

I. Controls and Restrictions - Miscellaneous

Controls and restrictions consistent with this Agreement (including, but not limited to, minimum size parking spaces, maximum land coverage, minimum and maximum heights of buildings, and minimum loading facilities) shall be included in the REA for Phase 1 of the Retail Complex and/or any CC&R's which the Participant imposes for Phase 2 and the remainder of the Site, in whole or in part.

J. Fees

Subject to the provisions of Section 213 of this Agreement, the Participant shall be responsible for water and sewer connection fees, license fees and other development and permit fees applicable to the development of the Site. To the extent legally allowable, such fees may be included, at the request of the Participant, as part of the financing under the Financing District.

III. CONTRIBUTIONS OF AGENCY AND CITY TO A PORTION OF COSTS OF OFF-SITE IMPROVEMENTS

The Precise Development Plan (including Conditions of Approval) provides for the City to contribute to the costs of certain of the Off-Site Improvements, and such provisions shall govern as to the matters covered thereby. Further, Section IV.B. and C. of the Method of Financing (Attachment No. 3) provide for Agency and City contributions to the costs of certain Off-Site Improvements subject to the conditions set forth therein.

IV. AGENCY'S RESPONSIBILITIES

The Agency's obligations to participate in the costs of certain Off-Site Improvements by making annual payments to the Participant are set forth in and governed by the Method of Financing (Attachment No. 3).



## ATTACHMENT NO. 3

### METHOD OF FINANCING

#### I. OVERVIEW

A. The principal source of financing available to the Agency to incur and pay costs pursuant to this Agreement is the allocation of property taxes (herein "Tax Increments") from the Site and the Retail Complex (collectively referred to herein as the "Project") in accordance with Sections 33670 et seq. of the California Health and Safety Code. In the adoption of the Redevelopment Plan, the Agency has agreed with the County of Marin and certain other agencies deriving property taxes from the Project Area to limit the Tax Increments available to the Agency from the Project Area to those generated by the Project. Total annual Tax Increments are also limited in amount under said agreements to One Million Dollars (\$1,000,000) annually, subject to administrative charges that may be imposed by the County, with twenty percent (20%) of Tax Increments allocated to the Agency's Low and Moderate Income Housing Fund, leaving a potential maximum of less than Eight Hundred Thousand Dollars (\$800,000) annually of Tax Increments available to the Agency for purposes of this Agreement, together with accumulated Tax Increments held by the Agency as of the date of this Agreement. The effect of these limitations is to restrict the tax increment income available to the Agency for annual administrative costs of the Agency and for participation in the cost of the Off-Site Improvements referred to in the Scope of Development (Attachment No. 2) and more specifically identified in this Method of Financing.

B. Because of these limitations on Tax Increments available to the Agency, and in order to enhance the ability of the Participant to finance the Off-Site Improvements and other public facilities referred to in the Scope of Development (Attachment No. 2), the Agency and City have agreed to initiate and diligently pursue finalization of proceedings to form a Financing District, as set forth in Section VIII hereof, which will include the Site, to obtain sufficient funds to pay the costs of the Off-Site Improvements and other public facilities as set forth herein. Within the limitations of the Tax Increments available to the Agency from the Project and after providing for administrative costs of the Agency, (in amounts not to exceed those specified in line 16 of the Payment Schedule [Exhibit A to this Attachment No. 3], which amounts are to be offset by any and all costs and/or expenses paid to the City, or its consultants, employees and agents, respecting the establishment and administration of the Financing District or as otherwise specified in Section 108 of this Agreement), the Agency will utilize the Tax Increments from the Project to partially reimburse the Participant for the costs of the annual special taxes or special assessments levied against the Project with respect to certain specified Off-Site Improvements under the Financing District in the manner provided in Section VIII herein.

C. An additional source of income available to the Agency to participate in the costs of certain specified Off-Site Improvements as provided herein will be annual lease payments made to the Agency by the City for the use of the Community Facilities. To the extent that Tax Increments available to the Agency as above set forth are insufficient to meet the Agency's annual payment amount as set forth in Section VIII hereof, the Agency will utilize the Community Facilities lease income received from the City to partially reimburse the Participant for the costs of the annual special taxes or special assessments levied against the Project with respect to certain Off-Site Improvements under the Financing District in the manner provided in Section VIII herein.

In the event the Participant elects to privately finance the costs of the Off-Site Improvements, as provided in Section VIII herein, the Agency's payments as set forth herein likewise shall be used to assist the Participant in the costs of the certain specified Off-Site Improvements as provided herein.

## II. SITE PREPARATION

Except for the Agency's responsibilities as set forth hereinbelow, the Participant shall pay all costs for preparing the Site for development, including but not limited to: any preliminary grading not already completed, soils tests and any corrections necessary, including toxic cleanup if contamination should be discovered; and final grading of the Site. In addition, the Agency and City shall cooperate with the Participant and shall use good faith efforts to assist the Participant in negotiating agreements with the public utility companies providing utilities to the Site whereby such public utility companies would pay for, or share in the cost of, placing utility lines underground up to the boundaries of the Site; provided, however, that the failure to obtain such agreement shall not relieve the Participant from its obligations hereunder in this Attachment No. 3 and under this Agreement.

## III. ON-SITE DEVELOPMENT

Except for the payments by the Agency as set forth in Section VIII hereof relating to the financing of a portion of the costs of certain specified Off-Site Improvements, the Participant shall pay for all costs associated with developing the Site as set forth in the Scope of Development (Attachment No. 2).

## IV. OFF-SITE IMPROVEMENTS

A. The Off-Site Improvements, set forth in Section II.D. of the Scope of Development (Attachment No. 2) shall be required for development of the Site. The Participant shall be responsible for causing the construction of the Off-Site Improvements. Except for contributions by the Agency and City as set forth in this Section IV and the payments by the Agency as set forth in Section VIII hereof, Participant shall pay the cost of the Off-Site Improvements, including design and

construction, contract administration and inspection. In addition, the Participant shall participate in any benefit assessment district or community facilities district established by the City for lighting, landscaping and maintenance of such Off-Site Improvements as set forth below.

B. Condition 8.H. of the Precise Development Plan Conditions (Section 7 of City Council Resolution No. 128-90) provides that the Participant shall raise the height of the railing along the north side of the Rowland Boulevard Overpass to a height of 6 feet, subject to Caltrans' approval. This was an increase in height made by the City Council over the recommended 4-1/2 foot height for such railing. Said increase in height was made on the assumption that it would not impose excessive additional costs on the Participant. Agency agrees that if raising the railing from the originally recommended 4-1/2 foot height to a 6 foot height would impose excessive additional costs (as herein defined) on the Participant, the Agency shall either (1) cause the City to revise said requirement to a 4-1/2 foot height, or (2) cause the Agency or City to reimburse the Participant for such excessive additional costs (as herein defined) in a manner reasonably satisfactory to the Participant. "Excessive additional costs," as used herein, shall mean additional costs of design, construction and installation (including other associated work that may be required by Caltrans due to the requirements of Condition 8.H.) in excess of one hundred forty percent (140%) of the costs of design, construction and installation of a 4-1/2 foot railing along the north side of the Rowland Boulevard Overpass, as verified by the City Manager.

C. Participant shall be responsible for fifty percent (50%) of the costs of the hinge slab work referred to in Section II.D. of the Scope of Development, not to exceed a cost to the Participant of \$100,000 for design, construction and associated road transfer area work, as verified by the City Manager (the "Participant's Share"). The Participant shall be reimbursed by the Agency or City for costs of design and construction of the hinge slab work in excess of the Participant's Share, as verified by the City Manager, upon satisfactory completion of said work but not earlier than January 8, 1992.

D. Pursuant to Condition 42.D. of the Precise Development Plan Conditions (Section 7 of City Council Resolution No. 128-90), the City Council shall consider forming an assessment district pursuant to the Landscaping and Lighting Act of 1972 (or similar district) to include eastside 101 properties for installation and maintenance of interchange landscaping subject to Caltrans approval. The Participant shall comply with the Precise Development Plan Condition 42.D. and shall participate in an assessment district formed pursuant to the Landscaping and Lighting Act of 1972 (or similar district). Agency shall use reasonable efforts to cause City to form such a district not later than 180 days following completion of Participant's Phase 1 development.

V. PAYMENTS FOR COMMUNITY FACILITIES AND FUTURE COMMUNITY FACILITIES

In connection with the development of the Site, and in addition to the on-site public amenities to be provided by the Participant as set forth in Section II.B of the Scope of Development (Attachment No. 2), the Participant has agreed to make payments to the Agency and City for off-site community facilities at the times and in the amounts and in the manner set forth as follows:

(1) For the Community Facilities (as defined in Attachment No. 2), the Participant shall pay to the Agency the sum of Three Million Dollars (\$3,000,000.00) in the manner and at the times as follows: (a) \$500,000 at the time of the funding of the Financing District Bonds or, if the Participant has elected to privately finance the costs of the Off-Site Improvements, at the time of first funding of the Participant's private financing; and (b) \$2,500,000 on January 8, 1992; and

(2) For the Future Community Facilities (as defined in Attachment No. 2), the Participant shall pay to the City the sum of Three Million Dollars (\$3,000,000.00) on or before the commencement of Fiscal Year 2002. The Agency has requested, and the Participant has agreed, to satisfy this obligation by paying to the City on January 8, 1992, the sum of One Million One Hundred Fifty Six Thousand Six Hundred Thirty Dollars (\$1,156,630.00), which is an amount equal to the present value (as of January 8, 1992) of \$3,000,000 due on July 1, 2002, using a discount rate of ten percent (10%).

(3) The Participant shall secure its obligations under subparagraphs (1) and (2), above, of this Section V by providing to the Agency an irrevocable demand letter of credit, in form and from an issuer satisfactory to the Agency. The letter of credit shall be in an amount equal to the sum of (a) \$2,500,000 under subparagraph (1), plus (b) the January 8, 1992, present value payment amount calculated under subparagraph (2). The letter of credit shall be provided to the Agency on or before the date of the payment of \$500,000 pursuant to subparagraph (1). The Agency shall be entitled to draw upon the letter of credit on demand and without conditions if the Participant fails to make the payments due the Agency and City on January 8, 1992, as required under subparagraphs (1) and (2).

(4) If the Participant does not (i) make the payment to the Agency required under paragraph (1)(a), above, on the date it is due, or (ii) provide to the Agency the letter of credit required under paragraph (3), above, on the date it is due, the Agency shall be under no obligation to execute and deliver to the Participant the Promissory Note and Agreement (Exhibit B hereto) and all obligations of the Agency to make payments to the Participant pursuant to the provisions of Sections VIII, IX and X of this Method of Financing and the Promissory Note and Agreement shall terminate (without notice to or opportunity to cure on the part of the Participant) and shall be of no further force and effect. If the Participant complies with paragraphs (1)(a) and (3), above, in the manner and by the dates required, but for any reason the

Participant's payments required under paragraphs (1)(b) or (2), above, are not made in the manner and on the dates due under said paragraphs (1)(b) and (2), above, either by the failure of the Participant to make such payments directly or by the inability of the Agency to draw on the letter of credit for the full amount of such payments, then the Agency shall, as its sole remedy (to be exercised by notice to the Participant within 30 days following the date such payments are due), offset and withhold (without obligation on the part of the Agency to ever pay such amounts to the Participant), payments otherwise due to the Participant under the Promissory Note and Agreement (Exhibit B hereto) until such amounts offset and withheld equal the amounts due and not paid under paragraphs (1)(b) and (2), above, plus interest on said unpaid amounts at the maximum rate permitted by law, compounded annually, from the date such payments were due.

#### VI. DEVELOPMENT, PROCESSING, AND OTHER FEES

Subject to the provisions of Section VIII below and Section 213 of this Agreement, the Participant and/or its tenants or other occupants of the Site shall be responsible for the payment of all the planning, development, public works, license and building fees relating to development of the Site.

#### VII. ENVIRONMENTAL REVIEW

Except for the payments by the Agency as set forth in Section VIII hereof, the Participant shall be responsible for all costs of preparing any additional environmental documents required for development of the Project, including but not limited to, any additional environmental documents relating to construction of the Off-Site Improvements set forth in Section II.D of the Scope of Development (Attachment No. 2).

#### VIII. FINANCING OF OFF-SITE IMPROVEMENTS AND PAYMENTS FOR COMMUNITY FACILITIES AND FUTURE COMMUNITY FACILITIES

The Participant desires to finance a part of the costs of the Off-Site Improvements and its payments for the Community Facilities and Future Community Facilities from the issuance and sale of tax exempt bonds (the "Financing District Bonds") sold by the Agency or City pursuant to the authority of the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 *et seq.*) or the Marks-Roos Local Bond Pooling Act of 1985 (Government Code Section 6584 *et seq.*) or other alternate financing district. The Agency or City shall use its best efforts to form or cause to be formed any necessary legal entities or to establish or cause to be established any necessary districts (the "Financing District") and to sell or cause to be sold tax exempt Financing District Bonds according to the Schedule of Performance (Attachment No. 4). The Participant agrees to cooperate in the establishment of the Financing District to include the Site and in the sale of the Financing District Bonds.

As used in this Agreement, the term "Financing District" shall refer to a Mello-Roos District, special assessment district or any other financing district mutually acceptable to the Agency, City and Participant; and the term "Financing District Bonds" shall refer to and include any such tax exempt bonds issued and sold by such Financing District pursuant to and for the purposes set forth in this Agreement.

Prior eligible costs incurred by the Participant, including but not limited to costs of design and construction, Off-Site Engineering Funds, Feasibility Study Funds and Current OPA Funds previously paid by the Participant, may be included for funding from the proceeds of tax exempt Financing District Bonds to be issued by the Financing District as set forth in this Part VIII to the extent that such costs can be legally funded by such Financing District Bonds; provided, however, that the total of all costs of work to be funded through tax exempt Financing District Bonds shall not exceed the sum of Thirty Million Dollars (\$30,000,000).

The tax exempt Financing District Bonds are to be secured by a portion of the Site and the Retail Complex, and the Participant will be obligated to pay a special tax or special assessment on the Site to pay the debt service on the tax exempt Financing District Bonds. The Agency agrees that upon the request of the Participant, it shall cause, to the extent legally permissible, the necessary action to be taken to allocate or reallocate to the remainder of the Site the lien of the Financing District Bonds from the portions of the Site owned by or leased to Major Retail Anchor Stores.

In order to assist in the payment by the Participant of the debt service for the Financing District Bonds to finance certain of the Off-Site Improvements, the Agency agrees to make payments to the Participant, in the annual amounts, at the times, and subject to the terms, conditions and limitations herein set forth:

1. The Agency's payments are made in partial consideration for, and to assist in the costs of, the undertaking by the Participant of the costs (in addition to other costs assumed by the Participant) of providing the following specifically identified Off-Site Improvements which are identified in the Redevelopment Plan and are required for the development of the Site pursuant to this Agreement and the Precise Development Plan:

Rowland Boulevard interchange improvements as set forth in Condition No. 8 of the Precise Development Plan Conditions (Section 7 of City Council Resolution No. 128-90);

Highway 101 improvements as set forth in Condition No. 9 of the Precise Development Plan Conditions (Section 7 of City Council Resolution No. 128-90);

Vintage Way improvements as shown on the Precise Development Plan, subject to Development Standards Exceptions (Section 2 of City Council Resolution No. 128-90);

Traffic signal systems as set forth in Condition No. 11 of the Precise Development Plan Conditions (Section 7 of City Council Resolution No. 128-90).

The total cost to the Participant of providing the above specifically identified Off-Site Improvements (including land costs, design and construction costs) is estimated to exceed Fourteen Million Dollars (\$14,000,000.00) in current dollars, plus costs of financing and interest and other incidental costs. The present value of the maximum amounts payable by the Agency to the Participant hereunder is estimated to be in the range of Eight Million Six Hundred Thousand Dollars to Nine Million Dollars (\$8,600,000 - \$9,000,000) depending upon the discount rate used for said present value calculations. The purpose of this paragraph is to show that the payments made by the Agency to the Participant for the above specified Off-Site Improvements will not exceed the costs of said improvements. In addition, the Participant has estimated its total costs for all Off-Site Improvements (including the above specifically identified improvements) will exceed the amount of Twenty-Seven Million Dollars (\$27,000,000) in current dollars, plus costs of financing and interest and other incidental costs.

2. The payment schedule shall be for the periods and in the annual amounts set forth in Exhibit A to this Attachment No. 3, incorporated herein by reference (the "Payment Schedule"). As used herein, "Fiscal Year" shall have the meaning set forth in the Promissory Note and Agreement, which is Exhibit B attached hereto.

3. Notwithstanding the amounts set forth in the Payment Schedule (Exhibit A), the Agency's payments for any Fiscal Year shall not exceed the total of (1) eighty percent (80%) of the net property Tax Increments actually received by the Agency and generated from the Project (as defined in Section I herein), less the Agency's actual annual administrative expenses for such Fiscal Year as specified in the Payment Schedule, and (2) lease payments received by the Agency during such Fiscal Year from the lease of the Community Facilities to the City (including payments pursuant to the Interim Financing Assurance, Section X hereof), which the Agency shall assign to the Participant. Any short-falls in the amount of said annual Fiscal Year payments as shown on the Payment Schedule as a result of the above limitations shall be waived by the Participant.

4. The Payment Schedule (Exhibit A) is based on projections of property Tax Increments to the Agency and sales tax revenues to the City based on the Participant's performance obligations with respect to the Project. These projections are shown on Lines 7 and 22 of the Payment Schedule. If in any Fiscal Year, the property Tax Increments to the Agency and/or the sales tax revenue to the City are less than the projected amounts for such Fiscal Year as shown in Lines 7 and 22 of

the Payment Schedule (the "Shortfall Amount"), the Agency's obligation to make a payment to the Participant for such Fiscal Year shall be reduced by the Shortfall Amount (less, for the first 10 Fiscal Years of the Payment Schedule, the amount of the first \$150,000 of net property Tax Increments to the Agency and/or sales tax revenue to the City from the Project), and the Participant shall be deemed to have waived its rights to the amount by which the Agency's payment is herein reduced. (See Illustrative Examples attached to the Promissory Note and Agreement, Exhibit B hereto.) The Participant expressly acknowledges that the amount of the Agency's payments under Attachment No. 3 and Promissory Note and Agreement, Exhibit B hereto, is directly dependent upon the generation of specified levels of both property taxes and City sales taxes from the Site as projected in the Payment Schedule (Exhibit A), and that the failure or inability of the Participant to commence and complete development of the Project for whatever reason in time to generate such specified levels of property taxes and City sales taxes, irrespective of the time for performance set forth in this Agreement, may adversely impact the amount of the payments due to the Participant from the Agency as set forth in this Attachment No. 3 and the Promissory Note and Agreement, Exhibit B hereto.

5. Payments by the Agency as set forth in the Payment Schedule (Exhibit A) commencing in the 11th Fiscal Year on said Payment Schedule are conditioned on and in consideration of the payment by the Participant, or its successors in interest, to the City of the cash sum of Three Million Dollars (\$3,000,000) which Participant, for itself and on behalf of its successors and assigns, hereby agrees to pay, by the end of the 10th Fiscal Year on said Payment Schedule for the Future Community Facilities as set forth in the Scope of Development (Attachment No. 2). If said cash payment is not promptly paid when due, the Agency shall be relieved of the obligations to make any further payments as shown on the Payment Schedule commencing with the 11th Fiscal Year, and the Participant, or its successors and assigns, shall be deemed to have waived all further rights and claim to such payments. The Participant shall have the right, to the extent legally permissible, to fund such \$3,000,000 cash payment from the proceeds of the Financing District Bonds. Payment by the Participant to the City of the present value amount of said sum on January 8, 1992, as provided in subparagraph (2) of Section V hereof, shall completely satisfy this condition.

6. Payments by the Agency to the Participant shall be made in two semi-annual installments thirty (30) days prior to the semi-annual bond payment date, commencing with the first payment in Fiscal Year 1992. The first installment in each Fiscal Year in the amount of fifty percent (50%) of the total amount due for such Fiscal Year shall be based on the Agency's projections of property Tax Increments and sales tax revenue to the City to be generated from the Project for such Fiscal Year, as shown on the Payment Schedule (Exhibit A), and the second installment shall be in the amount of the balance of the total payment due for such Fiscal Year by the Agency under the Promissory Note and Agreement and based on the Payment Schedule (Exhibit A). In all events, payments by the Agency shall be limited to funds actually received by the Agency as of said payment date; provided,

however, that Participant does not waive, and Agency shall pay when funds are received, any shortfall caused when projections have been met but funds are not available on said payment date solely because of the timing of receipt of funds by the Agency. Participant shall provide written evidence satisfactory to the Agency from time to time as may be requested by the Agency of the amount and times of payments of taxes with respect to the Site.

The special tax or special assessment on the Site, or privately financed debt service, is expected to be more than the payment by Agency to Participant. The Agency shall not be responsible for any shortfall between the amount of such tax, assessment or debt service and the Agency payment under any circumstances.

In the event that the County of Marin withholds the release of the annual property Tax Increment generated from the Project (usually occurring upon protest of a property owner of an assessment ruling), the Agency shall not be responsible for paying to the Participant its agreed upon sum associated with the withheld portion of the annual property Tax Increment until the receipt of the property tax increment from the County of Marin. No interest will accrue to this late payment to the Participant.

7. The Agency's obligations as set forth herein shall be evidenced by a promissory note and agreement (the "Promissory Note and Agreement") issued by the Agency to the Participant at the time of sale of the tax exempt Financing District Bonds, or, if the Participant has elected to privately finance the Off-Site Improvements, upon completion of those Off-Site Improvements identified in paragraph 1, above, as certified by the Agency, or in the alternative at such earlier time as the Agency is assured of the full and timely completion of such Off-Site Improvements. Upon the first funding of the private financing, the Promissory Note shall be placed in escrow to be delivered when the requirements for delivery have been met. The form of the Promissory Note and Agreement shall be subject to the reasonable approval of the Participant and shall be in conformity with the requirements set forth herein and any reasonable requirements of Agency's or City's bond counsel retained for the issuance of the tax exempt Financing District Bonds. A proposed form of said Promissory Note and Agreement acceptable to the Agency and Participant is attached hereto as Exhibit B to this Attachment No. 3.

8. The Agency estimates the present value of its maximum payments to the Participant over the term of the Payment Schedule (Exhibit A) to be approximately in the range of \$8,600,000 to \$9,000,000 (depending on a discount rate determined by the net interest rate of the Financing District Bonds); provided, however, that this shall not be deemed a limitation on the total payments owed the Participant. The Agency at any time may prepay the unpaid balance of any amounts owing the Participant from the proceeds of Agency bonds or from other Agency sources in the manner and subject to the calculations set forth in the Promissory Note and Agreement governing such prepayment.

9. It is the intent of the Agency, the City and the Participant to maintain the tax exempt status of the Financing District Bonds and the Agency and City agree to maintain and operate the Community Facilities or Future Community Facilities in a manner which does not adversely affect the tax exempt status of the Financing District Bonds.

10. The Participant and Agency have negotiated the amount, terms and conditions of the Agency payments hereunder based upon the applicable provisions of the Constitution and Laws of the State of California in effect on the date of this Agreement governing (i) the rate, levy, collection, amount, use and administration of property taxes, and the allocation of property Tax Increments generated from the Site and allocated to the Agency, and (ii) the rate, levy, collection, amount, use and allocation to the City of sales and use taxes generated from the Site (collectively, the "State Laws"). If any future changes in State Laws would materially adversely effect the receipt by the Agency of property Tax Increments generated from the Site or the receipt by the City of its one percent (1%) share of the sales and use taxes generated from the Site as unrestricted general fund revenues, the City and Agency shall reasonably cooperate with the Participant in efforts to avoid such material adverse effect. If future changes in State Laws do adversely materially effect the receipt by the Agency of property Tax Increments generated from the Site or the receipt by the City of its one percent (1%) share of the sales and use taxes generated from the Site as unrestricted general fund revenues, the Agency and Participant agree as follows:

(a) as to future changes in State Laws which materially adversely effect the allocation, amount or use of property Tax Increments generated from the Site to the Agency for purposes of this Agreement, any replacement revenues provided to the Agency as a result of such changes in State Laws which are available for payments pursuant to this Agreement shall be treated the same as property Tax Increments for purposes of this Agreement; otherwise to the extent the effect of such changes in State Laws is to reduce the amount of property Tax Increments available to the Agency hereunder, the Agency's payment obligations pursuant to this Agreement shall be reduced by the amount of any such reduction caused by such changes in State Laws; and

(b) as to future changes in State Laws which materially adversely effect the receipt, amount or use by the City of sales and use taxes generated from the Site as unrestricted general fund revenues, any replacement revenues provided to the City as a result of such changes in State Laws which are available for City lease payments shall be treated the same as sales and use taxes received by the City for purposes of this Agreement; otherwise to the extent the effect of such changes in State Laws is to reduce the amount of sales and use taxes generated from the Site and received by the City as unrestricted general fund revenues, the City's lease payment amount shall be reduced by the same percentage as the percentage reduction in the sales and use taxes generated from the Site and received by the City.

ATTACHMENT NO. 4  
SCHEDULE OF PERFORMANCE

<u>Action</u>	<u>Date</u>
1. <u>Execution and Submission of Agreement.</u> Execution of the Agreement by the Participant and submission to Agency.	The Agency shall execute the Agreement and City shall execute the Consent and Agreement upon submission by the Participant.
2. <u>Formation of Financing District.</u> Agency and City upon request of Participant shall complete the necessary action required to establish such district and cause such district to authorize the issuance of tax exempt Financing District Bonds to pay for the cost of the Off-Site Improvements and the Community Facilities and Future Community Facilities contributions referred to in the Scope of Development (see Section VIII of the Method of Financing).	As soon as possible, but in any event not later than 90 days after request by Participant.
3. <u>Retail Complex Design Drawings.</u> Participant has submitted design drawings for Phase 1 of the Retail Complex (including Macy's). Participant shall submit design drawings for Phase 2 of the Retail Complex to the City no later than June 1, 1991. Design drawings for subsequent phases, if any, of the Retail Complex may be submitted to the City at a time determined by Participant. (See Section 209 and Part II of the Scope of Development.)	City shall have fourteen (14) days from submission for Staff comments. Participant shall have sixty (60) days from receipt of Staff comments to react to such comments and resubmit the revised drawings. City shall have forty-five (45) days after such resubmittal within which to approve.

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| 4. | <u>Participant's Financing.</u> If Participant determines that it does not have adequate financing, Participant may elect to terminate this Agreement by delivering to Agency a written notice to such effect (see Section 410(b)).   | Not later than thirty (30) days prior to the agreed upon date for issuance of the Financing District Bonds.  |
| 5. | <u>Major Retail Anchor Store Commitments.</u> Participant shall submit to Agency its certification that it has obtained commitments from at least three Major Retail Anchor Stores to develop, construct, operate and maintain Retail Stores on the Site (see Section 210). | Not later than sixty (60) days prior to the agreed upon date for issuance of the Financing District Bonds.   |
| 6. | <u>Issuance of Financing District Bonds.</u> Agency and City shall cause the Financing District Bonds to be issued upon satisfaction and completion of Items 1 through 5 above.   | Not later than 45 days after completion of Items 1 through 5, above.   |
| 7. | <u>Participant's Election to Finance Off-Site Improvements.</u> If the Financing District is not formed or Financing District Bonds are not issued, Participant may elect to privately finance the Off-Site Improvements, and shall notify Agency in writing.               | Within sixty (60) days from the date Agency advises Participant (a) that Financing District will not be formed, or (b) that Financing District Bonds will not be issued.   |
| 8. | <u>Construction of Off-Site Improvements.</u> Participant shall commence construction of the Off-Site Improvements.   | Within thirty (30) days of either: (a) the date Financing District Bond proceeds are available and all applicable permits have been issued, or (b) the date of Participant's election to privately finance the Off-Site Improvements and all applicable permits have been issued; and shall be completed on a schedule that allows for substantial completion of all such improvements prior to opening of Phase 1 of the Retail Complex (see Scope of Development). |

9. Retail Complex Plan Check. Participant shall submit working drawings for Phase 1 of the Retail Complex to the City. No later than February 15, 1991.
- Participant shall submit working drawings for Phase 2 of the Retail Complex to the City. No later than September 15, 1991.
- Working drawings for subsequent phases, if any, shall be submitted to the City at a time determined by Participant. City shall have sixty (60) days from submission within which to approve the plans and to process and issue the requested permits.
10. Construction of Retail Complex Improvements. Participant and/or Major Retail Anchor Store shall commence substantial construction (as defined in Section 217) of the Phase I Retail Complex. No later than July 30, 1992, with an earlier target date of July 30, 1991. (See Note 1.)
11. Execution of REA and CC&R's. An REA and/or any CC&R's shall be executed by each party thereto. Prior to opening of Phase I and Phase II, as applicable.
12. Opening of Retail Complex. Construction of Phase I improvements on the Site shall be completed by, and Phase I of the Retail Complex shall open for business. No later than February 28, 1993, with an earlier target date of February 28, 1992. (See Note 1.)
13. Completion of Phase II of Retail Complex. Construction of Participant's Phase II improvements on the Site shall be completed by, and Phase II of the Retail Complex shall be open for business. No later than August 31, 1993, with an earlier target date of August 31, 1992. (See Note 1.)

NOTE 1: As used in this Schedule of Performance, the earlier "target date" shall be the date of performance for purposes of the Participant's obligations under this Agreement unless the target date shall have been extended to a date not to exceed the "no later than" date pursuant to the provisions of Section 211 of this Agreement.



AG T. 2248  
Reso R-29

ATTACHMENT NO. 5

COMMUNITY FACILITIES LEASE

[Copy of full lease may be inserted when mutually agreed to and approved by Agency and City]

Lease Terms to Include:

- Lessor: Agency or its designee
- Lessee: City
- Property: A site to be designated by the City, and Community Facilities designed and constructed to City requirements and specifications, subject to available funds of Agency and City.
- Term: As mutually agreed to, but not less than duration of Redevelopment Plan or termination of Agency payment obligations to Participate. Term to commence when Community Facilities are available for use and occupancy by City.
- Lease Payments: Payable pursuant to a formula which will permit Agency to meet its payment obligations to the Participant under the OPA and Promissory Note and Agreement, and subject to all the limitations and conditions contained therein. The Agency shall have the right to assign its right to Lease Payments to the Participant as additional security.
- Lease: City to devote Property to public use. City to operate and maintain and bear all costs of maintenance and operation. City shall (i) maintain adequate insurance coverage (which may be through City's self-insurance program) so as to insure the uninterrupted payment of the Lease Payments from City to Agency such as, but not limited to, business interruption insurance in an amount equal to the Lease Payments, and (ii) agree to such other reasonable provisions as Agency shall request to insure the uninterrupted payment of the Lease Payments so as to insure the uninterrupted payment from the Agency to the Participant as set forth on the Payment Schedule.
- Termination: For failure to pay rent or perform other covenants.

Disposition of  
Property Upon  
Termination or

Expiration of Lease: To be retained by Agency, or transferred to community non-profit, or as otherwise mutually agreed.

Application of  
Measure D:

To be determined based on final lease terms. If applicable, compliance with Measure D will be required before lease becomes effective.

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ATTACHMENT NO. 6.

PRECISE DEVELOPMENT PLAN

The Precise Development Plan is that certain Precise Development Plan (PD 90-008) for the Vintage Oaks at Novato Regional Shopping Center approved by the City Council of the City of Novato by Resolution No. 128-90, on December 11, 1990, including Conditions of Approval and other matters contained in said Resolution No. 128-90, a copy of which is attached hereto. The Precise Development Plan, Resolution No. 128-90, and all related materials and documents on file with the Planning Department of the City of Novato are incorporated herein by reference.



RESOLUTION NO. 128-90

RESOLUTION APPROVING THE PRECISE DEVELOPMENT PLAN (PD 90-008) FOR THE VINTAGE OAKS AT NOVATO REGIONAL SHOPPING CENTER AND MAKING FINDINGS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF NOVATO DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

1. The Planning Commission of the City of Novato has adopted Planning Commission Resolutions 90-026 and 90-027 recommending that the City Council certify the Final Subsequent Environmental Impact Report and approve the Precise Development Plan for The Vintage Oaks at Novato Regional Shopping Center; and

2. The City Council has adopted City Council Resolution No. 127-90 finding that the Final Subsequent Environmental Impact Report for The Vintage Oaks at Novato Regional Shopping Center (the "Project") was prepared, publicized, circulated, and reviewed and constitutes an adequate, accurate, objective, and complete Final Subsequent Environmental Impact Report in accordance with the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq. "CEQA"), the State CEQA Guidelines (Cal. Code of Regs. Title 14, Section 15000 et seq., "CEQA Guidelines"), and the City of Novato Environmental Review Guidelines; and

3. The City Council held a duly advertised and noticed public hearing on the project on November 27, 1990, and continued to December 5 and again to December 11, 1990. Public testimony was taken; and

4. During the hearing, the City Council received comments from the project sponsor, project consultants, City staff members, and City consultants, as well as members of the general public; and

5. Prior to acting on the Precise Development Plan application, the City Council has considered the information provided by those testifying, as well as information provided in the Final Subsequent Environmental Impact Report, staff reports, and supporting documentation.

6. The City Council hearing was held pursuant to a directed referral under Section 19.5-012b of the City of Novato Code; although an appeal of the Planning Commission action was also filed, Section 19.5-012c of the City of Novato Code provides that the directed referral takes precedence and the appeal is void.

2. Sidewalk shall be constructed along the westerly side of Vintage Way from the most northerly driveway of Pad Q to the South Vintage Way/Rowland Boulevard intersection.
3. Sidewalk widths shall be at least five feet wide, except along the west side of Rowland Boulevard between the North and South Vintage Way intersections, where it shall be four and one-half feet wide.
4. Sidewalks may be detached from curbs, except along Rowland Boulevard between North and South Vintage Way intersection, provided that:
  - a) They are separated a distance generally in conformance with that provided for the Rowland Plaza project; and
  - b) The landscaping placed adjacent thereto will not interfere with the use of the sidewalk or their structural integrity.

Section 5-45.008 b.2.(j) "Street widths."

Exception: To allow a right-of-way-width of less than 100 feet for the southerly portion of Vintage Way.

Condition: The final right-of-way width of the southerly portion of Vintage Way shall be sufficient to contain final street/sidewalk/bus stop improvements design as approved by the City Engineer.

Section 5-45.008 b.2.(k)(4) "The minimum grade for streets shall be one percent."

Exception: To allow a street grade of three quarters of one percent.

Condition: None required.

### SECTION 3. Findings for Exceptions.

1. The City Council makes the following findings with respect to the request for exceptions from Development Standards, in conformance with Section 5-3.010.c. of the Novato Municipal Code:

- (a) Due to special circumstances or conditions affecting this property, the strict application of this chapter would create an unnecessary hardship.
- (b) The exception is consistent with the intent of the requirements of this chapter and does not constitute a grant of special privilege.
- (c) That the exception would not result in significant increased adverse environmental impacts compared to the strict application of the requirements of this chapter.

## SECTION 7. Precise Development Plan Conditions

Note: An asterisk (\*) denotes those conditions that are derived from the EIR.

1. Approval of project plans shall be valid for a period of five (5) years from the date of final City Council action. Any part of the project which has received Design Review approval shall remain valid as long as the Design Review action remains valid. Applications for time extensions of the Precise Development Plan may be filed and considered by the Planning Commission.

### LAND USE

2. The following uses are permitted: retail, personal services, office, and public community facilities.
3. Gas station uses shall not be permitted within building pad AA.
4. Except for initial establishment in conformance with the Precise Development Plan, a Use Permit shall be required for the following:
  - A. Grocery store (excluding Costco)
  - B. Eating or drinking establishments
  - C. Uses with drive-through facilities
  - D. Hotel
  - E. Recreational uses
5. All automotive services, including gas stations but not including strictly retail automotive, shall require a Use Permit. Gas stations may not include mini-marts.
6. The proposed community facility shall be located off-site provided the developer shall commit itself to a payment to the satisfaction of the Redevelopment Agency of Three Million Dollars (\$3,000,000) toward the costs of off-site community facilities. The developer shall have no other obligation for the community facility.
7. The former site of the community facility may be utilized for a maximum of 20,000 square feet of commercial use, in conformance with Conditions 2 and 4 above.

### ROADWAY IMPROVEMENTS

8. The developer shall construct Rowland Boulevard interchange improvements as follows:
  - A. The Rowland Overpass, between the ramp intersections on both the east and west sides, shall be restriped to include a six-foot bike lane on the south side and a seven-foot bike lane on the north side.

- C. Rowland Boulevard and the easterly Highway 101 ramps.
  - D. Rowland Boulevard and the westerly Highway 101 ramps.
  - E. Rowland Boulevard and Redwood Boulevard.
12. Rowland Boulevard at Vintage Way improvements shall include two right-turn lanes into Vintage Way. Other traffic lane configuration in this area shall be in general conformance with Exhibit C, "Diagram of Proposed Lane Configuration."
  13. The developer shall install all necessary conduits under the intersection of South Vintage Way and Rowland Boulevard to provide for future installation of a traffic signal system. To ensure future construction of this signal system, the developer and City shall enter into a recorded agreement which will specify that the developer will pay for 75% of the cost to design, construct, and inspect the system when a signal is warranted.
  14. A stop for vehicles exiting the shopping center shall be installed at the driveway approach to Rowland Boulevard near the Target store (Anchor 3). No stops shall be provided on Rowland Boulevard. In addition, the developer shall install conduits for possible future traffic signals at this intersection.
  15. The driveway servicing the front of the Costco store (Anchor 5) off of Vintage Way shall be constructed as generally shown on Exhibit D, attached.
  16. The curb return radii for this project shall be not less than 45 feet as specified in the Development Standards Chapter of the City Code.
  - \*17. Necessary signage shall be constructed to reduce traffic hazards by directing vehicular movements and reducing weaving in the eastbound direction of Rowland Boulevard approaching Rowland Way.
  18. Standard directional signage shall be provided both on-site and off-site as required by the City Code.

#### TRANSPORTATION SYSTEMS MANAGEMENT

19. Prior to issuance of any Certificate of Occupancy, the developer shall develop and submit a Transportation Systems Management (TSM) Program for shopping center employees to the Community Development Director for approval. The TSM Program shall be designed to reduce the AM and PM peak hour trips by a goal of 30% from that which would occur if each employee arrived/departed in a single-occupant vehicle during peak hour. The program shall provide incentives for vanpooling, carpooling, and use of alternative modes of transportation to reduce employee auto use. The developer shall employ a TSM coordinator for the shopping center.

By June 30 of each year, after occupancy of the first building and for a period of ten (10) years from full buildout, a report based on employee surveys shall be submitted

## DRAINAGE AND UTILITY IMPROVEMENTS

25. The culvert system through the Lynwood Slough portion of the project shall be as approved by the Marin County Flood Control and Water Conservation District and shall be consistent with the conditions of approval set forth herein.
26. The minimum elevation (after ultimate settlement) for finished floors or damageable facilities shall be 8.5 ngvd (national geodetic vertical datum) (1.5 feet above the 100-year flood level of 7.0 feet) or 1.5 feet greater than any new 100-year flood determined by the Federal Emergency Management Agency as completed prior to receipt of building permit applications. The minimum elevation for all new streets and truck delivery routes to buildings shall be no lower than 6.5 ngvd after ultimate settlement. The minimum elevation for all other project locations, excluding flood-proofed loading docks and perimeter sloped areas, shall be no lower than 6.0 ngvd after ultimate settlement. The City Engineer may require supplemental or independent soils analyses to verify predicted settlement rates.
27. Other drainage systems for the project shall be constructed in conformance with requirements of the Development Standards Chapter of the City Code.
28. The developer shall comply with the North Marin Water District's Regulation 15, Water Conservation Regulations for the Novato Service Area, including those regulations pertaining to the watering of landscaping. The developer and any successors in interest, including lessees and tenants of the shopping center, shall comply with Regulation 15 standards.
29. Prior to issuance of any Certificate of Occupancy, the developer, in consultation with the Novato Disposal Service, shall develop a program subject to the approval of the Community Development Director to implement a program for recyclable waste products generated on-site.
30. Prior to the submittal of a Design Review application, the developer shall consult with PG&E regarding energy-conserving design techniques and energy rebate programs for commercial buildings. The intent of this condition is to encourage the developer to achieve energy conservation that exceeds Title 24 energy standards.
31. Utilities to the site shall be undergrounded and the existing overhead utility lines fronting Highway 101 shall be undergrounded along the entire length of the project, including those through and/or adjacent to the Ecological Preserve area. The existing overhead utility lines through the Ecological Preserve may remain overhead until the adjacent Hanna property to the south is further developed. With the Hanna property development, it shall be the responsibility of the developer to remove said utility lines. The provision for this future removal shall be guaranteed by recorded agreement between the developer and the City.
32. Due to the potentially significant impacts related to differential settlement, as addressed in the Environmental Impact Report, soils and improvements engineering shall identify improvement locations where differential settlement may occur and

- B. No more than three 12-foot-high major tenant identification signs.
38. Prior to the issuance of building permits, a comprehensive signage program for all project signs shall be submitted for approval by the Design Review Committee.
  39. The landscape plans included in the Precise Development Plan submittal shall be considered conceptual in nature. Final landscape plans for the Center shall be approved by the Design Review Committee.
  40. There shall be no building construction within the drip line of the existing oak trees located on the oak knoll.
  - \*41. Concurrent with the submittal of a Design Review application for a comprehensive landscape plan, the developer shall submit an evaluation and maintenance plan for the oak trees located on the oak knoll. The report shall be prepared by a certified arborist and shall include the following:
    - A. An evaluation of the existing condition of the trees.
    - B. Recommendations for immediate and long-term maintenance of the oaks to ensure their preservation. The recommendations shall be based on a review of the grading, landscape, and construction plans, including the proposed location of buildings M, N, and O.
    - C. Recommendations on the types of landscape materials that should be used in the oak knoll area to ensure irrigation and cultural compatibility with the mature oak trees.
    - D. Recommendations on the possible removal and replacement of trees.
  42. A Comprehensive Landscape and Irrigation Plan for the project site shall be submitted to, and approved by, the Design Review Committee prior to approval of any improvement plans. The Plan shall provide for the following:
    - A. Treatment of oak knoll, as recommended in the study required by Condition 41.
    - B. Treatment of area along State lands and Ecological Preserve. Use of native tree and shrub species shall be used in these areas to lessen the possibility of ornamental plants colonizing into these areas.
    - C. Screening of buildings, loading areas, auto service areas, headwalls, and openings of drainage culverts.
    - D. Landscaping and/or treatment of parkways, medians, and Caltrans right-of-way (interchange and frontage). The Council shall consider forming a 1972

the mechanism to provide for continuing maintenance of the Ecological Preserve. The statement shall identify the agencies, persons, and/or organizations that are designated by the property owner to be responsible for the required maintenance and monitoring activities.

47. The developer shall be responsible for sweeping all shopping center parking areas a minimum of once a week; the frequency of parking lot sweeping shall increase to three times per week during the rainy season.

#### FIRE PROTECTION

48. Rowland Boulevard shall be constructed through the South Vintage Way intersection, as generally shown on the Precise Development Plan. Such construction shall not block or prohibit physical access for emergency vehicles from the south. The remainder of Rowland Boulevard to the south project property line shall be constructed in the future by the developer and shall be guaranteed by recorded agreement between the developer and City.
49. Prior to issuance of any building permit for building construction, the developer shall obtain a right of entry or other appropriate mechanism to permit emergency access and installation of an all-weather surface through the Hanna property to Hanna Ranch Road.
50. Final improvement plans for the project shall include the following to ensure adequate fire protection:
  - \*A. A fully automatic sprinkler system for all buildings.
  - B. Fire hydrants, as required by the Fire Marshal, which must be installed and operational prior to the framing stage.
  - C. Landscaping at entry driveways shall be designed to maintain an 11-foot-high clearance for emergency vehicles.
51. An all-weather emergency access to and around the construction sites shall be maintained, subject to the approval of the Fire District.

#### MISCELLANEOUS

52. While the possibility of buried cultural materials is considered remote, should cultural resources be discovered on the site during excavation and/or construction, all work within the area of the find shall be halted and a qualified archaeologist shall be contacted to determine the appropriate mitigation measures in accordance with State law and Chapter 4.7 of the City Code.
53. The following measures shall be implemented to control dust during the construction phase of the project:

and imposed as conditions of Precise Development Plan approval, as listed in Section 7, and that these mitigation measures will avoid or substantially lessen the significant impacts.

SECTION 9. Significant Environmental Impacts and Mitigation Measures.

The following environmental impacts were deemed significant in the Final Subsequent Environmental Impact Report:

A. TRAFFIC AND TRANSPORTATION

A.1. Impact: Project traffic would lead to a decline in levels of service for both northbound and southbound Highway 101 ramps and ramp intersections at Rowland Boulevard.

Mitigation: Improvements needed to accommodate project and cumulative traffic include signalizing the southbound Highway 101 ramp intersection at Rowland Boulevard, adding lanes to the overpass by restriping, widening the northbound on- and off-ramps, and providing a two-lane southbound loop ramp for westbound Rowland Boulevard traffic. All widenings would have to address Caltrans policy regarding ramp metering.

A northbound auxiliary lane would be needed between the State Route 37 interchange and the Rowland Boulevard interchange, and an extended merge lane would be needed on the northbound Highway 101 on-ramp to accommodate the project and cumulative traffic.

Finding: These mitigation measures have been imposed as conditions of approval and will substantially lessen the significant impacts on ramps and ramp intersections at Rowland Boulevard. However, impacts will not be reduced to a level of insignificance due to the congested condition on Highway 101, which will continue with or without the project. A Statement of Overriding Considerations shall be adopted for these impacts.

A.2. Impact: Near the site, Highway 101 conditions are currently congested, and cumulative traffic growth, including project generated traffic, would worsen freeway congestion. This impact is less than significant with respect to the project, but significant with respect to cumulative traffic.

Mitigation: The HOV lane extension through the study area and a transit way on the NWPRR, as recommended by the Highway 101 Corridor Committee, would be desirable with or without the project.

Finding: The extension of an HOV lane on Highway 101 is within the responsibility and jurisdiction of another agency and should be implemented with or without the project.

With regard to transit on the NWPRR right-of-way, a provision for the construction and operation of an on-site parking garage for transit users has been included as a condition of project approval. Future transit operation along the NWPRR right-of-way would be within the responsibility and jurisdiction of another agency and should be implemented with or without the project.

(2) Utilize design criteria that would give site improvements the flexibility needed to accommodate the differential settlement expected to occur after completion of construction.

(3) Perform all site preparation and design all improvements in accordance with the recommendations of a California registered soils engineer.

Finding: These mitigation measures have been incorporated into the project grading plan and included, where appropriate, as conditions of approval. These measures will substantially lessen the significant impacts with regard to differential settlement. However, these impacts will not be reduced to a level of insignificance. The project alternatives identified in the Final Subsequent EIR were found to be infeasible or would not substantially lessen this environmental impact. A Statement of Overriding Considerations shall be adopted for this impact.

B.2. Impact: People and improvements would be exposed to an increased earthquake hazard on the developed project site.

Mitigation:

(1) Design buildings in conformance with the current Uniform Building Code to resist the amplified ground shaking expected to occur within the Bay mud and imported fill material on which the project would be constructed.

(2) Set buildings back from the edge of fill embankments to avoid areas with the greatest potential of lateral spreading and lurch cracking during an earthquake.

(3) Gradually slope fill embankments down to natural ground elevations to reduce likelihood of lateral spreading and lurch cracking.

(4) Perform all site preparation and design all improvements in accordance with the recommendations of a California registered soils engineer.

Finding: These mitigation measures have been incorporated into the project grading plan and design. These measures will substantially lessen the significant impacts with regard to seismic hazards. However, these impacts will not be reduced to a level of insignificance. The project alternatives identified in the Final Subsequent EIR were found to be infeasible or would not substantially lessen this environmental impact. A Statement of Overriding Considerations shall be adopted for this impact.

C. Air Quality.

C.1. Impact: Project construction activities would temporarily increase PM<sub>10</sub> concentration (dust) in the area of construction that could be sufficient to violate the Federal and State PM<sub>10</sub> standards in the site vicinity.

reduce the significant impacts identified for the proposed project. Alternative site designs that have been considered would not be compatible with the needs and desires of the proposed major tenants of the Center.

- (c) Alternative Project Locations. The two areas within Novato that were considered as alternative project locations, downtown Novato and Hamilton Air Force Base, have been rejected for the following reasons: 1) development of a regional shopping center at either location could have comparable significant environmental impacts; 2) no specific site exists in the central Novato area that could provide adequate space and allow efficient traffic circulation and parking; 3) the proposed project would not be consistent with the General Plan goals and policies for the reuse of Hamilton Air Force Base; and 4) the Hamilton site is not considered viable due to the voter defeat of the Berg-Revoir proposal, and due to the present uncertainty of the ultimate disposition of Hamilton Field. No other sites were found available for the proposed project that were not already owned, controlled, or undeveloped and of sufficient size for a regionally-serving shopping center.
- (d) Alternative Project Size. A smaller regionally-serving shopping center project would not be expected to significantly reduce the magnitude or importance of the significant impacts identified for the project. A smaller project would generate less traffic, but would not significantly influence the impact of cumulative development traffic. In addition, the potential for differential settlement and earthquake hazards would continue to exist.

#### SECTION 11. Findings Concerning Unavoidable Significant Impacts.

1. The City Council finds that although measures identified in Section 9 above have been incorporated into the project or required as conditions of approval, and that these measures will avoid or substantially lessen the environmental impacts described above, the above mitigation measures will not fully mitigate all significant adverse impacts described in the Final Subsequent Environmental Impact Report. Specifically, the City Council finds that the project will result in significant adverse impacts in the following areas which cannot be fully mitigated: traffic and transportation, air quality, and soils, geology, and seismicity.

2. The City Council finds that specific economic and social considerations make infeasible full mitigation of these impacts and make project alternatives infeasible.

3. The City Council has weighed the above benefits of the proposed Plan against its unavoidable environmental risks and adverse environmental effects identified in the Final Subsequent EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are "acceptable." A written statement of such overriding considerations, identifying the specific reasons why the City has determined that the economic, social or other benefits of the project outweigh the unavoidable adverse environmental impacts, is attached hereto as "Exhibit A" and incorporated by reference.

\* \* \* \* \*

EXHIBIT "A"

Statement of Overriding Consideration  
The Vintage Oaks at Novato Regional Shopping Center  
Precise Development Plan

Pursuant to Public Resources Code Section 21081(g) and CEQA Guideline Section 15091, et seq., the City Council of the City of Novato makes the following Statement of Overriding Considerations and Findings in support thereof:

A. Unavoidable Significant Adverse Impacts:

The following unavoidable significant environmental impacts are associated with the proposed project as identified in the Final Subsequent Environmental Impact Report for the project, which consists of the Draft Subsequent Environment Impact Report for the Vintage Oaks at Novato Regional Shopping Center, dated July 1990, and the Final EIR (Response to Comments) dated October 1990. These impacts cannot be fully mitigated by changes or alterations to the basic project.

1. Traffic and Transportation. Project traffic would lead to a decline in levels of service for both northbound and southbound Highway 101 ramps and ramp intersections at Rowland Boulevard.

This impact is unavoidable and is considered significant.

With cumulative traffic, the existing congested condition on Highway 101 in the vicinity of the project would worsen, and unacceptable levels of service would result at the Ignacio Boulevard interchange. Cumulative growth would also result in a decline in the level of service at the Redwood/Rowland Boulevard and South Novato/Rowland Boulevard intersections. These conditions would result with or without the proposed project.

2. Soils, Geology and Seismicity. Differential settlement of the ground surface resulting from future consolidation of Bay mud could damage site improvements, including buildings, roadways, parking lots, and underground utilities. In addition, people and improvements would be exposed to an increased earthquake hazard on the developed project site. These impacts are unavoidable and are considered significant.
3. Air Quality. Project construction activities would temporarily increase PM<sub>10</sub> concentration (dust) in the area of construction that could be sufficient to violate the federal and State PM<sub>10</sub> standards in the site vicinity. Traffic generated by the project would emit exhaust containing reactive organic compounds (ROGs) and oxides of nitrogen (NOx) in quantities large enough to contribute significantly to regional pollutant totals. ROG and NOx levels would exceed one percent of the emissions for the County and also exceed levels requiring the use of the Best Available Control Technologies (BACT)



Majors Engineering

EXHIBIT B

150 Ford Way  
Novato, CA 94945-4504  
Fax (415) 892-6413  
(415) 892-0333  
R-3

September 10, 1990

Mr. Mark Westfall  
Senior Planner  
City of Novato  
901 Sherman Avenue  
Novato, Ca. 94945

RE: VINTAGE OAKS AT NOVATO  
MJM NO. 5-1744-07

Dear Mark:

Associated with the Precise Development Plan for the subject project we are requesting exception to the Development Standards for the following:

1. Drainage:

Section 5-15.008 h.1.(a) "For sag conditions, factors of safety shall be designed into the grading/drainage facility relationships commensurate with potential overland flow if blockage of the drainage facility occurs."

We propose that this project not provide an alternative overland flow route for 100% of the estimated flood flow.

Justification

a. Blockage may occur from debris clogged entrance or collapsed of a drainage system.

(1) The entrance grate, required to prevent human entry and to trap flood trash, will have a capacity two times the culvert entrance square footage (100% safety factor). The size of debris that may clog the entrance is limited to the depth of overflow over the highway, 1.5 to 2 feet deep.

(2) The culvert entrances are 4 each, 10 foot high by 12 foot wide box culverts. Collapse of the four independent culverts, constructed to today's highway standard, are very unlikely to collapse at the same time causing total blockage.

An ESOP Company

... in San Ramon, Novato and Sacramento.

Mr. Mark Westfall  
September 10, 1990  
Page 5

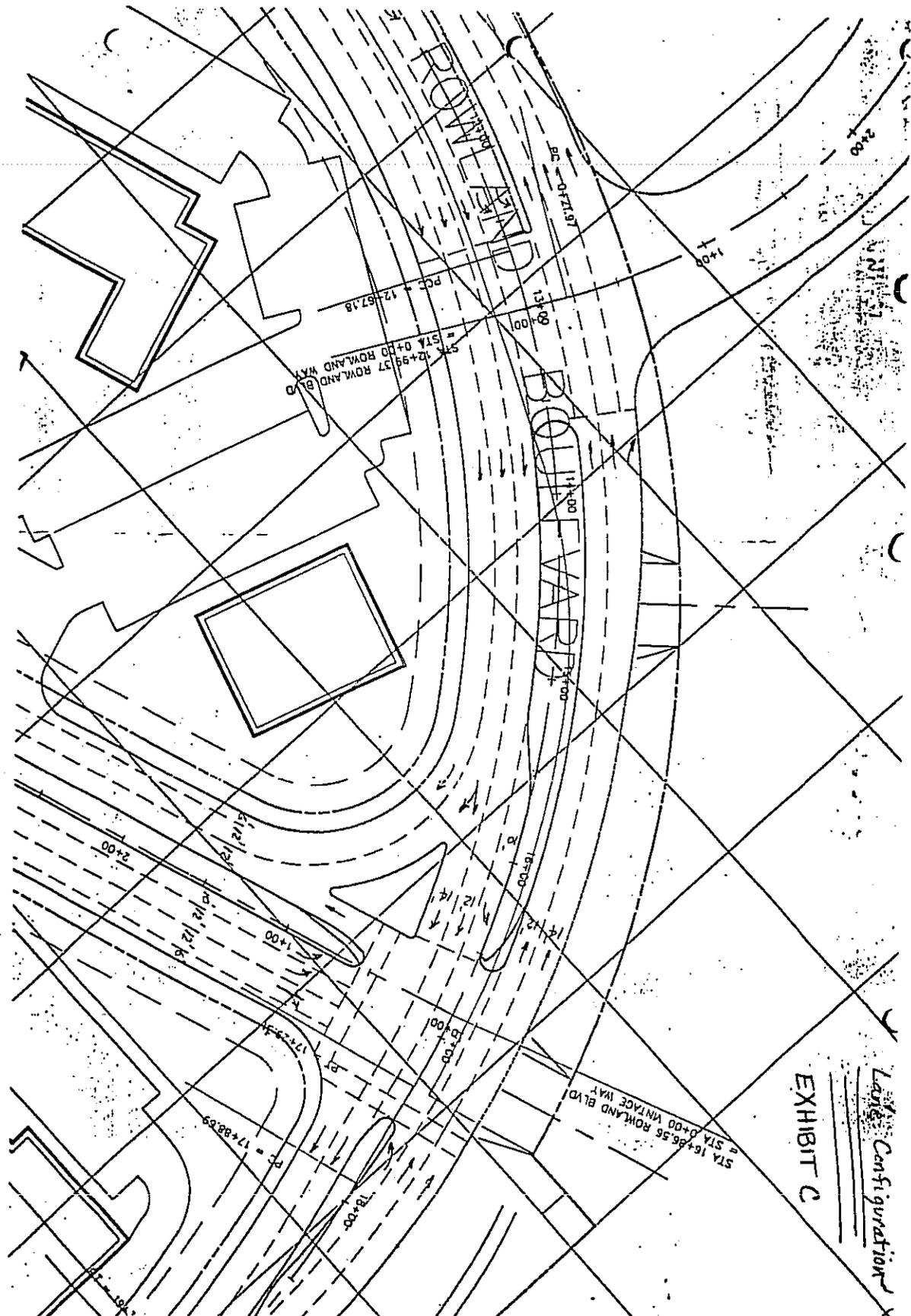
If there are any questions, please feel free to contact our office.

Sincerely,  
MAJORS ENGINEERING, INC.

*Keith Hastings*

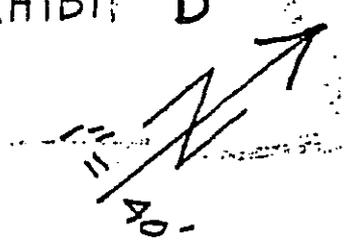
Keith Hastings

KH:mmc  
cc: Tom Nolan

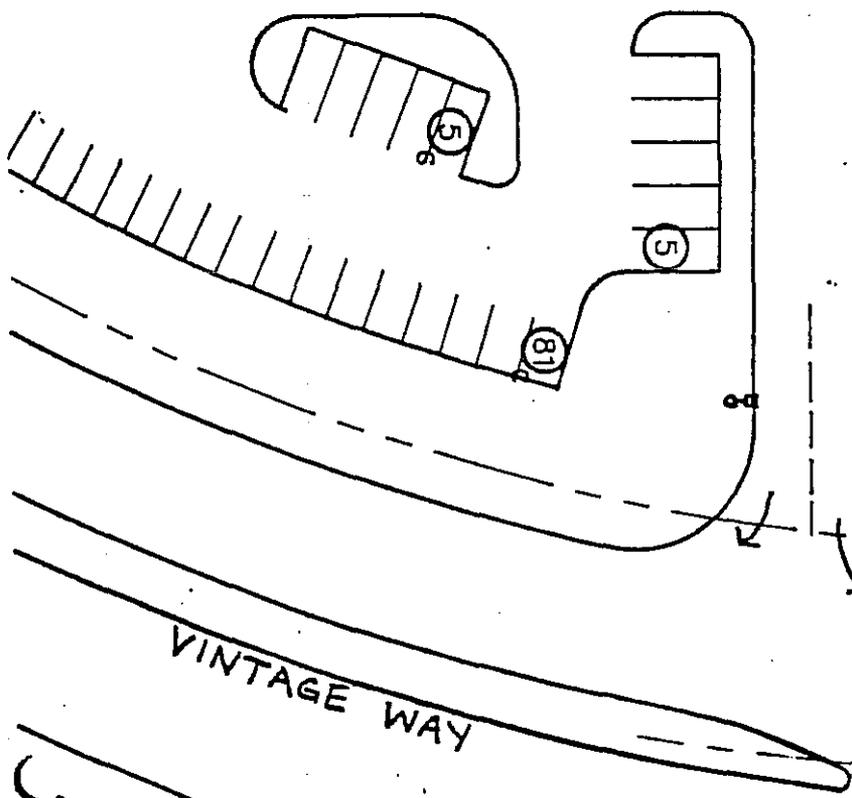
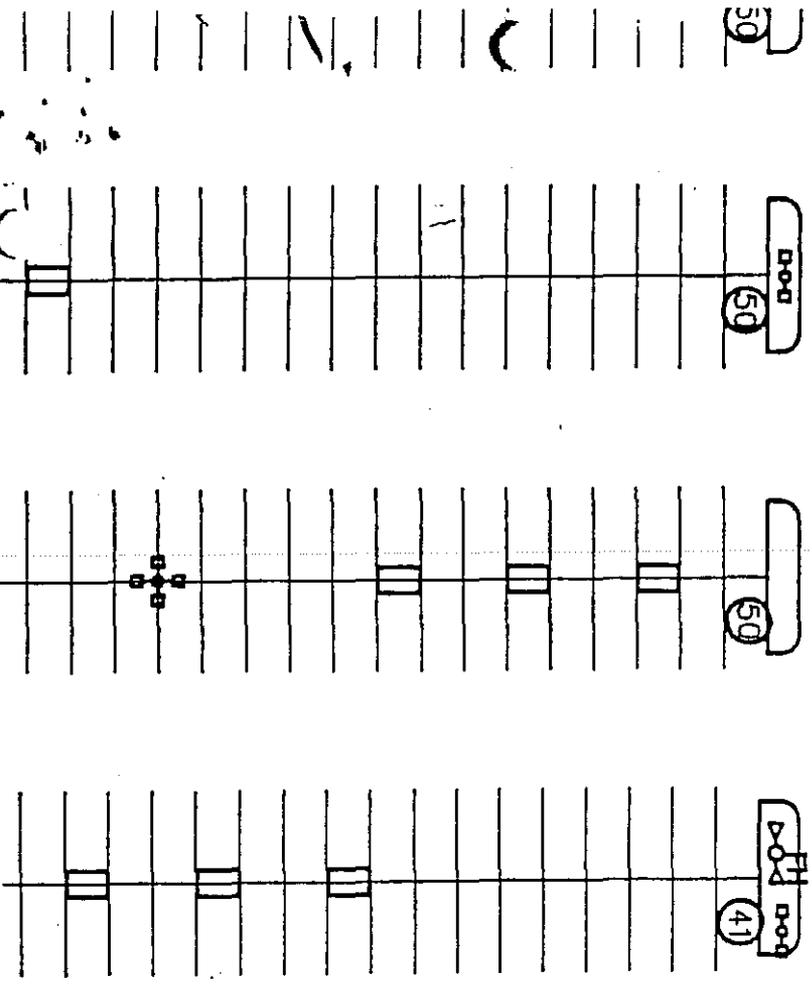
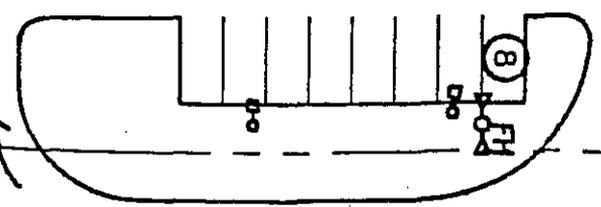
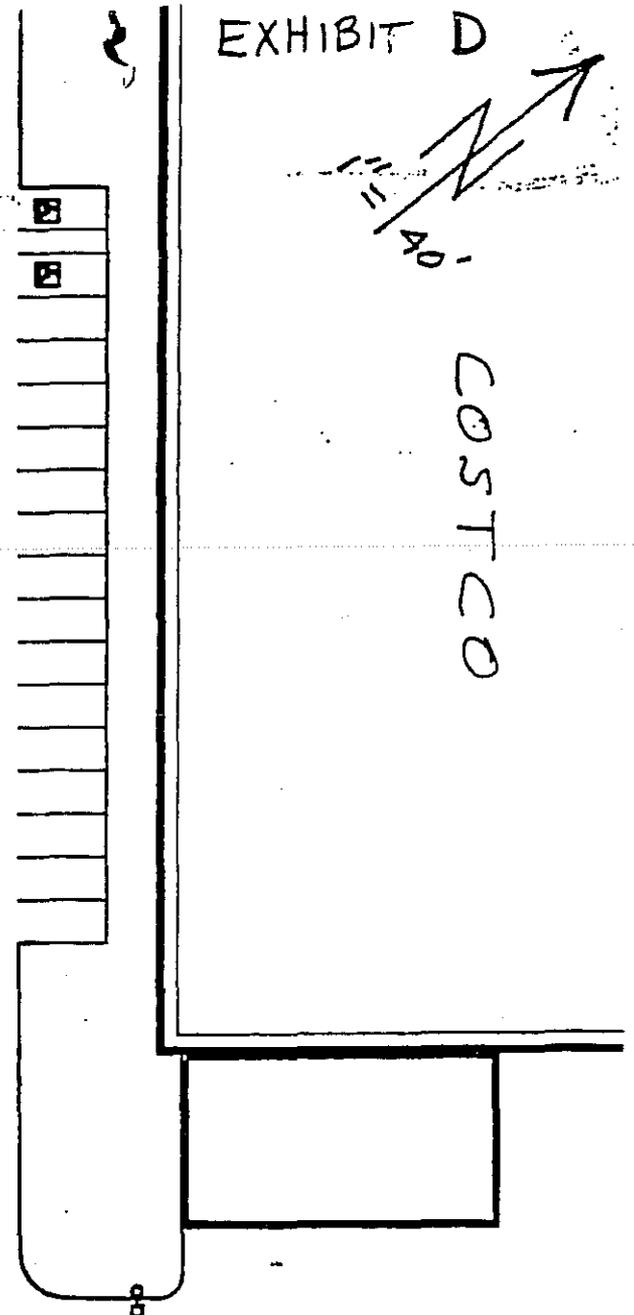


Large Configuration  
**EXHIBIT C**

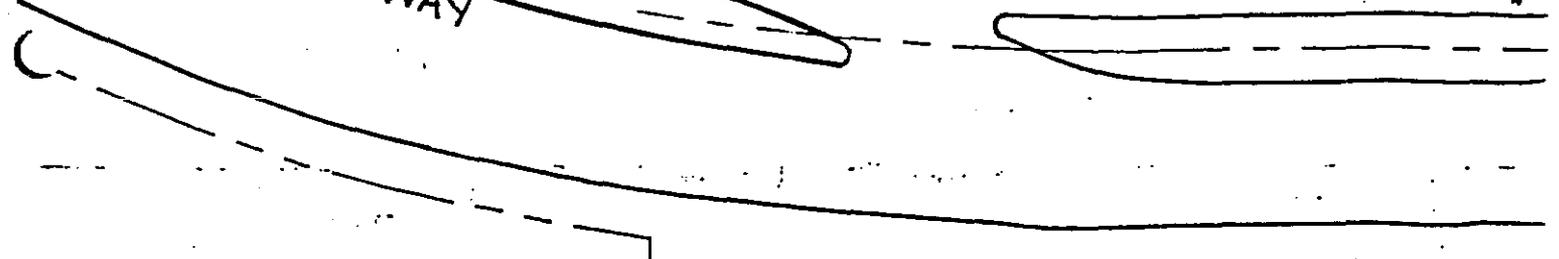
EXHIBIT D



COSTCO



VINTAGE WAY



IX. ALTERNATIVE METHOD OF FINANCING PUBLIC IMPROVEMENTS

In the event the Agency elects to terminate this Agreement pursuant to Sections 411(a) of this Agreement because the Agency has been unable to (1) cause the formation of the Financing District, or (2) the Agency is unable to issue Financing District Bonds, the Participant may elect, in the alternative, to privately finance the costs related to all of the Off-Site Improvements and payments for the Community Facilities and Future Community Facilities specified in the Scope of Development (Attachment No. 2) and in this Agreement, in which case the Agency's obligations to make payments to the Participant under Section VIII, above, and the Payment Schedule (Exhibit A) shall remain in full force and effect.

In the event of a termination of this Agreement for any reason prior to the issuance of tax exempt Financing District Bonds, or in the event the Participant elects to privately finance the Off-Site Improvements and payments to the Agency and City hereunder, the Agency shall, at the request of the Participant, promptly cause the City to take all action required in order to remove the lien of the Financing District from the Site.

X. INTERIM FINANCING ASSURANCE

A. Background

The Participant initially reached agreement with City and Agency staff to locate the Community Facilities on a site within the Retail Complex. The Participant's obligation would have been to (1) contribute up to Three Million Dollars (\$3,000,000.00) toward the cost of design and construction of the Community Facilities building, (2) construct the Community Facilities on behalf of the Agency, and (3) ground lease the Community Facilities pad in the Retail Complex to the Agency, which in turn would sublease the pad and building to the City for use and operation with restrictions to assure compatibility with the Retail Complex. The Agency's pledge of City rents under the sublease was an integral part of the financing arrangement under which the Participant was assured of the Agency's ability to make the payments to the Participant as set forth in the Payment Schedule (Exhibit A). By virtue of its obligation to construct the Community Facilities, the Participant could assure itself that the Community Facilities would be completed, and the sublease to the City would take effect, within the time required for Agency payments under the Payment Schedule (Exhibit A).

As a result of this initial agreement, the Community Facilities were designated on the proposed Precise Development Plan to be located within the Retail Complex. During the public hearing before the City Council on the Precise Development Plan, a number of citizens and community groups requested that the Community Facilities be located off-site, in order to provide better access, broader use and greater flexibility in design and future integration of the Community

Facilities into other community uses, including park and recreation uses. Responding to these requests, the City Council asked the Participant if it would agree to an off-site location for the Community Facilities with a fixed contribution of Three Million Dollars (\$3,000,000.00) by the Participant toward the cost of the Community Facilities. The Participant agreed to this request and the Precise Development Plan incorporated these changes in the approval by the City Council.

With the Community Facilities to be provided at an off-site location, the Participant can no longer be assured that the City's lease of the Community Facilities, on which the Agency's payments to the Participant are in substantial part based, will be in effect at the time said payments commence. The Agency and City must designate an off-site location, commence and complete design and construction drawings, undertake environmental analysis and obtain other documentation and approvals before construction of the Community Facilities can commence. The timing is beyond the control of the Participant, and the Agency and City are unable to commit to a binding schedule for completion which would assure completion of the Community Facilities in time for the Agency to receive rent income from the City's lease of the Community Facilities for Agency payments to the Participant as provided herein.

The Participant is unable to proceed with its financing for the Retail Complex without a firm and binding assurance of the Agency's ability to make payments to the Participant in accordance with the Payment Schedule (Exhibit A).

B. Interim Payment Assurance

The intent of this provision is to provide the Participant with a firm and binding assurance of the Agency's ability to make payments to the Participant in accordance with the Payment Schedule (Exhibit A) in the event the Community Facilities at an off-site location are not completed in time for the City's lease of the Community Facilities from the Agency to be effective by the time Agency payments are to commence as provided herein and in the Payment Schedule (Exhibit A). Such assurance is herein referred to as the "Interim Payment Assurance."

The Agency and City shall select and promptly act to implement the Interim Payment Assurance to assure the Participant that the Agency will have financial resources to the same extent it would have had if the City's lease of the Community Facilities had been in effect. The Interim Payment Assurance may consist of one or a combination of the following: (1) a lease by the Agency to the City of other land or facilities; (2) the adoption by the City and Agency of ordinances to effectuate the transfer to the Agency of the City's sales and use taxes from the Retail Complex, as authorized in redevelopment project areas by Section 7202.6 of the Revenue and Taxation Code; (3) an interim loan by the City to the Agency; (4) interim borrowing by the Agency from other sources; or (5) other financing arrangements mutually acceptable to the Agency, City and Participant.

The Interim Payment Assurance shall have received all final approvals and shall be in effect, to the reasonable satisfaction of the Participant, prior to or concurrently with the first issuance of Financing District Bonds, or in the event the Participant elects to privately finance the Off-Site Improvements and payments to the Agency and City hereunder, concurrently with funding of such private financing. The Agency and/or City shall not expend any payment received under Section V(1)(a) of this Method of Financing until (1) the expiration of sixty (60) days following final approval of the Interim Payment Assurance by the Agency and City, or (2) if any litigation shall be filed during said 60-day period, the dismissal or other satisfactory resolution of such litigation which leaves the Interim Payment Assurance in effect. If any such litigation (whenever filed) shall be pending on January 8, 1992, the Participant at its option may escrow the amount payable on such date under Sections V(1)(b) and V(2) of this Method of Financing in an interest bearing account (in the name of the Agency, with interest accruing to the Agency) to the reasonable satisfaction of the Agency and City, to be released to the Agency upon the satisfactory resolution of such litigation which leaves the Interim Payment Assurance in effect. If any such litigation is not satisfactorily resolved and the Interim Payment Assurance is not in effect at the time that Agency payments become due under the Promissory Note and Agreement (Exhibit B hereto), and absent other written agreement by the parties, the Agency shall use the escrowed funds, as necessary, to make the payments due to the Participant under the Promissory Note and Agreement (Exhibit B hereto) to the extent that such payments would have been due had the Interim Payment Assurance been in effect.

If the Interim Payment Assurance is not in effect by said time to the reasonable satisfaction of the Participant, the Participant, at its sole option, may elect to: (1) delay the issuance of Financing District Bonds and suspend its development of the Project until such time as the Interim Financing Assurance is in effect to the reasonable satisfaction of the Participant, in which event the time periods for Participant's actions set forth in the Schedule of Performance (Attachment No. 4) shall be extended for the period of such delay or extension, subject, however, to the provisions of subsection 4 of Section VIII herein; (2) terminate this Agreement; or (3) proceed with the issuance of the Financing District Bonds and the development of the Project. Such election by the Participant shall be made in writing not less than thirty (30) days prior to the scheduled issuance of the Financing District Bonds. If the Participant elects under (3), above, to proceed with the issuance of the Financing District Bonds and the development of the Project, notwithstanding the delay or absence of the Interim Financing Assurance, any amounts due to the Participant pursuant to the Payment Schedule and the terms hereof and of the Promissory Note but not paid by the Agency because of delay or absence of the Interim Financing Assurance shall be carried forward as an obligation of the Agency, bearing interest from the date such payment was due to the date of actual payment at the rate of ten percent (10%) per annum, compounded annually, and shall be paid by the Agency out of first funds available to the Agency under the Community Facilities Lease referred to in Section X.A. of this Method of Financing.

XI. NO PARTNERSHIP

Neither anything in this Attachment No. 3 nor the Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or by either of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties.

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## DETAILED PAYMENT SCHEDULE

(In Thousands of Dollars)

**ASSUMPTIONS:**

Agency first payment in 1992  
Build-out phased over 3 years

Owner Participation Agreement:  
Exhibit A to Attachment No. 3,  
Method of Financing;  
Schedule A to Exhibit B,  
Promissory Note and Agreement

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1 INCOME											
2 Beginning Balance	0	0	0	0	0	0	0	0	0	0	0
3 Projected Property Tax Increment (See Note 1)											
4 Existing Land and Phase One	387	395	403	411	419	428	436	445	454	463	472
5 Phase Two	172	176	179	183	186	190	194	198	202	206	210
6 Hotel	190	194	197	201	205	210	214	218	222	227	231
7 TOTAL (Lines 4, 5, 6)	749	764	779	795	811	827	844	860	878	895	913
8 Interest	0	0	0	0	0	0	0	0	0	0	0
9 Recovery of Staff Time	52	55	58	60	63	67	70	73	77	81	85
10											
11 TOTAL PROJECTED INCOME	801	819	837	855	874	894	914	934	955	976	998
12											
13 EXPENSES											
14 Housing Set Aside	150	153	156	159	162	165	169	172	176	179	183
15 Administrative Costs (Actual, Not To Exceed)	81	85	89	91	95	99	103	107	111	115	119
16 SUBTOTAL (Lines 14, 15)	231	238	245	250	257	264	272	279	288	294	302
17 Pledge to Hahn	800	800	800	800	800	800	800	800	800	800	800
18 TOTAL PROJECTED EXPENSES	1,031	1,038	1,045	1,050	1,057	1,064	1,072	1,079	1,087	1,094	1,102
19											
20 PROJECTED YEAR END BALANCE	(230)	(219)	(208)	(195)	(183)	(170)	(158)	(145)	(132)	(118)	(104)
21											
22 PROJECTED SALES TAX TO CITY	1,873	1,966	2,065	2,168	2,276	2,390	2,509	2,635	2,767	2,905	3,050
23											
24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT											
25 From Property Tax Increment	570	581	592	605	617	630	642	655	668	682	696
26 From City Lease	230	219	208	195	183	170	158	145	132	118	104
27											
28 TOTAL PAYMENTS	800	800	800	800	800	800	800	800	800	800	800

NOTES: 1. No reassessment due to a sale is assumed in this summary. Increases in property tax increment available will reduce portion of payments derived from City lease

## PAYMENT SCHEDULE SUMMARY

(In Thousands of Dollars)

**ASSUMPTIONS:**

Agency first payment in 1992  
Build-out phased over 3 years

**SEE DETAILED PAYMENT SCHEDULE  
STARTING ON PAGE 2**

Owner Participation Agreement:  
Exhibit A to Attachment No. 3,  
Method of Financing;  
Schedule A to Exhibit B,  
Promissory Note and Agreement

Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
7 Projected Property Tax Increment TOTAL (Lines 4, 5, 6)	125	138	665	707	639	652	665	678	692	706	720	734

22 PROJECTED SALES TAX TO CITY	0	690	1,380	1,421	1,464	1,508	1,553	1,600	1,648	1,697	1,748	1,801
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24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT												
25 From Property Tax Increment	0	586	532	548	492	501	511	520	530	540	550	560
26 From City Lease	0	364	418	402	458	449	439	430	420	410	400	240
28 TOTAL PAYMENTS	0	950	950	950	950	950	950	950	950	950	950	800

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
7 Projected Property Tax Increment TOTAL (Lines 4, 5, 6)	749	764	779	795	811	827	844	860	878	895	913

22 PROJECTED SALES TAX TO CITY	1,873	1,966	2,065	2,168	2,276	2,390	2,509	2,635	2,767	2,905	3,050
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24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT											
25 From Property Tax Increment	570	581	592	605	617	630	642	655	668	682	696
26 From City Lease	230	219	208	195	183	170	158	145	132	118	104
28 TOTAL PAYMENTS	800	800	800	800	800	800	800	800	800	800	800

NOTES: 1. No reassessment due to a sale is assumed in this summary. Increases in property tax increment available will reduce portion of payments derived from City lease

## DETAILED PAYMENT SCHEDULE

(In Thousands of Dollars)

**ASSUMPTIONS:**

Agency first payment in 1992  
Build-out phased over 3 years

Owner Participation Agreement:  
Exhibit A to Attachment No. 3,  
Method of Financing;  
Schedule A to Exhibit B,  
Promissory Note and Agreement

Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
1 INCOME												
2 Beginning Balance	319	443	0	0	0	0	0	0	0	0	0	0
3 Projected Property Tax Increment (See Note 1)												
4 Existing Land and Phase One	125	138	408	324	330	337	344	351	358	365	372	380
5 Phase Two	0	0	177	144	147	150	153	156	159	162	165	169
6 Hotel	0	0	80	239	162	165	169	172	175	179	182	186
7 TOTAL (Lines 4, 5, 6)	125	138	665	707	639	652	665	678	692	706	720	734
8 Interest	24	33	0	0	0	0	0	0	0	0	0	0
9 Recovery of Staff Time	115	121	50	34	35	37	39	41	43	45	47	50
10												
11 TOTAL PROJECTED INCOME	583	735	715	741	675	689	704	719	735	751	767	784
12												
13 EXPENSES												
14 Housing Set Aside	25	28	133	141	128	130	133	136	138	141	144	147
15 Administrative Costs (Actual, Not To Exceed)	115	121	50	52	55	58	60	63	67	70	73	77
16 SUBTOTAL (Lines 14, 15)	140	149	183	193	183	188	193	199	205	211	217	224
17 Pledge to Hahn	0	950	950	950	950	950	950	950	950	950	950	800
18 TOTAL PROJECTED EXPENSES	140	1,099	1,133	1,143	1,133	1,138	1,143	1,149	1,155	1,161	1,167	1,024
19												
20 PROJECTED YEAR END BALANCE	443	(364)	(418)	(402)	(458)	(449)	(439)	(430)	(420)	(410)	(400)	(240)
21												
22 PROJECTED SALES TAX TO CITY	0	690	1,380	1,421	1,464	1,508	1,553	1,600	1,648	1,697	1,748	1,801
23												
24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT												
25 From Property Tax Increment	0	586	532	548	492	501	511	520	530	540	550	560
26 From City Lease	0	364	418	402	458	449	439	430	420	410	400	240
27												
28 TOTAL PAYMENTS	0	950	950	950	950	950	950	950	950	950	950	800

NOTES: 1. No reassessment due to a sale is assumed in this summary. Increases in property tax increment available will reduce portion of payments derived from City lease



EXHIBIT B  
PROMISSORY NOTE AND AGREEMENT

PRINCIPAL AMOUNT: \_\_\_\_\_, 19\_\_  
CONTINGENT \_\_\_\_\_, California  
(No Interest)  
(Present Value of Total Maximum Payments  
Estimated Not to Exceed \$9,000,000.00)

For value received, the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California (herein called the "Agency"), hereby promises to pay to HNH ASSOCIATES, a California limited partnership in which EWH 1979 Development Company, L.P., a California limited partnership, is the sole general partner (herein called the "Participant"), an annual amount as hereinafter set forth. The place of payment shall be c/o The Hahn Company, 4350 La Jolla Village Drive, Suite 700, San Diego, California 92122-1233, Attention: Finance Department-Vintage Oaks at Novato, and may be changed from time to time as the Participant or any permitted assignee thereof may designate in writing. Payments hereunder shall be payable in lawful money of the United States of America.

This Note is made and delivered pursuant to and in implementation of an Owner Participation Agreement entered into as of January 17, 1991 (herein the "OPA"), between the Agency and the Participant, which provides for the planning for the coordinated design and construction on certain real property (the "Site") of a regional retail center (the "Retail Complex"), construction and financing of certain other on-site and off-site public improvements (the "Off-Site Improvements") and certain payments to the Agency and/or the City for certain off-site community facilities and other actions necessary to accomplish the development of the Retail Complex. The Retail Complex, the Off-Site Improvements and related on-site and off-site improvements and amenities are collectively referred to herein as the "Project".

Pursuant to the OPA, the Agency will use its best efforts to form or establish or cause to be formed or established a Mello-Roos District or alternate financing district (the "Financing District") and to sell or cause to be sold tax exempt bonds of such Financing District (the "Financing District Bonds") to finance the costs of the Off-Site Improvements. The Financing District Bonds will be secured by certain

portions of the Site and the Retail Complex, and the Participant will be obligated to pay a special tax or special assessment on the Site to pay the debt service on the tax exempt Financing District Bonds. The Participant will cooperate with the Agency in the establishment of the Financing District and in the sale of the Financing District Bonds. In addition, the OPA further provides that, at the Participant's option, the costs of developing the Off-Site Improvements and certain other costs related to development of the Project already paid or to be paid by the Participant as set forth in the OPA may be funded by means of and included in the proceeds of tax exempt Financing District Bonds.

In the alternative, if the Financing District is not formed or Financing District Bonds are not issued, the OPA allows the Participant to elect to proceed with the Project by privately financing the costs of the Off-Site Improvements and other payments to the Agency and/or City under the OPA.

Pursuant to the OPA, the Agency has irrevocably pledged a portion of the Property Tax Increments received by the Agency generated from the Project and Lease Payments received by the Agency from the lease of the Community Facilities to the City of Novato (the "City"), as further set forth herein, to assist the Participant in the payment of special taxes or special assessments to pay the debt service on the Financing District Bonds for financing, or to assist the Participant in the costs of privately financing, certain of the Off-Site Improvements as set forth in the OPA.

This Note does not constitute a debt of the City or any other public agency except the Agency, and the City has no obligation whatsoever with respect to it. The obligation of the Agency to repay the amount of this Note is a special limited obligation of the Agency, payable only from and limited by the annual availability of funds to the Agency during the term of this Note from Property Tax Increments from the Project and the Lease Payments from the City. Nothing herein shall preclude the Agency from repaying the amount of this Note, or any part thereof, from any other funds lawfully available to the Agency from time to time; however, the Agency shall be under no obligation to do so.

#### A. DEFINITIONS

1. "Financing District" means a Mello-Roos Community Facilities District or other special assessment district or financing district, as set forth in Section VIII of the Method of Financing (Attachment No. 3 to the OPA).

2. "Financing District Bonds" means those tax exempt bonds to be sold by the Financing District to finance a portion of the Off-Site Improvements, as set forth in Section VIII of the Method of Financing (Attachment No. 3 to the OPA).

3. "Fiscal Year" means the fiscal year of the Agency, commencing July 1 of the calendar year of date and ending June 30 of the next succeeding calendar year.

4. "Lease Payments" means (a) those lease payments received by the Agency from the lease of the Community Facilities to the City, as set forth in the OPA, and (b) prior to said lease becoming effective, payments to the Agency resulting from the adoption of the Interim Financing Assurance referred to in Section X of the Method of Financing (Attachment No. 3 to the OPA).

5. "Note" means this Promissory Note and Agreement, evidencing the Agency's obligation to make certain payments to assist the Participant in the payment of special taxes or special assessments to pay the debt service on the Financing District Bonds for financing, or to assist the Participant in privately financing, certain of the Off-Site Improvements.

6. "Off-Site Improvements" means those off-site improvements to be constructed by the Participant as set forth in Section II.D. of the Scope of Development (Attachment No. 2 to the OPA).

7. "Project" means the Retail Complex to be developed by the Participant as set forth in the Scope of Development (Attachment No. 2 to the OPA), including the Off-Site Improvements and related on-site and off-site improvements to be developed as part of, or in conjunction with, the Retail Complex, and also including certain payments to the Agency and/or City for off-site Community Facilities and Future Community Facilities.

8. "Property Tax Increments" means those property taxes actually received by the Agency and generated from the Project, pursuant to Section 33670(b) of the California Health and Safety Code. The Participant understands and acknowledges that the Agency has entered into an agreement with the County of

Marin limiting the Agency's allocation of Property Tax Increment from the Project, as more fully described in the Method of Financing (Attachment No. 3 to the OPA).

9. "Redevelopment Plan" means the Redevelopment Plan for the Novato Redevelopment Project which was approved and adopted by the City Council of the City of Novato on November 29, 1983, by Ordinance No. 1040, as it now exists and as it may be subsequently amended.

B. OBLIGATION REPRESENTED

1. This Note represents the Agency's obligation to make annual payments (to the extent specified funds as set forth in Section C herein are available annually to make such payments) for the period specified herein. This Note is to be executed and delivered by the Agency to the Participant at the time of issuance of the tax exempt Financing District Bonds or, in the alternative, upon completion by the Participant and acceptance by the City of the privately financed Off-Site Improvements for which payments hereunder are made or at such earlier time as the Agency is assured of the full and timely completion of the Off-Site Improvements, as reasonably determined by the Agency.

2. The Agency's obligation to make payments to the Participant as set forth herein relates specifically to those certain Off-Site Improvements which are required for the development of the Site pursuant to the OPA and the Precise Development Plan and are specially identified in Section VIII.1. of the Method of Financing (Attachment No. 3 to the OPA).

C. PAYMENT

Except as otherwise expressly set forth herein, the obligation represented by this Note is payable as follows:

1. Subject to the following terms, conditions and limitations, the Agency shall make payments to the Participant in the annual amounts set forth in Line 28 of the Payment Schedule, attached hereto as Schedule A and incorporated herein by reference, including amounts payable by the Agency pursuant to the last sentence of Section X.B. of the Method of Financing (Attachment No. 3 to the OPA) which the

Agency in its sole discretion may elect to equally amortize over a period of up to five (5) years.

2. Notwithstanding the amounts set forth in Line 28 of the Payment Schedule (Schedule A), the Agency's payments for any year shall not exceed the total of (1) eighty percent (80%) of the net Property Tax Increments actually received by the Agency (after the County has withheld any administrative charges) and generated from the Project less the Agency's actual annual administrative expenses for such year not to exceed the amounts specified in Line 15 of the Payment Schedule (Schedule A), which amounts are to be offset by any and all costs and/or expenses paid to the City, or its agents, employees or consultants, respecting the establishment and administration of the Financing District, and (2) Lease Payments from the City received by the Agency from the lease of the Community Facilities to the City, which Lease Payments the Agency shall assign to the Participant; provided, however that until the Community Facilities are completed and available for occupancy by the City, the Agency and City shall enter into legally binding arrangements to the reasonable satisfaction of the Participant, as set forth in Section X of the Method of Financing (Attachment No. 3 to the OPA), to assure payments to the Participant in the same manner and in the same amount as if the City's lease of the Community Facilities had been in full force and effect. Any shortfalls in the amount of said annual payments as shown on the Payment Schedule (Schedule A) as a result of the above limitations shall be waived by the Participant.

3. The Payment Schedule (Schedule A) is based on projections of Property Tax Increments from the Project (Line 7) and sales tax revenues to the City (Line 22) based on the Participant's performance obligations with respect to the Project. If in any Fiscal Year, the Property Tax Increments from the Project and/or the sales tax revenue to the City are less than the projected amounts for such Fiscal Year as shown in Lines 7 and 22 of the Payment Schedule (the "Shortfall Amount"), the Agency's obligation to make a payment to the Participant for such Fiscal Year shall be reduced by the Shortfall Amount (less, for the first 10 years of the Payment Schedule, the amount of the first \$150,000 of net Property Tax Increments to the Agency and/or sales tax revenues to the City from the Project), and the Participant shall be deemed to have waived its rights to the amount by which the Agency's

payment is herein reduced. Attached hereto and incorporated herein by reference are illustrative examples of the application of the foregoing provisions. The Participant expressly acknowledges that the amount of the Agency's payments under this Promissory Note and Agreement is directly dependent upon the generation of specified levels of both property taxes and City sales taxes from the Project as projected in the Payment Schedule (Exhibit A), and that the failure or inability of the Participant to commence and complete development of the Project for whatever reason in time to generate such specified levels of property taxes and City sales taxes, irrespective of the time for performance set forth in the OPA, may adversely impact the amount of the payments due to the Participant from the Agency as set forth in this Promissory Note and Agreement.

4. If the Participant does not (i) make the payment to the Agency required under paragraph (1)(a) of Section V of the Method of Financing (Attachment No. 3 to the OPA) on the date it is due, or (ii) provide to the Agency the letter of credit required under paragraph (3) of Section V of the Method of Financing (Attachment No. 3 to the OPA) on the date it is due, the Agency shall be under no obligation to execute and deliver to the Participant this Promissory Note and Agreement and all obligations of the Agency to make payments to the Participant pursuant to the provisions of Sections VIII, IX and X of the Method of Financing (Attachment No. 3 to the OPA) and this Promissory Note and Agreement shall terminate (without notice to or opportunity to cure on the part of the Participant) and shall be of no further force and effect. If the Participant complies with paragraphs (1)(a) and (3) of Section V of the Method of Financing (Attachment No. 3 to the OPA) in the manner and by the dates required, but for any reason the Participant's payments required under paragraphs (1)(b) or (2) of Section V of the Method of Financing (Attachment No. 3 to the OPA) are not made in the manner and on the dates due under said paragraphs (1)(b) and (2), either by the failure of the Participant to make such payments directly or by the inability of the Agency to draw on the letter of credit for the full amount of such payments, then the Agency shall, as its sole remedy (to be exercised by notice to the Participant within thirty (30) days following the date such payments are due), offset and withhold (without obligation on the part of the Agency to ever pay such amounts to the Participant), payments otherwise due to the Participant under this Promissory Note and Agreement until such amounts offset and withheld equal the the amounts due and not paid under paragraphs (1)(b)

and (2) of Section V of the Method of Financing (Attachment No. 3 to the OPA), plus interest on said unpaid amounts at the maximum rate permitted by law, compounded annually, from the date such payments were due.

5. Payments by the Agency to the Participant shall be made in two semi-annual installments thirty (30) days prior to the semi-annual bond payment date, commencing with the first payment in Fiscal Year 1992. The first installment in each Fiscal Year in the amount of fifty percent (50%) of the total amount due for such Fiscal Year shall be based on the Agency's projections of Property Tax Increments and sales tax revenue to the City to be generated from the Project for such Fiscal Year, as shown on the Payment Schedule (Exhibit A), and the second installment shall be in the amount of the balance of the total payment due for such Fiscal Year by the Agency under this Promissory Note and Agreement and based on the Payment Schedule (Exhibit A). In all events, payments by the Agency shall be limited to funds actually received by the Agency as of said payment date; provided, however, that Participant does not waive, and Agency shall pay when funds are received, any shortfall caused when projections have been met but funds are not available on said payment date solely because of the timing of receipt of funds by the Agency. The Participant shall provide written evidence satisfactory to the Agency from time to time as may be requested by the Agency of the amount and times of payments of taxes with respect to the Site.

The special tax or special assessment on the Site, or privately financed debt service, is expected to be more than the payment by the Agency to the Participant. The Agency shall not be responsible for any shortfall between the amount of such tax, assessment or debt service and the Agency payment under any circumstances.

In the event that the County of Marin withholds the release of the annual Property Tax Increment from the Project (usually occurring upon protest of a property owner of an assessment ruling), the Agency shall not be responsible for paying to the Participant its agreed upon sum associated with the withheld portion of the annual Property Tax Increment until the receipt of the Property Tax Increment from the County of Marin. No interest will accrue to this late payment to the Participant.

6. The obligation of the Agency to make annual payments to the Participant, as set forth herein, shall terminate on December 29, 2013 (the expiration date of the Redevelopment Plan).

7. The Agency hereby irrevocably pledges to the Participant, on a first lien basis and prior to any other pledge, use or allocation, except as set forth herein and in the Payment Schedule (Schedule A hereto), the Property Tax Increment from the Project and Lease Payments from the City as the sole and exclusive source of revenue for payments under this Note, subject to all the terms and conditions, priorities and limitations set forth herein, including the Payment Schedule (Schedule A).

8. Payments due the Participant hereunder shall be due without any right of offset, deduction or retention for any reason whatsoever.

9. The Participant and Agency have negotiated the amount, terms and conditions of the Agency payments hereunder based upon the applicable provisions of the Constitution and Laws of the State of California in effect on the date of the OPA governing (i) the rate, levy, collection, amount, use and administration of property taxes, and the allocation of Property Tax Increments generated from the Site and allocated to the Agency, and (ii) the rate, levy, collection, amount, use and allocation to the City of sales and use taxes generated from the Site (collectively, the "State Laws"). If any future changes in State Laws would materially adversely effect the receipt by the Agency of Property Tax Increments generated from the Site or the receipt by the City of its one percent (1%) share of the sales and use taxes generated from the Site as unrestricted general fund revenues, the City and Agency shall reasonably cooperate with the Participant in efforts to avoid such material adverse effect. If future changes in State Laws do adversely materially effect the receipt by the Agency of Property Tax Increments generated from the Site or the receipt by the City of its one percent (1%) share of the sales and use taxes generated from the Site as unrestricted general fund revenues, the Agency and Participant agree as follows:

(a) as to future changes in State Laws which materially adversely effect the allocation, amount or use of Property Tax Increments generated from the Site to the Agency for purposes of the OPA and making the payments hereunder,

any replacement revenues provided to the Agency as a result of such changes in State Laws which are available for payments pursuant to this Agreement shall be treated the same as Property Tax Increments for purposes of this Agreement; otherwise to the extent the effect of such changes in State Laws is to reduce the amount of Property Tax Increments available to the Agency hereunder, the Agency's payment obligations hereunder shall be reduced by the amount of any such reduction caused by such changes in State Laws; and

(b) as to future changes in State Laws which materially adversely effect the receipt, amount or use by the City of sales and use taxes generated from the Site as unrestricted general fund revenues, any replacement revenues provided to the City as a result of such changes in State Laws which are available for City lease payments shall be treated the same as sales and use taxes received by the City for purposes of the OPA and making the payments hereunder; otherwise to the extent the effect of such changes in State Laws is to reduce the amount of sales and use taxes generated from the Site and received by the City as unrestricted general fund revenues, the City's Lease Payment amount shall be reduced by the same percentage as the percentage reduction in the sales and use taxes generated from the Site and received by the City as unrestricted general fund revenues.

D. REMEDIES UPON DEFAULT UNDER OR TERMINATION OF OPA

The effects of defaults under or termination of the OPA, and the respective rights and obligations of the Agency and Participant with respect thereto, shall be governed by the provisions of the OPA.

E. NONNEGOTIABILITY; TRANSFER

The Agency has no personal liability for repayment of the sums evidenced hereby except from the sources of funds pledged hereunder. This is a nonnegotiable Note. Without the consent of the Agency, this Note may not be assigned except to any successor or assignee of the Participant authorized under the OPA. This Note may be assigned by the Participant as security for financing to pay costs of the Participant for the development of the Project. Any unauthorized assignment or transfer shall, at the option of the Agency, be considered void and of no force and effect. No transferee shall have any greater rights or obligations than the Participant.

F. PREPAYMENT

The Agency shall have the right to prepay, at any time and from time to time, all or any portion of the amounts owing under this Note without any premium or penalty, and to issue bonds or incur other indebtedness of the Agency for such purpose including, but not limited to, bonds of the Agency secured by the Property Tax Increments from the Project; provided, however, the Agency's right to issue such bonds is conditioned upon the Agency's full prepayment of any amounts owing under this Note. In making a prepayment, the Agency shall designate the Fiscal Year payment(s) for which such prepayment is made. The present value amount of such prepayment shall be calculated using a discount rate determined by one of the following: (1) if Financing District Bonds have been issued, the discount rate shall be the factor using the net interest cost on the Financing District Bonds; or (2) if the Participant has privately financed the Off-Site Improvements, the discount rate shall be the factor using the specified interest rate charged to the Participant for such private financing. By way of example, if the Agency specified in Fiscal Year 2003 that it was prepaying \$800,000 due in Fiscal Year 2013, and the net interest cost on the Financing District Bonds was 8.5 percent, the amount of the prepayment in Fiscal Year 2003 of the \$800,000 payment due in Fiscal Year 2013, would be \$353,828 (\$800,000 discounted back for 10 years at a discount rate of 8.5%).

G. WAIVERS

The Agency waives diligence, presentment, demand, protest, notice of protest, notice of nonpayment of dishonor and all other notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and (to the full extent permitted by law) the right to plead any statute of limitations as a defense to any demand hereunder or in connection with any security herefor, and hereby agrees that no failure on the part of the Participant to exercise any power, right or privilege hereunder, or to insist upon prompt compliance with the terms hereof, shall constitute a waiver thereof.

H. DEFAULTS AND REMEDIES

1. Event of Default. An event of default ("Event of Default") shall exist under this Note if the Agency has available to it those funds set forth in Section C

hereof committed to be paid to the Participant hereunder, and does not use the full amount available therefore to make the payments under this Note, within ten (10) days after such amount is due and payable.

2. Remedies. In case of an Event of Default, the Participant may at any time thereafter, at its option and without notice, exercise any or all remedies available to the Participant under the OPA.

3. Remedies Cumulative. All rights and remedies of the holder of this Note provided herein are cumulative and shall be in addition to all other rights and remedies available to the Participant under other documents, at law or in equity, and all such rights and remedies may be exercised singly, successively and/or concurrently. Failure to exercise any such right or remedy shall not be deemed a waiver of such right or remedy.

I. TIME OF ESSENCE

Time is of the essence with respect to every provision hereof. This Note shall be accepted by the Participant in the State of California and shall be governed by, and construed and enforced in accordance with, the laws of the State of California. If any provision or portion of any provision in this Note is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions and portions thereof shall nevertheless continue in full force and effect. If any party hereunder commences an action against the other party regarding this Note, the prevailing party shall be entitled to recover from the nonprevailing party its reasonable attorneys' fees (including reasonable in-house counsel fees) and costs associated therewith.

J. INCORPORATION BY REFERENCE

The OPA, including all attachments thereto (including, but not limited to, the Method of Financing, Attachment No. 3), as same may be hereafter amended from time to time, is incorporated herein by reference and made a part hereof. Nothing

herein shall be deemed to amend the OPA, and in the event of any conflict between the provisions of this Note and the provisions of the OPA, the provisions of the OPA shall prevail.

(SEAL)

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By \_\_\_\_\_  
Chairperson

By \_\_\_\_\_  
Secretary

"AGENCY"

## PAYMENT SCHEDULE SUMMARY

(In Thousands of Dollars)

Owner Participation Agreement:  
Exhibit A to Attachment No. 3,  
Method of Financing;  
Schedule A to Exhibit B,  
Promissory Note and Agreement

**ASSUMPTIONS:**

Agency first payment in 1992  
Build-out phased over 3 years

**SEE DETAILED PAYMENT SCHEDULE  
STARTING ON PAGE 2**

Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
7 Projected Property Tax Increment TOTAL (Lines 4, 5, 6)	125	138	665	707	639	652	665	678	692	706	720	734

22 PROJECTED SALES TAX TO CITY	0	690	1,380	1,421	1,464	1,508	1,553	1,600	1,648	1,697	1,748	1,801
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24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT												
25 From Property Tax Increment	0	586	532	548	492	501	511	520	530	540	550	560
26 From City Lease	0	364	418	402	458	449	439	430	420	410	400	240
28 TOTAL PAYMENTS	0	950	950	950	950	950	950	950	950	950	950	800

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
7 Projected Property Tax Increment TOTAL (Lines 4, 5, 6)	749	764	779	795	811	827	844	860	878	895	913

22 PROJECTED SALES TAX TO CITY	1,873	1,966	2,065	2,168	2,276	2,390	2,509	2,635	2,767	2,905	3,050
--------------------------------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------

24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT											
25 From Property Tax Increment	570	581	592	605	617	630	642	655	668	682	696
26 From City Lease	230	219	208	195	183	170	158	145	132	118	104
28 TOTAL PAYMENTS	800	800	800	800	800	800	800	800	800	800	800

NOTES: 1. No reassessment due to a sale is assumed in this summary. Increases in property tax increment available will reduce portion of payments derived from City lease

## DETAILED PAYMENT SCHEDULE

(In Thousands of Dollars)

**ASSUMPTIONS:**

Agency first payment in 1992  
Build-out phased over 3 years

Owner Participation Agreement:  
Exhibit A to Attachment No. 3,  
Method of Financing;  
Schedule A to Exhibit B,  
Promissory Note and Agreement

Fiscal Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
1 INCOME												
2 Beginning Balance	319	443	0	0	0	0	0	0	0	0	0	0
3 Projected Property Tax Increment (See Note 1)												
4 Existing Land and Phase One	125	138	408	324	330	337	344	351	358	365	372	380
5 Phase Two	0	0	177	144	147	150	153	156	159	162	165	169
6 Hotel	0	0	80	239	162	165	169	172	175	179	182	186
7 TOTAL (Lines 4, 5, 6)	125	138	665	707	639	652	665	678	692	706	720	734
8 Interest	24	33	0	0	0	0	0	0	0	0	0	0
9 Recovery of Staff Time	115	121	50	34	35	37	39	41	43	45	47	50
10												
11 TOTAL PROJECTED INCOME	583	735	715	741	675	689	704	719	735	751	767	784
12												
13 EXPENSES												
14 Housing Set Aside	25	28	133	141	128	130	133	136	138	141	144	147
15 Administrative Costs (Actual, Not To Exceed)	115	121	50	52	55	58	60	63	67	70	73	77
16 SUBTOTAL (Lines 14, 15)	140	149	183	193	183	188	193	199	205	211	217	224
17 Pledge to Hahn	0	950	950	950	950	950	950	950	950	950	950	800
18 TOTAL PROJECTED EXPENSES	140	1,099	1,133	1,143	1,133	1,138	1,143	1,149	1,155	1,161	1,167	1,024
19												
20 PROJECTED YEAR END BALANCE	443	(364)	(418)	(402)	(458)	(449)	(439)	(430)	(420)	(410)	(400)	(240)
21												
22 PROJECTED SALES TAX TO CITY	0	690	1,380	1,421	1,464	1,508	1,553	1,600	1,648	1,697	1,748	1,801
23												
24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT												
25 From Property Tax Increment	0	586	532	548	492	501	511	520	530	540	550	560
26 From City Lease	0	364	418	402	458	449	439	430	420	410	400	240
27												
28 TOTAL PAYMENTS	0	950	950	950	950	950	950	950	950	950	950	800

NOTES: 1. No reassessment due to a sale is assumed in this summary. Increases in property tax increment available will reduce portion of payments derived from City lease

## DETAILED PAYMENT SCHEDULE

(In Thousands of Dollars)

Owner Participation Agreement:  
Exhibit A to Attachment No. 3,  
Method of Financing;  
Schedule A to Exhibit B,  
Promissory Note and Agreement

**ASSUMPTIONS:**

Agency first payment in 1992  
Build-out phased over 3 years

Fiscal Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1 INCOME											
2 Beginning Balance	0	0	0	0	0	0	0	0	0	0	0
3 Projected Property Tax Increment (See Note 1)											
4 Existing Land and Phase One	387	395	403	411	419	428	436	445	454	463	472
5 Phase Two	172	176	179	183	186	190	194	198	202	206	210
6 Hotel	190	194	197	201	205	210	214	218	222	227	231
7 TOTAL (Lines 4, 5, 6)	749	764	779	795	811	827	844	860	878	895	913
8 Interest	0	0	0	0	0	0	0	0	0	0	0
9 Recovery of Staff Time	52	55	58	60	63	67	70	73	77	81	85
10											
11 TOTAL PROJECTED INCOME	801	819	837	855	874	894	914	934	955	976	998
12											
13 EXPENSES											
14 Housing Set Aside	150	153	156	159	162	165	169	172	176	179	183
15 Administrative Costs (Actual, Not To Exceed)	81	85	89	91	95	99	103	107	111	115	119
16 SUBTOTAL (Lines 14, 15)	231	238	245	250	257	264	272	279	288	294	302
17 Pledge to Hahn	800	800	800	800	800	800	800	800	800	800	800
18 TOTAL PROJECTED EXPENSES	1,031	1,038	1,045	1,050	1,057	1,064	1,072	1,079	1,087	1,094	1,102
19											
20 PROJECTED YEAR END BALANCE	(230)	(219)	(208)	(195)	(183)	(170)	(158)	(145)	(132)	(118)	(104)
21											
22 PROJECTED SALES TAX TO CITY	1,873	1,966	2,065	2,168	2,276	2,390	2,509	2,635	2,767	2,905	3,050
23											
24 PAYMENTS ON PROMISSORY NOTE AND AGREEMENT											
25 From Property Tax Increment	570	581	592	605	617	630	642	655	668	682	696
26 From City Lease	230	219	208	195	183	170	158	145	132	118	104
27											
28 TOTAL PAYMENTS	800	800	800	800	800	800	800	800	800	800	800

NOTES: 1. No reassessment due to a sale is assumed in this summary. Increases in property tax increment available will reduce portion of payments derived from City lease



SCHEDULE A  
PAYMENT SCHEDULE

EXPLANATION

The attached Payment Schedule consists of a Payment Schedule Summary and a Detailed Payment Schedule. The Payment Schedule Summary includes those lines of the Payment Schedule containing the projections of funds which are relevant to calculating the annual payment obligation of the Agency to the Participant in accordance with the terms and conditions of this Attachment No. 3 and the Promissory Note and Agreement. The Detailed Payment Schedule presents a detail of sources, allocation and uses of funds projected to be received by the Agency from the Site, including the projections of funds shown on the Payment Schedule Summary. A line-by-line explanation of the Detailed Payment Schedule follows. This explanation is provided solely as an informational document. It shall not be used to modify or interpret the provisions of this Attachment No. 3 or the Promissory Note and Agreement.

<u>LINE</u>	<u>EXPLANATION</u>
1-11	<u>INCOME</u> : These are the projections of property tax increment allocations to the Agency from the Site, and other incidental income, on a fiscal year basis.
2	<u>Beginning Balance</u> : Projected property tax increment available to the Agency from prior fiscal years' allocations.
	<u>Projected Property Tax Increment</u> :
4	Projected annual property tax increment from assessed value of land in the Site and Phase One development.
5	Projected annual property tax increment from assessed value of Phase Two development.
6	Projected annual property tax increment from assessed value of hotel development.

- 7        TOTAL: Total projected annual property tax increment from the Site (total of lines 4, 5 and 6).  
THIS PROJECTED ANNUAL AMOUNT IS USED, IN PART, TO CALCULATE THE AGENCY'S PAYMENT OBLIGATION. IF THE ACTUAL AMOUNT OF PROPERTY TAX INCREMENT FOR ANY FISCAL YEAR IS LESS THAN THE PROJECTED AMOUNT FOR THAT FISCAL YEAR, THE AGENCY'S PAYMENT OBLIGATION MAY BE REDUCED FOR THAT YEAR. IF THE ACTUAL AMOUNT OF THE PROPERTY TAX INCREMENT IN ANY FISCAL YEAR IS MORE THAN THE PROJECTED AMOUNT FOR THAT YEAR, THE AGENCY'S PAYMENT OBLIGATION FOR THAT YEAR WILL NOT BE AFFECTED (SUBJECT TO THE AGENCY'S PAYMENT OBLIGATION BEING REDUCED, AS EXPLAINED BELOW, WITH REFERENCE TO LINE 22). THE AGENCY'S PAYMENT OBLIGATION MAY ALSO BE REDUCED BY CHANGES IN STATE LAW, AS SET FORTH IN THIS ATTACHMENT NO. 3 AND THE PROMISSORY NOTE AND AGREEMENT.
- 8        Interest: Projected annual interest earned by the Agency from the investment of its property tax increment allocations.
- 9        Recovery of Staff Time: Projected annual income to the Agency from contributions by the Participant and other sources, to cover Agency administrative costs.
- 11       TOTAL PROJECTED INCOME: Total amount of annual income to the Agency as reflected in lines 1 through 9.
- 13-18   EXPENSES: Projected annual expenses of the Agency, on a fiscal year basis.
- 14       Housing Set Aside: Projected amount of the annual property tax increment (20%) from the Site that is required to be deposited into the Agency's Low and Moderate Income Housing Fund.
- 15       Administrative Costs: The maximum amount of annual administrative costs of the Agency that may be charged against the Project, provided that the Agency may exceed these amounts so long as the Agency's payment obligations to the Participant are not affected by such excess charges.

- 16 Subtotal: Subtotal of expenses as reflected on lines 14 and 15, which amounts are to be offset by any and all costs and/or expenses paid to the City, or its consultants, employees and/or agents, respecting the establishment and administration of the Financing District.
- 17 Pledge to Hahn: The maximum amount of the Agency's annual payment obligation to the Participant pursuant to, and subject to the terms and conditions of, this Attachment No. 3 and the Promissory Note and Agreement.
- 18 TOTAL PROJECTED EXPENSES: Total projected annual expenses of the Agency as reflected in lines 13-17.
- 20 PROJECTED YEAR END BALANCE: The projected balance of funds available to the Agency at the end of each fiscal year. (Total Projected Income from line 11, less the Total Projected Expenses from line 18.)
- 22 PROJECTED SALES TAX TO CITY: Projected annual sales tax receipts to the City's General Fund (unrestricted) generated from the Site, presently being the City's 1% share of the sales and use taxes collected by the State.  
THIS PROJECTED ANNUAL AMOUNT IS USED, IN PART, TO CALCULATE THE AGENCY'S PAYMENT OBLIGATION. IF THE ACTUAL AMOUNT OF SALES TAX RECEIPTS TO THE CITY FOR ANY FISCAL YEAR IS LESS THAN THE PROJECTED AMOUNT FOR THAT FISCAL YEAR, THE AGENCY'S PAYMENT OBLIGATION MAY BE REDUCED FOR THAT YEAR. IF THE ACTUAL AMOUNT OF THE SALES TAX RECEIPTS TO THE CITY IN ANY FISCAL YEAR IS MORE THAN THE PROJECTED AMOUNT FOR THAT YEAR, THE AGENCY'S PAYMENT OBLIGATION FOR THAT YEAR WILL NOT BE AFFECTED (SUBJECT TO THE AGENCY'S PAYMENT OBLIGATION BEING REDUCED, AS EXPLAINED ABOVE, WITH REFERENCE TO LINE 7). THE AGENCY'S PAYMENT OBLIGATION MAY ALSO BE REDUCED BY CHANGES IN STATE LAW, AS SET FORTH IN THIS ATTACHMENT NO. 3 AND THE PROMISSORY NOTE AND AGREEMENT.

- 24-28     PAYMENTS ON PROMISSORY NOTE AND AGREEMENT: The Agency's annual payment obligation due under the Promissory Note and Agreement, assuming projected amounts in lines 7 and 22 are met or exceeded and no reduction occurs in the Agency's payment obligation under the terms of this Attachment No. 3 and the Promissory Note and Agreement. Notwithstanding anything herein to the contrary, added to the amount shown will be the amount of any payments required from the Agency pursuant to Section C.1. of the Promissory Note and Agreement (being amounts payable by the Agency pursuant to the last sentence of Section X.B. of the Method of Financing, Attachment No. 3 to the OPA) such that the amount under line 26 shall be increased to show such increased amount.
- 25     From Property Tax Increment: Projected amount of the Agency's payment obligation from property tax increment (Total Projected Income from line 11, less the Expenses from line 16), subject to the same assumptions stated above for lines 24-28. This is a projected minimum amount and will increase to the extent that property tax increments exceed projections after setting aside 20% of the excess into the Agency's Low and Moderate Income Housing Fund.
- 26     From City Lease: Projected annual amount of the Agency's payment obligation from rent paid by the City under the City Lease of the Community Facilities or under the Interim Payment Assurance, subject to the same assumptions stated above for lines 24-28. It may be greater or lesser than the amount projected on line 26. This will always be a "balancing payment" and will be the difference between the Agency's payment obligation for a fiscal year and the property tax increments applied by the Agency in that fiscal year to the Agency's payment obligation.
- 28     TOTAL PAYMENTS: The amount of the Agency's payment obligation for a fiscal year, subject to the same assumptions stated above for lines 24-28.

ILLUSTRATIVE EXAMPLES  
PAYMENT SCHEDULE

<u>Example No. 1</u>			
(Shortfall in Property Tax Increment)			
<u>Fiscal Year 1995</u>	<u>Projected</u>	<u>Actual</u>	<u>Shortfall</u>
Property Tax Increment (Line 7)	\$ 639,000	\$ 539,000	(\$100,000)
Sales Tax Revenue to City (Line 22)	\$1,464,000	\$1,500,000	-0-
	Total Shortfall:	(\$100,000)	
		Less: <u>\$150,000</u>	
	Calculated Shortfall:	-0-	
	Agency Payment (Line 28):	\$950,000	

<u>Example No. 2</u>			
(Shortfall in Property Tax Increment)			
<u>Fiscal Year 1995</u>	<u>Projected</u>	<u>Actual</u>	<u>Shortfall</u>
Property Tax Increment (Line 7)	\$ 639,000	\$ 400,000	(\$239,000)
Sales Tax Revenue to City (Line 22)	\$1,464,000	\$1,500,000	-0-
	Total Shortfall:	(\$239,000)	
		Less: <u>\$150,000</u>	
	Calculated Shortfall:	(\$ 89,000)	
	Agency Payment (Line 28):	\$861,000	
	Amount Waived by Participant:	\$ 89,000	

Example No. 3  
 (Shortfall in both Property Tax Increment and  
 Sales Tax Revenue to the City)

<u>Fiscal Year 1995</u>	<u>Projected</u>	<u>Actual</u>	<u>Shortfall</u>
Property Tax Increment (Line 7)	\$ 639,000	\$ 539,000	(\$100,000)
Sales Tax Revenue to City (Line 22)	\$1,464,000	\$1,400,000	(\$ 64,000)

Total Shortfall:	(\$164,000)
Less:	<u>\$150,000</u>
Calculated Shortfall:	(\$14,000)
Agency Payment (Line 28):	\$936,000
Amount Waived by Participant:	\$14,000

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AGREEMENT #R-85

TAX ALLOCATION LOAN AGREEMENT

by and between the

REDEVELOPMENT AGENCY OF THE CITY OF NOVATO

and the

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

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Dated as of December 17, 2002

Agreement # CIEDB 02-042

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## TAX ALLOCATION LOAN AGREEMENT

THIS TAX ALLOCATION LOAN AGREEMENT, is made and entered into as of December 17, 2002, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a public body, corporate and politic duly organized and existing under the laws of the State of California (the "Borrower") and the CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (the "CIEDB"), duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at Section 63000 thereof) as now in effect and as it may from time to time hereafter be amended (the "Act").

### WITNESSETH:

WHEREAS, the Borrower adopted a resolution authorizing a Loan from the CIEDB to finance or construct a Project, as defined herein, and the Borrower hereby finds and determines that there will be significant public benefits accruing from such borrowing; and

WHEREAS, the CIEDB has authority under the Act to issue tax-exempt Bonds and pledge its rights under this Agreement to secure such Bonds, and Borrower acknowledges that the issuance of such Bonds impacts its rights and obligations as described herein, and Borrower hereby agrees to adhere to the requirements contained in this Loan Agreement necessary in order to maintain the tax-exempt status of the Bonds; and

WHEREAS, all acts and proceedings required by law necessary to make this Loan Agreement, when executed by the Borrower and the CIEDB, the valid, legal and binding obligation of the Borrower and the CIEDB, and to constitute this Loan Agreement a legal, valid, and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution of this Loan Agreement has been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

SECTION 1.01. Definitions. Unless the context clearly otherwise requires, the capitalized terms in this Loan Agreement shall have the respective meanings set forth below.

"Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at Section 63000 thereof) as now in effect and as it may from time to time hereafter be amended.

“Additional Payments” means the payments made pursuant to Section 2.12(e) herein.

“Borrower” means the Redevelopment Agency of the City of Novato.

“Bond Date” means the date when the Loan and this Loan Agreement are pledged as security for Bonds under an Indenture.

“Bonds” means any bonds issued by the CIEDB, the repayment of which is secured, in whole or in part, by this Loan Agreement.

“Business Day” means any day, Monday through Friday, which is not a legal holiday of the State or the Trustee.

“Certificate of the Borrower” means a request or certificate, in writing, signed by a duly authorized representative of the Borrower.

“CIEDB” means the California Infrastructure and Economic Development Bank.

“CIEDB Annual Fee” means the fee payable to CIEDB pursuant to Section 2.12(e)(1).

“City” means the City of Novato.

“Code” means the Internal Revenue Code of 1986, as amended, or any successor statute thereto, and any regulations promulgated thereunder.

“Debt Service” means, for any Fiscal Year, the sum of interest and principal due and payable under this Loan Agreement during such Fiscal Year, the CIEDB Annual Fee for such Fiscal Year, and any Parity Debt Service during such Fiscal Year.

“Event of Default” means any of the events described in Section 7.01.

“Fiscal Year” means any twelve (12) month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive.

“Housing Fund” means the Borrower’s Low- and Moderate-Income Housing Fund established and maintained for the purpose of increasing the supply of low- and moderate-income housing pursuant to the Law.

“Indenture” means any indenture providing for the issuance of Bonds.

“Independent Accountant” means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the Borrower, and who, or each of whom:

(a) is in fact independent and not under the control of the Borrower or the CIEDB;

(b) does not have any substantial interest, direct or indirect, in the Borrower, the CIEDB or the Project; and

(c) is not connected with the Borrower or the CIEDB as an officer or employee of the Borrower or the CIEDB, but who may be regularly retained to make reports to the Borrower or the CIEDB.

“Independent Consultant” means a consultant or firm of such consultants generally recognized to be well qualified in the field of consulting relating to tax allocation bond financing by State redevelopment agencies, appointed and paid by the Borrower, and who, or each of whom:

- (a) is in fact independent and not under the domination of the Borrower;
- (b) does not have any substantial interest, direct or indirect, with the Borrower; and
- (c) is not connected with the Borrower as a member, officer or employee of the Borrower, but who may be regularly retained to make annual or other reports to the Borrower.

“Interest Payment Date” means February 1 and August 1 of every year in which the Loan is outstanding.

“Law” means the Community Redevelopment Law of the State of California (being Part I of Division 24 of the Health and Safety Code of the State of California, as amended), and all laws amendatory thereof or supplemental thereto.

“Loan” means the loan made by the CIEDB to the Borrower and evidenced by this Loan Agreement.

“Loan Agreement” means this Tax Allocation Loan Agreement, between the CIEDB and the Borrower, under which the Loan is made, as originally entered into or as amended pursuant to the provisions hereof.

“Loan Funds” mean the total cumulative amount authorized by the CIEDB to the Borrower pursuant to this Loan Agreement to finance and/or construct the Project and as specified in Section 2.04, not to exceed three million, seven hundred thousand dollars (\$3,700,000).

“Maximum Annual Debt Service” means as of the date of calculation, the greatest total Debt Service payable in any Fiscal Year during which this Loan Agreement is in effect.

“Parity Debt” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Borrower payable from and secured by a lien on the Tax Revenues on a parity with the Loan, issued or incurred pursuant to and in accordance with the provisions of Section 2.05.

“Parity Debt Instrument” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Borrower payable from and secured by a

lien on Tax Revenues which is on parity with this Loan Agreement and issued or incurred pursuant to and in accordance with the provisions of Section 2.05 and Section 6.01.

“Parity Debt Service” means for any Fiscal Year:

(a) the sum of: (1) the interest due and payable during such Fiscal Year under and all outstanding Parity Debt, assuming that principal thereof is paid as scheduled and that any mandatory sinking fund payments on any Parity Debt are made as scheduled; (2) that portion of the principal amount due on all outstanding Parity Debt maturing during such Fiscal Year; (3) that portion of the principal amount of all such outstanding Parity Debt required to be redeemed or paid (together with the redemption premiums, if any, thereof) during such Fiscal Year; and (4) any fees similar to the CIEDB Annual Fee payable during such Fiscal Year with respect to outstanding Parity Debt on a parity with such Parity Debt.

(b) Parity Debt Service shall not include: (1) interest on Parity Debt which is to be paid from amounts constituting capitalized interest or (2) interest on or principal of Parity Debt payable from the proceeds of any Parity Debt required to remain unexpended and to be held in escrow pursuant to the terms of a Parity Debt instrument, provided that each escrow complies with the terms of Section 2.05(g)(4).

“Pass-Through Payments” means all payments required to be paid in each Fiscal Year to any Taxing Agencies pursuant to the Law, but only to the extent that such payments are not subordinated to the payment of Debt Service.

“Project” means the public development facility to be financed by the Loan, authorized by Government Code section 63010(q) and the Act and described in Exhibit D.

“Project Area” means the Downtown Novato Redevelopment Project Area of the Borrower created pursuant to the Redevelopment Plan.

“Redevelopment Plan” means the redevelopment plan for the Project Area, adopted on June 29, 1999 pursuant to Ordinance No. 1412 by the City Council of the City of Novato and as the same may be amended from time to time by the Borrower.

“Report” means a document in writing signed by an Independent Consultant or an Independent Accountant, and including:

(a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Loan Agreement to which such Report relates;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“Special Fund” means the Redevelopment Agency of the City of Novato Downtown Novato Redevelopment Project Area special fund established and maintained by the Borrower pursuant to the Law into which the Borrower deposits all Tax Revenues and in which the CIEDB has a security interest pursuant to the terms of this Loan Agreement.

“State” means the State of California.

“Subordinate Debt” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Borrower payable from and secured by a lien on the Tax Revenues which are subordinate to the Loan and to Parity Debt, if any.

“Subordinate Debt Instrument” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Borrower payable from and secured by a lien on Tax Revenues which is on subordinate to this Loan Agreement and issued or incurred pursuant to and in accordance with the provisions of Section 2.06 and Section 6.01.

“Tax Certificate” means the tax certificate in the form set forth in Exhibit G executed and delivered by the Borrower as of December 17, 2002 setting forth certain conditions, covenants, expectations and elections of the Borrower with respect to the Loan in accordance with the Code.

“Tax Revenue” means, for each Fiscal Year during the term hereof, the taxes eligible for allocation to the Borrower with respect to the Project Area pursuant to the Law (exclusive of (a) amounts, if any, not exceeding twenty percent (20%) of certain such taxes which may be required by law to be set aside for certain housing purposes, (b) amounts, if any, received pursuant to Chapter 1.5 of Part 1 of Division 4 of Title 2 (commencing with Section 16110) of the Government Code, and (c) Pass-Through Payments) together with all payments, reimbursements and subventions, if any, specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations.

“Taxing Agencies” mean all local government agencies entitled to a portion of the property taxes levied in the Project Area.

SECTION 1.02. Rules of Construction. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa. All references herein to particular articles or sections are references to articles or sections of this Loan Agreement. The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Loan Agreement, nor shall they affect its meanings, construction or effect.

## ARTICLE II

### LOAN TERMS; PARITY DEBT; DISBURSEMENT; ADDITIONAL PAYMENTS

SECTION 2.01. Authorization. The CIEDB, pursuant to its resolution previously adopted, hereby agrees to lend to the Borrower and the Borrower, pursuant to resolution previously adopted in form substantially similar to Exhibit A1, hereby agrees to borrow from the CIEDB the principal amount of three million, seven hundred thousand dollars (\$3,700,000)

under and subject to the terms of this Loan Agreement. This Loan Agreement constitutes a continuing agreement between the Borrower and the CIEDB to secure the full and final repayment of the Loan, subject to the covenants, agreements, provisions and conditions herein contained.

SECTION 2.02. Terms of Loan; Interest Rates; Bond Date.

(a) The Loan to be paid by the Borrower to the CIEDB hereunder is the sum of the principal amount of the Borrower's obligation hereunder plus the interest from the date funds are disbursed, subject to prepayment as provided in Section 2.03. Interest shall accrue on disbursed amounts prior to the Bond Date and on the entire principal balance, whether or not disbursed, from the Bond Date forward. Borrower shall receive a credit against interest owed based upon the actual interest earned by the CIEDB at a rate of up to three and thirty-nine hundredths percent (3.39%) per annum (net of rebatable arbitrage) on the undisbursed Loan Funds.

(b) For purposes of this Loan Agreement:

(1) The principal amount of the Loan to be paid by the Borrower to the CIEDB hereunder is three million, seven hundred thousand dollars (\$3,700,000).

(2) The term of this Agreement is thirty (30) years from December 17, 2002.

(3) The interest rate is three and thirty-nine hundredths percent (3.39%) per annum.

(4) Prior to the Bond Date, there will be a twenty-six basis points (.26%) reduction in the interest rate, resulting in an initial rate of three and thirteen hundredths percent (3.13%) per annum.

(c) Payments of principal and interest shall be as set forth in the amortization schedule of Exhibit E hereto. A replacement amortization schedule will be sent to the Borrower upon the Bond Date.

(1) Prior to the Bond Date, interest only payments will be based upon the amount of Loan Funds disbursed payable at the initial rate of three and thirteen hundredths percent (3.13%) per annum.

(2) Commencing on the Bond Date, interest only payments will be based upon the total principal component of the Loan, including the amounts not disbursed, using an interest rate of three and thirty-nine hundredths percent (3.39%) per annum.

(d) Commencing on the day following the end of the interest only period, the principal component of the Loan shall be fully amortized over the remaining term of this Loan Agreement. If any portion of the principal of the Loan is prepaid in part pursuant to Section 2.03 hereof, the schedule of the principal payments shall be modified to reflect such partial prepayment.

(e) The obligation of the Borrower to pay the Loan by paying the principal and interest payments is, subject to Section 4.07, absolute and unconditional, and until such time as the Loan shall have been paid in full (or provision for the payment thereof shall have been made as provided in Section 8.05), the Borrower shall not discontinue or suspend any interest or principal payments required to be paid by it under this Loan Agreement when due, whether or not the Project or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

SECTION 2.03. Prepayment and Reduction in Loan Funds.

(a) Optional Prepayment. Prior to the Bond Date, the principal of the Loan shall be subject to optional prepayment in whole or in part at any time, without premium, together with accrued interest thereon and any Additional Payments payable to the CIEDB. On or after the Bond Date, optional repayment of the principal of the Loan shall be as set forth in the Indenture and may include a non-prepayment period and/or a prepayment premium.

(b) Notice of Prepayment. Prior to the Bond Date, the Borrower shall be required to give the CIEDB written notice of its intention to prepay the Loan at least forty-five (45) days prior to the date of the requested prepayment, and shall transfer to the CIEDB all amounts required for such prepayment no later than the date fixed for such prepayment, which in no case shall be after the Bond Date. On or following the Bond Date, notice and transfer of optional prepayments shall be as set forth in the Indenture, and may include prepayment premiums and/or time periods during which prepayment is prohibited.

(c) Notice of Bond Date; Prepayment after Notice of Bond Date. At least ninety (90) days prior to the expected Bond Date, the CIEDB shall send notice to the Borrower providing the Borrower with the option of converting to new Loan terms as of the Bond Date, as those terms are described in Section 2.02, or pre-paying or reducing the Loan pursuant to Section 2.03(a) or Section 2.03(d). Information regarding the Indenture terms on pre-payment or reducing the Loan amount shall be provided with the notice of Bond Date. The Borrower shall notify the CIEDB no less than forty-five (45) days prior to the expected Bond Date if it intends to prepay the Loan or reduce the principal amount of the Loan through the unencumbrance of Loan amounts as described in Section 2.03(c), otherwise the terms for payment of the Loan will be converted to the new terms described in Section 2.02.

(d) Reduction in Loan Funds. If (i) prior to the Bond Date, the Borrower requests a reduction in the amount of the Loan, or (ii) the CIEDB unencumbers Loan Funds as provided in Section 2.12(b), such amounts shall be deducted from the Loan, shall no longer constitute Loan Funds and shall no longer be available to the Borrower; provided, that no such request pursuant to subsection (i) of this subsection shall be approved unless the costs of completing the Project have been adequately provided for in the sole discretion of the CIEDB. The CIEDB shall amend this Loan Agreement to reflect the lower amount. Any reduction in Loan Funds shall not effect the obligation of the Borrower to complete the Project. Following

any reduction in Loan Funds, the CIEDB shall provide the Borrower with an updated amortization schedule using the new Loan amount with an amended maturity date.

SECTION 2.04. Encumbrance of Loan Funds. The CIEDB hereby encumbers the amount of three million, seven hundred thousand dollars (\$3,700,000) as Loan Funds.

SECTION 2.05. Parity Debt. The Borrower may after the date hereof issue or incur Parity Debt in such principal amount as shall be determined by the Borrower subject to the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Parity Debt issued under this section:

(a) No Event of Default hereunder, under any Parity Debt Instrument, Subordinate Debt Instrument or under any other instrument secured by Tax Revenues shall have occurred and be continuing, and the Borrower shall otherwise be in compliance with all covenants set forth in this Loan Agreement.

(b) Tax Revenues, as calculated in this subsection (g), received or estimated to be received by the Borrower in the then current Fiscal Year (i) calculated using a tax rate of one percent (1%), (ii) based upon the most recent taxable valuation of property in the Project Area as evidenced in a written document from an appropriate official of the county in which the Project is located and (iii) exclusive of payments, reimbursements and subventions, if any, specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations, shall be at least equal to one hundred ten percent (110%) of Maximum Annual Debt Service, including within such Maximum Annual Debt Service, the amount of maximum annual debt service on Parity Debt then proposed to be issued or incurred.

(c) The aggregate amount of the principal of and interest on any Parity Debt and Subordinate Debt coming due and payable following the issuance of such Parity Debt shall not exceed the maximum amount of Tax Revenues permitted under the Redevelopment Plan to be allocated to the Borrower following the issuance of such Parity Debt.

(d) The Parity Debt Instrument providing for the issuance of such Parity Debt shall provide that interest thereon shall be payable on February 1 and August 1 and principal thereof shall be payable on February 1 in any year in which principal is payable.

(e) The Parity Debt Instrument providing for the issuance of such Parity Debt may provide for the establishment of separate funds and accounts.

(f) Within thirty (30) days of the issuance of such Parity Debt, the Borrower shall deliver to the CIEDB a Certificate of the Borrower certifying the conditions precedent to the issuance of such Parity Debt set forth in subsections (a), (b), (c) and (d) of this Section 2.05 have been satisfied.

(g) For the purpose of the calculations pursuant to this Section 2.05 subsection (b) and the preparation of the Certificate of the Borrower required by this Section 2.05 subsection (f), the following shall apply:

(1) The Tax Revenues referred to above shall be deemed to be

increased by any additional assessed valuation of taxable property as to which construction has been completed, as of the date of, and as may be shown by, a Report of an Independent Consultant.

(2) The Tax Revenues shall not include any amounts resulting from a property tax rate in the Project Area in excess of one percent (1%) unless the Borrower files with the CIEDB a Report of an Independent Consultant showing that any such excess tax rate will be in effect throughout the term of this Loan.

(3) The Tax Revenues shall not include any amounts from property tax assessments that are being appealed unless the Borrower provides the CIEDB with a report of an Independent Consultant showing that the appeal is unlikely to prevail.

(4) For purposes of calculating Maximum Annual Debt Service, Parity Debt shall not include any debt with respect to which the following conditions are met:

(A) The proceeds of such Parity Debt shall be held by a corporate trustee in a separate fund (the "temporary redemption fund") and deposited or invested in federal securities as defined in Section 8.05 or in an investment agreement with a financial institution or insurance company, whose unsecured debt obligations are rated in at least the second-highest rating category by at least one nationally recognized securities rating agency, at a rate of interest which, together with amounts made available by the Borrower from Parity Debt proceeds or otherwise, is at least sufficient to pay debt service on the Parity Debt the proceeds of which are to be deposited in the temporary redemption fund.

(B) Moneys may be transferred from the temporary redemption fund only if Tax Revenues for the then current Fiscal Year will be at least equal to one hundred ten percent (110%) of Maximum Annual Debt Service, (excluding from such calculation the principal amount of Parity Debt which is equal to moneys on deposit in said temporary redemption fund after each such transfer).

(C) Parity Debt shall be redeemed from moneys remaining on deposit in the temporary redemption fund at the expiration of a specified escrow period in such manner as may be determined by the Borrower.

(5) If any Parity Debt is capital appreciation bonds, then the accreted value payment shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of such capital appreciation bond.

(6) If any Parity Debt bears interest payable pursuant to a variable interest rate formula, the interest rate on such Parity Debt for periods when the actual interest rate cannot yet be determined shall be assumed to be the maximum interest rate under the Parity Debt.

SECTION 2.06. Subordinate Debt. The Borrower may after the date hereof issue or incur Subordinate Debt in such principal amount as shall be determined by the Borrower subject

to the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Subordinate Debt issued under this section:

(a) No Event of Default hereunder, under any Parity Debt Instrument, Subordinate Debt Instrument or under any other instrument secured by Tax Revenues shall have occurred and be continuing, and the Borrower shall otherwise be in compliance with all covenants set forth in this Loan Agreement.

(b) Tax Revenues, as calculated in this subsection (g), received or estimated to be received by the Borrower in the then current Fiscal Year (i) calculated using a tax rate of one percent (1%), (ii) based upon the most recent taxable valuation of property in the Project Area as evidenced in a written document from an appropriate official of the county in which the Project is located and (iii) exclusive of payments, reimbursements and subventions, if any, specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations, shall be at least equal to one hundred ten percent (110%) of the greatest total debt service payable in any Fiscal Year during which this Loan Agreement is in effect for Parity Debt, existing Subordinate Debt and Subordinate Debt then proposed to be issued or incurred.

(c) The aggregate amount of principal of and interest on any Parity Debt and Subordinate Debt coming due and payable following the issuance of such Subordinate Debt shall not exceed the maximum amount of Tax Revenues permitted under the Redevelopment Plan to be allocated to the Borrower following the issuance of such Subordinate Debt.

(d) The Subordinate Debt Instrument providing for the issuance of such Subordinate Debt shall provide that interest thereon shall be payable on February 1 and August 1 and principal thereof shall be payable on February 1 in any year in which principal is payable.

(e) The Subordinate Debt Instrument providing for the issuance of such Subordinate Debt may provide for the establishment of separate funds and accounts.

(f) Within thirty (30) days of the issuance of such Subordinate Debt, the Borrower shall deliver to the CIEDB a Certificate of the Borrower certifying the conditions precedent to the issuance of such Subordinate Debt set forth in this Section 2.06 subsections (a), (b), (c) and (d) above have been satisfied.

(g) For the purpose of the calculations pursuant to this Section 2.06 subsection (b) and the preparation of the Certificate of the Borrower required by this Section 2.06 subsection (f), the following shall apply:

(1) The Tax Revenues referred to above shall be deemed to be increased by any additional assessed valuation of taxable property as to which construction has been completed, as of the date of, and as may be shown by, a Report of an Independent Consultant.

(2) The Tax Revenues shall not include any amounts resulting from a property tax rate in the Project Area in excess of one percent (1%) unless the Borrower files with the CIEDB a Report of an Independent Consultant showing that any such excess tax rate will be in effect throughout the term of this Loan.

(3) The Tax Revenues shall not include any amounts from property tax assessments that are being appealed unless the Borrower provides the CIEDB with a report of an Independent Consultant showing that the appeal is unlikely to prevail.

(4) For purposes of calculating the greatest total debt service payable in any Fiscal Year during which this Loan Agreement is in effect for Parity Debt, existing Subordinate Debt and Subordinate Debt then proposed to be issued or incurred, Subordinate Debt shall not include any debt with respect to which the following conditions are met:

(A) The proceeds of such Subordinate Debt shall be held by a corporate trustee in a separate fund (the "temporary redemption fund") and deposited or invested in federal securities as defined in Section 8.05 or in an investment agreement with a financial institution or insurance company, whose unsecured debt obligations are rated in at least the second-highest rating category by at least one nationally recognized securities rating agency, at a rate of interest which, together with amounts made available by the Borrower from Subordinate Debt proceeds or otherwise, is at least sufficient to pay debt service on the Subordinate Debt the proceeds of which are to be deposited in the temporary redemption fund.

(B) Moneys may be transferred from the temporary redemption fund only if Tax Revenues for the then current Fiscal Year will be at least equal to one hundred percent (100%) of the greatest total debt service payable in any Fiscal Year during which this Loan Agreement is in effect for Parity Debt, existing Subordinate Debt and Subordinate Debt then proposed to be issued or incurred, (excluding from such calculation the principal amount of Subordinate Debt which is equal to moneys on deposit in said temporary redemption fund after each such transfer).

(C) Subordinate Debt shall be redeemed from moneys remaining on deposit in the temporary redemption fund at the expiration of a specified escrow period in such manner as may be determined by the Borrower.

(D) If any Subordinate Debt is capital appreciation bonds, then the accreted value payment shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of such capital appreciation bond.

(E) If any Subordinate Debt bears interest payable pursuant to a variable interest rate formula, the interest rate on such Subordinate Debt for periods when the actual interest rate cannot yet be determined shall be assumed to be the maximum interest rate under the Subordinate Debt.

SECTION 2.07. Borrower's Payment of Project Costs. The Borrower agrees to pay any and all costs connected with the Project, including, without limitation, any and all Project costs (as defined in the Act) exceeding the CIEDB approved amount, and if the CIEDB reduces the Loan Funds pursuant to any provision hereunder, it shall also be the responsibility of the Borrower to pay those additional costs of the Project.

SECTION 2.08. Validity of Loan Agreement. The validity of this Loan Agreement shall not be dependent upon the completion of the Project or upon the performance by any person of his or her obligation with respect to the Project.

SECTION 2.09. Project Description. The Project shall be known as the Grant Avenue Improvement Project. The Project is more particularly described in Exhibit D hereto.

SECTION 2.10. Reasonable Cost of Eligible Project. The reasonable cost of the eligible Project is estimated to be ten million, seven hundred ten thousand, five hundred dollars (\$10,710,500), of which a portion valued at three million, seven hundred thousand dollars (\$3,700,000) shall be paid with the Loan, and the remainder shall be paid as set forth in Exhibit D hereto.

SECTION 2.11. Withholding of Loan Funds.

(a) The CIEDB may withhold all or any portion of the Loan Funds prior to the Bond Date in the event that:

(1) The Borrower has substantially violated any of the terms, provisions, conditions or commitments of this Loan Agreement, or if an Event of Default has occurred; or

(2) The Borrower is unable to demonstrate, to the satisfaction of the CIEDB, the ability to complete the Project or to maintain adequate progress toward completion thereof.

(b) In the event that Loan Funds are withheld from the Borrower, the CIEDB shall notify the Borrower of the reasons and advise the Borrower that the Borrower has thirty (30) days in which to remedy the failure or violation.

(c) If Loan Funds are withheld pursuant to this section, the Borrower hereby acknowledges and agrees that the CIEDB shall have the right to disencumber undisbursed funds under this Loan Agreement.

SECTION 2.12. Disbursement; Additional Payments.

(a) Loan Funds shall be disbursed solely upon receipt by the CIEDB of invoices documenting, to the satisfaction of the CIEDB, that the Borrower has incurred costs that constitute both reasonable and necessary components of the Project and which are consistent with the cost categories, amounts and requirements described in Exhibit D hereto. Provided, however, that no disbursements shall be approved until and unless the Borrower has complied with the conditions precedent to disbursement set forth in Exhibit C hereto, and, except for the purchase of land or preliminary costs, no invoice shall be dated prior to December 17, 2002. "Preliminary costs," as used in this paragraph, means architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project in an aggregate amount not exceeding twenty percent (20%) of the Loan Funds.

(b) Borrower must both: 1) begin Project construction no later than twelve (12) months after December 17, 2002; and 2) submit invoices to the CIEDB for the entire Loan amount within thirty-five (35) months after December 17, 2002. If the Borrower fails to meet either of these conditions, the CIEDB may unencumber any and all undisbursed Loan amounts and the unencumbered amounts shall henceforth not be available to the Borrower. If the Borrower fails to meet the thirty-five (35) month requirement, the CIEDB may elect to hold any or all undisbursed funds and apply such funds to the outstanding principal balance of the Loan amount or, if after the Bond Date, the optional redemption of Bonds in accordance with the Indenture (in which event the principal amount of the Loan amount shall be reduced by the principal amount of Bonds so redeemed).

(c) The total cumulative amount of such disbursements shall not exceed the total amount of the Loan made hereunder. Notwithstanding any contrary provisions of this Loan Agreement or any related documents, under no circumstances will the CIEDB be obligated to make disbursements in excess of the lesser of (i) actual Project costs incurred in connection with the completion of the Project or (ii) three million, seven hundred thousand dollars (\$3,700,000).

(d) Interest shall be calculated on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months. Any installment of principal or interest that is not paid when due shall continue to accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law from and including the Interest Payment Date with respect to which such principal or interest is payable to but not including the date of actual payment.

(e) The Borrower shall pay to the CIEDB as Additional Payments:

(1) A payment of the CIEDB Annual Fee due on February 1 of each year during the term of this Agreement in an amount equal to three tenths of one percent (.3%) of the outstanding principal component of the remaining Loan payments as of each January 1 as set forth in Exhibit E; and

(2) Amounts in each year as shall be required by the CIEDB for the payment of extraordinary expenses of the CIEDB in connection with an Event of Default, the enforcement of this Loan Agreement or any amendments thereto requested by the Borrower, including all expenses, fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs of the CIEDB in connection with an Event of Default, the enforcement of this Loan Agreement or any amendments thereto requested by the Borrower. Extraordinary expenses and extraordinary costs are those expenses and costs related to this Loan Agreement in excess of ordinary and customary expenses incurred. Such Additional Payments shall be billed by the CIEDB from time to time, together with a statement certifying that the amount so billed has been paid by, or will be paid by, the CIEDB for one or more of the items above described, or that such amount is then payable by the CIEDB for such items.

(3) Borrower shall deposit the CIEDB Annual Fee with the CIEDB not later than February 1 of each year or if billed pursuant to subsection (2) above, Borrower shall pay to the CIEDB the amount billed within thirty (30) days after receipt of the bill by the Borrower. Any amounts billed and not paid within thirty (30) days of billing or due date shall

accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

(f) A one-time Loan origination fee in an amount equal to thirty-one thousand, four hundred fifty dollars (\$31,450) shall be due and payable by the Borrower upon initial disbursement of Loan Funds.

(g) Upon receipt of a written request for disbursement, the CIEDB will disburse Loan Funds under this Agreement, no more than once a month, to the Borrower after specific compliance with Exhibit C conditions precedent, and after the Borrower presents evidence that a Project cost has been incurred. All requests for payment shall be accompanied by information and documentation as may be required by the CIEDB to determine the amount of Loan Funds to be disbursed. In addition, all requests for payment shall be accompanied by a certification by the Borrower that the Loan Funds requested are for eligible Project costs, as defined in the Act, CIEDB guidelines and this Agreement, incurred in the amounts and for the purposes represented, and that the work or materials for which payment has been requested are satisfactory. The CIEDB will provide the Borrower with a description of the documentation required for payment. Further, not more than ninety percent (90%) of each invoice payable from Loan Funds designated for construction shall be disbursed until the CIEDB receives a recorded notice of completion for the Project or other evidence of completion satisfactory to the CIEDB and the Borrower has met all conditions precedent to final disbursement set out in Exhibit C; provided however, if the Borrower is obliged by law to make payments to certain construction contractors of one hundred percent (100%) of invoiced amounts or to establish a retention fund for final payment for certain contractors, the CIEDB shall disburse Loan Funds in the amount required by law.

### ARTICLE III

#### PLEDGE OF TAX REVENUES; APPLICATION OF FUNDS

SECTION 3.01. Pledge of Tax Revenues and Special Fund. The Loan and all Parity Debt shall be equally secured by a pledge of and first lien on all of the Tax Revenues and all amounts in the Special Fund, without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. The Tax Revenues and all amounts in the Special Fund are hereby pledged in their entirety to the payments required by Section 3.02. The Tax Revenues and all amounts in the Special Fund are hereby pledged in their entirety to the payments required by Section 3.02. The Tax Revenues and all amounts in the Special Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Borrower.

Neither the Loan nor this Loan Agreement is a debt of the CIEDB, the State or any of its political subdivisions (other than the Borrower) and neither the CIEDB, the State nor any of its political subdivisions (other than the Borrower) is liable thereon, nor in any event shall the Loan be payable out of any funds or properties other than Tax Revenues of the Borrower and amounts in the Special Fund as provided herein. Neither the Loan nor this Loan Agreement constitutes an indebtedness within the meaning of any constitutional or statutory limitation or restriction, and

neither the members of the Borrower nor any persons executing this Loan Agreement are liable personally on the Loan or this Loan Agreement.

SECTION 3.02. Special Fund; Deposits. In order to carry out its obligation to repay the Loan, the Borrower agrees and covenants that it shall establish a Special Fund. In each Fiscal Year, the Borrower shall transfer to the Special Fund an amount of Tax Revenues equal to the sum of (i) Debt Service payable on February 1 and August 1 of such Fiscal Year and (ii) Additional Payments payable during such Fiscal Year. The Tax Revenues in each Fiscal Year shall not be applied to any other purpose until such time as such deposit has been fully made. The Special Fund is hereby pledged and a first security interest granted therein and all money on deposit in the Special Fund shall be applied and used only as provided herein. All money on deposit in the Special Fund shall be used to pay Section 3.03 amounts, Additional Payments, and Parity Debt. After making all the set-asides and payments hereinabove required to be made in each Fiscal Year, the Borrower may expend in such Fiscal Year any remaining money in the Special Fund for any lawful purpose of the Borrower. The Borrower agrees and covenants to maintain the Special Fund so long as the Loan remains unpaid.

SECTION 3.03. Amounts Payable from the Special Fund. The Borrower shall promptly pay the following amounts at the following times:

(a) Interest/Principal Payments. The Borrower shall pay to the CIEDB the principal due and payable under this Loan Agreement by February 1 of each year, as set forth in the Exhibit E amortization schedule. The interest due and payable under this Loan Agreement is due at the CIEDB by each Interest Payment Date.

(b) Additional Payments. The Borrower shall promptly pay to the CIEDB Additional Payments due pursuant to Section 2.12(e).

(c) The Borrower shall promptly pay to the holder of any Parity Debt the amount of Parity Debt Service as those amounts become due and payable.

SECTION 3.04. Commingling of Accounts. The CIEDB may commingle any amounts in any of the funds and accounts held hereunder with any other amounts held by the CIEDB for purposes of making any deposit or investment, provided that the CIEDB shall maintain separate accounting procedures for the investment of all funds held hereunder. The value of investments credited to such fund shall be calculated at the cost thereof (excluding accrued interest).

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

SECTION 4.01. Organization; Authority. The Borrower is duly organized and existing under the laws of the State and has all necessary power and authority to enter into and perform its duties (including the authority to pledge the Tax Revenues) under this Loan Agreement.

SECTION 4.02. Agreement Valid and Binding; Approval by City. This Loan Agreement has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally. The legislative body of the City has authorized the Borrower to enter into this Loan Agreement and to accept the Loan hereunder by duly adopting a resolution in substantially the form attached hereto as Exhibit A2.

SECTION 4.03. No Conflict in Execution of Agreement. The execution and delivery by the Borrower of this Loan Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, charter, by-law or any agreement to which the Borrower is subject or by which it is bound or by which its properties may be affected.

SECTION 4.04. No Litigation. There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Borrower to restrain or enjoin the execution or delivery of this Loan Agreement, or in any way contesting or affecting the validity of this Loan Agreement, or contesting the powers of the Borrower to enter into or perform its obligations under this Loan Agreement, including the pledge of Tax Revenues or in any way contesting or affecting the establishment of the Project Area or the Redevelopment Plan.

SECTION 4.05. No Breach or Default. The Borrower is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including Article XVI, Section 18 thereof), any applicable judgment or decree, any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Borrower is a party or is otherwise subject which would have a material adverse impact on the Borrower's ability to perform its obligations under this Loan Agreement and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

SECTION 4.06. No Consent, Approval or Permission Necessary. No consent or approval of any trustee or holder of any indebtedness of the Borrower, and no consent, permission, authorization, order or licenses of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Loan Agreement or the consummation of any transaction contemplated herein, except as have been obtained or made and as are in full force and effect.

SECTION 4.07. Pledged Funds; Limited Obligation. The Borrower expects that in each year, the Tax Revenues will equal or exceed the current year's payments due under this Loan Agreement, and such payments will be treated as paid from the current Tax Revenues. The Borrower shall have no obligation to use any funds other than the Tax Revenues and amounts in the Special Fund, directly or indirectly, to pay principal of or interest on the Loan and Additional Payments; nor are any funds other than the Tax Revenues and amounts in the Special Fund so pledged as security for the Loan.

SECTION 4.08. Pledge and First Lien. The pledge of the Tax Revenues and amounts in the Special Fund constitute a valid pledge of and a first lien on all of the Tax Revenues and amounts in the Special Fund.

SECTION 4.09. Information Submitted to the CIEDB. The information relating to the Borrower, the Redevelopment Plan, the Project Area and the Project submitted by the Borrower to the CIEDB, including, but not limited to, all information in the application for financing, was true at the time submitted to the CIEDB and as of the date of this Loan Agreement, remains true and correct in all material respects, and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

SECTION 4.10. Financial Statements of the Borrower. The Borrower's financial statements furnished to the CIEDB have been prepared in conformity with generally accepted accounting principles and fairly present in all material respects the financial condition of the Borrower as of the date thereof and the results of its operations for the period covered thereby. There has been no material adverse change in the business, condition (financial or otherwise) or operations of the Borrower since the date of such financial statements.

SECTION 4.11. Establishment of Project Area. The Project Area has been duly established pursuant to the Redevelopment Plan and the Redevelopment Plan is in full force and effect and the Borrower is in compliance with the Redevelopment Plan and the Law.

SECTION 4.12. Project Completion.

(a) The Project consists and will consist of the facilities described in Exhibit D and the Borrower shall make no changes thereto or to the operation thereof which would affect the qualification of the Project as a "public development facility" within the meaning of the Act or the qualifications of the Project for tax-exempt financing under the Code.

(b) The City, upon completion of the Project, will have good and valid title to the Project sufficient to carry out the purposes of this Loan Agreement.

(c) The Borrower intends to utilize the Project or cause the Project to be utilized as a "public development facility" within the meaning of the Act.

(d) The Project will be located wholly within the corporate limits of Novato, California.

(e) To the best of the Borrower's knowledge, no officer or official of the CIEDB has any material interest whatsoever in the Project or in the transactions contemplated by this Loan Agreement.

(f) All applicable local governmental agency, State and federal government certificates, approvals, permits and authorizations with respect to the construction of the Project have been obtained or will be obtained as soon as practicable.

SECTION 4.13. Existing Obligations. The CIEDB has a senior lien on Tax Revenues and there are no obligations on parity with this Loan.

## ARTICLE V

### AFFIRMATIVE COVENANTS OF THE BORROWER

SECTION 5.01. Punctual Payment. The Borrower will punctually pay, or cause to be paid, all payments required hereunder in strict conformity with the terms of this Loan Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Loan Agreement.

SECTION 5.02. Payment of Claims. The Borrower from time to time will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the Tax Revenues or any part thereof, or upon any funds in the hands of the CIEDB, or which might impair the security of the Loan. Nothing herein contained shall require the Borrower to make any such payment so long as the Borrower in good faith shall contest the validity of said claims.

SECTION 5.03. Books and Accounts; Financial Statements.

(a) The Borrower will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the tax increment revenues from the Project Area (which may be consolidated with other project areas or activities of the Borrower). Such books of record and accounts shall at all times during business hours be subject to the inspection of the CIEDB or its designee.

(b) The Borrower will prepare and file with the CIEDB annually as soon as practicable, but in any event not later than one hundred eighty (180) days after the close of each Fiscal Year, so long as this Loan Agreement has not been discharged by the CIEDB, an audited financial statement of the Borrower relating to the Project Area for the preceding Fiscal Year, prepared by an Independent Accountant. The Borrower will furnish to the CIEDB such reasonable number of copies of such audited financial statements as may be required by the CIEDB for distribution (at the expense of the Borrower).

(c) Simultaneously with the delivery of the annual audited financial statements, the Borrower will deliver to the CIEDB a Certificate of the Borrower stating the following:

(1) To the extent not contained in the audited financial statements filed pursuant to subsection (b), the Certificate of the Borrower shall include:

(i) The total amount of assessed valuations of properties within the Project Area, for the most recent completed Fiscal Year, showing the total secured value and the total unsecured value;

(ii) The total taxes eligible for allocation to the Borrower with respect to the Project Area pursuant to the Law for the most recent completed Fiscal Year, including gross tax increment revenues and all deductions for payments to Taxing Agencies,

deposits into the housing fund and any other deductions required to be made to compute the Tax Revenues available to pay this Loan, Parity Debt and Subordinate Debt;

(iii) The percentage by which annual Tax Revenues have provided coverage for this Loan and Parity Debt Service, and the percentage by which Tax Revenues available after the payment of Debt Service and Parity Debt Service provided coverage for Subordinate Debt for the most recent completed Fiscal Year;

(iv) To the extent the Borrower has actual knowledge of any pending appeals of the amount of assessed valuation of any property in the Project Area, the total number of such appeals and the aggregate amount by which such assessed value and Tax Revenues would be reduced if all such appeals were granted in the amount requested; and

(v) The ten (10) largest assessees of taxable property within the Project Area for the most recent completed Fiscal Year, showing the identity of each such assessee and the total assessed value of the properties owned by each such assessee, together with any assessment appeals filed by any of such taxpayers.

(2) Any amendments to the Redevelopment Plan that materially adversely affect the Tax Revenues. For purposes of this subsection, an estimated decrease in excess of five percent (5%) shall be deemed material;

(3) Notification of any Parity Debt or Subordinate Debt incurred since the last reporting date and certification that there had been no default or noncompliance under any Parity Debt Instruments or Subordinate Debt Instruments;

(4) Certification that no Event of Default has occurred and no event has occurred which, with the passing of time would constitute an Event of Default;

(5) Notification of any other event or circumstance that would materially affect completion of the Project and/or repayment of this Loan; and

(6) If any of the information requested in this subsection is set out in the Borrower's audited financial statement, that document may be referenced to meet the requirements of this subsection.

(d) The Borrower shall, upon request, furnish to the CIEDB, in a format specified by the CIEDB, information concerning employment and other public benefits connected to the Project.

SECTION 5.04. Reserved.

SECTION 5.05. Notification to the CIEDB. The Borrower agrees to notify the CIEDB, immediately, by telephone promptly confirmed in writing, if any representation made in this Loan Agreement or in the application for financing to the CIEDB shall at any time so long as the Loan Agreement is outstanding prove untrue or incorrect in any manner.

SECTION 5.06. Protection of Security and Rights. The Borrower shall preserve and protect the security of the Loan and the rights of the CIEDB. From and after the date hereof, the Loan Agreement shall be incontestable by the Borrower.

SECTION 5.07. Reserved.

SECTION 5.08. Tax Covenants. The Borrower recognizes that the Loan Funds consist of proceeds of a tax-exempt financing program. In order to maintain the tax-exempt status of the financing, the Borrower will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code, and the Borrower specifically agrees to comply with all terms and conditions contained in the Tax Certificate.

The provisions of this Section 5.08 shall survive the discharge of the CIEDB'S obligations hereunder and shall apply to any trustee or other successor or assignee described in Section 8.02.

SECTION 5.09. Taxation of Leased Property. Whenever any property in the Project Area is redeveloped by the Borrower and thereafter is leased by the Borrower to any person or persons, or whenever the Borrower leases any real property in the Project Area to any person or persons for redevelopment, the property shall be assessed and taxed in the same manner as privately-owned property (in accordance with the Law), and the lease or contract shall provide (i) that the lessee shall pay taxes upon the assessed value of the entire property and not merely upon the assessed value of the leasehold interest, and (ii) that if for any reason the taxes paid by the lessee on such property in any year during the term of the lease shall be less than the taxes that would have been payable upon the entire property if the property were assessed and taxed in the same manner as privately-owned property, the lessee shall pay such difference to the Borrower within thirty (30) days after the taxes for such year become payable, and in any event prior to the delinquency date of such taxes established by law.

SECTION 5.10. Assumption of Loan Agreement. The obligations of the Borrower under this Loan Agreement may not be assumed by another entity except in connection with a transfer of the entire Project Area by the Borrower and only upon prior written approval of the CIEDB and:

(1) an opinion of counsel experienced in matters relating to the tax-exempt status of interest on any obligations secured by this Loan Agreement, and approved by the CIEDB, to the effect that such transfer would not cause interest on the obligations to be included in gross income for federal income tax purposes;

(2) a Report signed by an Independent Consultant concluding that such transfer would not materially adversely affect the security for the Loan or the rights of the CIEDB; and

(3) evidence sufficient to the CIEDB that the entity assuming the Loan is eligible pursuant to the Act.

SECTION 5.11. Completion of Project; Construction Contracts.

(a) The Borrower shall ensure that all activities undertaken with respect to the completion of the Project are undertaken and accomplished with due diligence and in conformity with all requirements of the Act and other applicable law.

(b) All construction contracts shall be let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by Borrower, and damages or delays authorized by the laws of the State. Borrower shall not approve any change orders cumulatively resulting in an increase in Project costs of more than five percent (5%) of the original construction contract amount without having funds committed for the increased Project costs.

(c) The Borrower shall notify the CIEDB forthwith upon the filing of a stop notice, litigation or any other legal proceeding which may impact the completion

SECTION 5.12. Payment from Tax-Exempt Debt. The Borrower hereby covenants to notify the CIEDB forty-five (45) days before making any repayment or prepayment of this Loan Agreement from the proceeds of any tax-exempt debt incurred by the Borrower.

SECTION 5.13. Further Assurances. The Borrower will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably required by the CIEDB as necessary or proper to carry out the intention or to facilitate the performance of this Loan Agreement and for the better assuring and confirming unto the CIEDB of the rights and benefits provided in this Loan Agreement.

SECTION 5.14. Agreement to Complete.

(a) The Borrower agrees that it will acquire, construct or install the Project, and construct, acquire and install other facilities and real and personal property deemed by the Borrower necessary for the operation of the Project. The Borrower may supplement or amend the Project description with written approval from the CIEDB from time to time, provided that no such supplement or amendment shall cause the Project or any portion thereof to fail to constitute a "project" within the meaning of the Act.

(b) At any time, upon request of the CIEDB, the Borrower agrees to make available to the CIEDB for review and copying all then current plans and specifications for the Project. The Borrower may identify any proprietary information in such plans and specifications and, to the extent legally permissible, the CIEDB agrees to keep such information confidential.

(c) As soon as the Project is completed, the Borrower shall evidence such completion by providing a Certificate of the Borrower to the CIEDB stating that (i) construction of the Project has been completed substantially in accordance with the final plans and specifications therefore and all labor, services, materials and supplies used in construction have been paid for, and (ii) all other facilities necessary in connection with the Project have been constructed, acquired and installed in accordance with the final plans and specifications therefore and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any

rights of the Borrower against third parties for the payment of any amount not then due and payable which exist at the date of such certificate or which may subsequently exist.

SECTION 5.15. Borrower's General Responsibility. The Borrower is solely responsible for the design, construction, operation and maintenance of the Project. Any review or approval of plans, specifications, bid documents or other construction documents by the CIEDB is solely for the purpose of proper administration of Loan Funds by the CIEDB and shall not be deemed to relieve or restrict the Borrower's responsibility or result in any duty, obligation or responsibility on the part of the CIEDB or the officers and agents thereof.

SECTION 5.16. Borrower's Assurances and Commitments.

(a) Compliance with Laws and Regulations. The Borrower shall at all times comply and require its contractor and subcontractors to comply with all applicable federal and State laws, rules and regulations, and all applicable local ordinances, specifically including, but not limited to, contractor pre-qualification, prevailing wage, environmental, procurement and safety laws, rules, regulations, and ordinances. Borrower agrees that its failure to act in accordance with the provisions of this subsection (a) will not result in any duty, obligation or responsibility on the part of the CIEDB or the officers and agents thereof.

(b) Archeological or Historical Resources. Should a potential archeological or historical resource be discovered during construction, the Borrower agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and the Borrower has determined appropriate actions regarding preservation of the resource.

(c) Construction Activities. The Borrower shall assure that adequate supervision and inspection of Project construction activities are maintained. The CIEDB reserves the right to conduct an audit of Borrower's construction expenditures during construction and up to three (3) years following receipt by CIEDB of a notice of completion or other evidence of completion satisfactory to the CIEDB. The CIEDB, at its discretion, may require the Borrower to conduct an interim and/or final audit at the Borrower's expense, such audit to be conducted by and a report prepared by an Independent Accountant.

(d) Compliance with the Law. The Borrower will comply with the Law so as not to adversely affect the security for the payment of the Loan and any Parity Debt. The Borrower will comply with the deposits required by the Law to be made to the Housing Fund.

SECTION 5.17. Project Access. The Borrower shall assure that the CIEDB or its designee will have suitable access to the Project site at all reasonable times so long as this Loan is outstanding and shall include provisions assuring such access in all contracts and subcontracts relating to the Project.

SECTION 5.18. Performance and Payment Bonds.

(a) The Borrower shall require its contractor to certify under penalty of perjury, and provide the Borrower with such certified copy, which shall be available for the CIEDB's inspection if requested, that a bond or bonds by one or more authorized surety companies satisfactory to Borrower; surety companies must be authorized to do business in

California and have an agent for service of process in California. The Borrower shall require that the Borrower be named as an additional payee on the performance and payment bonds required herein and shall provide the CIEDB with an insurance certificate to that effect.

(b) Said bond shall be in the amounts and for the following purposes: (i) an amount not less than one hundred percent (100%) of the total estimated cost of the Project construction contract amount conditioned upon the faithful performance of the terms of this Loan Agreement including the maintenance of the work for a period of one year from the date of final acceptance of work or improvements by the Borrower against any defective work or labor done, or defective materials furnished, and (ii) an additional amount not less than one hundred percent (100%) of the estimated cost of the Project securing payment to the contractor, his or her subcontractors and to persons renting equipment or furnishing labor or materials to them for the Project.

SECTION 5.19. Continuing Disclosure. Upon the request of the CIEDB, the Borrower covenants to furnish certain financial and operating data pertaining to the Borrower that may be required to either: (i) enable the CIEDB to secure an Indenture by this Loan Agreement and issue any Bonds; or (ii) enable any underwriter to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission in connection with the Bonds. The Borrower further covenants to provide the CIEDB with copies of all continuing disclosure reports concerning the Borrower required by the terms of any financing other than this Loan Agreement, including reports required to be filed in order to comply with Rule 10b-5 or Rule 15c2-12, and to send such reports to the CIEDB at the same time such reports are sent to any dissemination agent, trustee, nationally recognized municipal securities information repository or other person.

SECTION 5.20. Notice of Default and Event of Default. The Borrower covenants that it will deliver to the CIEDB, immediately after the Borrower shall have obtained knowledge of the occurrence of an Event of Default or default hereunder, a Certificate of the Borrower setting forth the details of such Event of Default or default and the action which the Borrower proposes to take with respect thereto.

SECTION 5.21. Compliance with State Contract Requirements. The Borrower shall comply with all provisions contained in Exhibit F so long as this Loan is outstanding.

SECTION 5.22. Statements of Indebtedness. The Borrower shall comply with all requirements of the Law to insure the allocation and payment to it of the Tax Revenues, including without limitation the timely filing of any necessary statements of indebtedness with appropriate officials of the County.

SECTION 5.23. Cumulative Tax Revenue Limit. The Borrower covenants that it will not accept Tax Revenues greater than Debt Service, including debt service on Subordinate Debt, in any year, if such acceptance will cause the amount remaining under any then-applicable tax increment limit in the Redevelopment Plan to fall below remaining cumulative Debt Service and debt service on Subordinate Debt, except for the purpose of depositing such revenues in escrow for the payment of this Loan and interest on and principal of and redemption premiums, if any, on Parity Debt or Subordinate Debt.

## ARTICLE VI

### NEGATIVE COVENANTS OF THE BORROWER

SECTION 6.01. Limitation on Additional Debt; No Senior Debt. The Borrower hereby covenants that, until the Loan has been paid and discharged pursuant to Section 8.05, the Borrower shall not after the date of this Loan Agreement issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loans, advances or indebtedness, which are in any case secured by a lien on all or any part of the Tax Revenues that is superior to or on a parity with the lien established hereunder for the security of the Loan, excepting only Parity Debt meeting the requirements set out in Section 2.05 herein and Subordinate Debt meeting the requirements set out in Section 2.06 herein. Nothing herein is intended nor shall be construed in any way to prohibit or impose any limitations upon the issuance or incurrence by the Borrower of loans, bonds, notes, advances or other indebtedness that is not secured by Tax Revenues.

SECTION 6.02. Disposition of Property. The Borrower will not, except as otherwise provided in this Section 6.02, authorize the disposition of any real property in the Project Area to anyone which will result in such property becoming exempt from taxation because of public ownership or use or otherwise (except for public ownership or use contemplated by the Redevelopment Plan in effect on the date of adoption of this Loan Agreement, or property to be used for public streets or public off-street parking facilities or easements or rights of way for public utilities, or other similar uses) if such dispositions, together with all similar prior dispositions on or subsequent to December 17, 2002, shall comprise more than ten percent (10%) of the land area in the Project Area. If the Borrower proposes to make any such disposition which, together with all similar dispositions on or subsequent to December 17, 2002, shall comprise more than ten percent (10%) of the land area in the Project Area, it shall cause to be filed with the CIEDB a Report of an Independent Consultant on the effect of such proposed disposition. If the Report concludes that the Tax Revenues will not be materially reduced by such proposed disposition, the Borrower may proceed with such proposed disposition. If the Report concludes that Tax Revenues will be materially reduced by such proposed disposition, the Borrower shall as a condition precedent to proceeding with such proposed disposition, require that such new owner or owners either:

(1) deposit in the Special Fund, so long as this Loan remains unpaid, an amount equal to the amount that would have been received by the Borrower as Tax Revenues if such property were assessed and taxed in the same manner as privately-owned non-exempt property, which payment shall be made within thirty (30) days after taxes for each year would become payable to the Taxing Agencies for non-exempt property and in any event prior to the delinquency date of such taxes established by law; or

(2) deposit to the Special Fund a single sum equal to the amount estimated by an Independent Consultant to be receivable from taxes on such property from the date of such payment to the final maturity of this Loan, less expected earnings on such amount calculated at five percent (5%) per annum.

SECTION 6.03. Nondiscrimination.

(a) During the performance of this Loan Agreement, Borrower, any contractor and its subcontractors shall not deny the contracts' benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. The Borrower, any contractor and its subcontractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) The Borrower, any contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Sections 11135-11139.5) and any regulations promulgated thereunder.

(c) The Borrower, any contractor and its subcontractors shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the Project to any of its affiliates or to any business enterprise in which Borrower has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though Borrower were dealing with any other parties.

(d) The Borrower, any contractor and its subcontractors shall, with respect to the Project described herein, give written notice of their obligations under this section to labor organizations representing employees of the Borrower and any contractor or subcontractor performing work on the Project which have a collective bargaining or other contract with the Borrower, contractor or subcontractor.

(e) The Borrower, any contractor and its subcontractors shall include the provisions of this section in all subcontracts to perform work under this Loan Agreement or any contract contemplated hereby.

SECTION 6.04. Amendment of Redevelopment Plan. The Borrower will not amend the Redevelopment Plan except as provided in this section. If the Borrower proposes to amend the Redevelopment Plan, it shall cause to be filed with the CIEDB a Report of an Independent Consultant on the effect of such proposed amendment. If the Report concludes that Tax Revenues will not be materially reduced by such proposed amendment, the Borrower may undertake such amendment. If the Report concludes that Tax Revenues will be materially reduced by such proposed amendment, the Borrower may not undertake such proposed amendment without the prior written consent of the CIEDB. For purposes of this section, a decrease in tax increment revenues in excess of five percent (5%) shall be deemed material.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

#### SECTION 7.01. Events of Default and Acceleration of Loan.

(a) The following events shall constitute Events of Default hereunder:

(1) failure by the Borrower to pay the principal of or interest or prepayment premium (if any) on the Loan pursuant to Section 3.03(a)(1) or any Additional Payment pursuant to Section 3.03(a)(2) when and as the same shall become due and payable;

(2) the occurrence of an event of default with respect to any Parity Debt or any Subordinate Debt which causes all principal of such Parity Debt or Subordinate Debt to become due and payable immediately;

(3) failure by the Borrower to observe and perform any of the covenants, agreements or conditions on its part contained in this Loan Agreement, other than as referred to in the preceding subsection (1), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the Borrower by the CIEDB, or to the Borrower and the CIEDB; provided, however, that if the failure stated in such notice can be corrected, but not within such sixty (60) day period, the CIEDB may consent to an extension of such time if corrective action is instituted by the Borrower within such sixty (60) day period and diligently pursued until such failure is corrected;

(4) the filing by the Borrower of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Borrower, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Borrower or of the whole or any substantial part of its property;

(5) any representation or other written statement made by the Borrower contained in this Loan Agreement, the Loan application or in any instrument furnished in compliance with or in reference thereto shall prove to have been incorrect in any material respect; or

(6) an unexcused failure by the Borrower to pay amounts due under any bond, note, installment sale agreement, capital lease or other agreement or instrument to which it is a party relating to the borrowing of money, if such unpaid amount shall exceed fifty thousand dollars (\$50,000).

(b) If an Event of Default has occurred and is continuing, the CIEDB may (i) declare the principal of the Loan, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Loan Agreement to the contrary

notwithstanding, and (ii) exercise any other remedies available to the CIEDB in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the CIEDB shall give notice of such Event of Default to the Borrower by telephone, telecopier, facsimile or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Borrower shall deposit with the CIEDB a sum sufficient to pay all installments of principal of the Loan matured prior to such declaration and all accrued interest thereon, with interest on such overdue installments of principal and interest at the net effective rate then borne by the Loan, and the reasonable expenses of the CIEDB (including but not limited to attorneys fees and costs), and any and all other defaults known to the CIEDB (other than in the payment of principal of and interest on the Loan due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the CIEDB or provision deemed by the CIEDB to be adequate shall have been made therefore, then, and in every such case, the CIEDB may, by written notice to the Borrower, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.02. Remedies. Upon the occurrence of an Event of Default the CIEDB shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Borrower or any member, officer or employee thereof, and to compel the Borrower or any such member, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the CIEDB; or

(c) by suit in equity upon the happening of an Event of Default to require the Borrowers and its members, officers and employees to account as the trustee of an express trust.

SECTION 7.03. Application of Funds upon Default. All amounts received by the CIEDB pursuant to any right given or action taken by the CIEDB under provisions of this Loan Agreement, or otherwise held by the CIEDB upon the occurrence of an Event of Default, shall be applied by the CIEDB in the following order:

(a) First, to the payment of the costs and expenses of the CIEDB, including reasonable compensation to their agents and attorneys, including CIEDB employees as set forth in Section 2.12(e)(2); and

(b) Second, to the payment of the whole amount of interest on and principal of the Loan and any Parity Debt then due and unpaid, with interest on overdue installments of principal and interest at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law; provided, however, that in the event such amounts shall be

insufficient to pay in full the amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(1) first, to the payment of all installments of interest on the Loan and any Parity Debt then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full;

(2) second, to the payment of principal of all installments of the Loan and any Parity Debt then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full;

(3) third, to the payment of principal of the Loan and any Parity Debt then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 7.01 or otherwise, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full; and

(4) fourth, to the payment of interest on overdue installments of principal and interest on the Loan and any Parity Debt, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

(c) Third, to the payment of other Additional Payments to the CIEDB as described in Sections 2.12(e)(1) and (3).

SECTION 7.04. No Waiver. Nothing in this Article VII or in any other provision of this Loan Agreement shall affect or impair the obligation of the Borrower, which is absolute and unconditional, to pay from the Tax Revenues and other amounts pledged hereunder, all payments due hereunder, or affect or impair the right of action, which is also absolute and unconditional, of the CIEDB to institute suit to enforce such payment by virtue of the contract embodied in this Loan Agreement.

A waiver of any default by the CIEDB shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the CIEDB to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the CIEDB by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by the CIEDB. This Section 7.04 is not a waiver of State statute of limitations provisions.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the CIEDB, the Borrower and the CIEDB shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

SECTION 7.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the CIEDB is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter

existing at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.01. Venue. The CIEDB and the Borrower hereby agree that any action arising out of this Loan Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

SECTION 8.02. Assignment. This Loan Agreement may, at the CIEDB's discretion after the Bond Date, be assigned by the CIEDB to a trustee or any other party for the purpose of securing the payment of any bonds, notes or other obligations issued by the CIEDB and secured by this Loan Agreement and Loan, and the Borrower hereby consents to such assignment.

SECTION 8.03. Benefits Limited to Parties. Nothing in this Loan Agreement, expressed or implied, is intended to give to any person other than the Borrower and the CIEDB, any right, remedy or claim under or by reason of this Loan Agreement. All covenants, stipulations, promises or agreements contained in this Loan Agreement by and on behalf of the Borrower shall be for the sole and exclusive benefit of the CIEDB.

SECTION 8.04. Successor. Whenever in this Loan Agreement either the Borrower or the CIEDB is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Loan Agreement contained by or on behalf of the Borrower or the CIEDB shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. Following the Bond Date the trustee for the Bonds will be the CIEDB's assignee.

#### SECTION 8.05. Discharge of Loan Agreement.

(a) If the Borrower shall pay and discharge the entire indebtedness under this Loan by paying or causing to be paid the principal of, interest and prepayment premium (if any) and Additional Payments on the Loan, as and when the same become due and payable, then, at the election of the Borrower, but only if all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Tax Revenues and other funds provided for in this Loan Agreement and all other obligations of the CIEDB and the Borrower under this Loan Agreement with respect to the Loan shall cease and terminate, except only (i) the obligation of the Borrower to pay or cause to be paid to the CIEDB, from the amounts so deposited with the CIEDB or such other fiduciary, all sums due with respect to this Loan Agreement and all expenses and costs of the CIEDB as provided in this Loan Agreement, and (ii) the obligations of the Borrower under Sections 5.07, 8.01, and 8.12. Notice of such election shall be filed with the CIEDB.

Any funds thereafter held by the CIEDB hereunder, which are not required for said purposes, shall be paid over to the Borrower.

All or any portion of unpaid principal installments of the Loan payment shall, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in this section (except that the Borrower shall remain liable for such Loan payment, but only out of such money or securities deposited with the Bond trustee or other fiscal agent approved by the CIEDB for such payment), if (i) there shall have been deposited with the Bond trustee or other fiscal agent approved by the CIEDB either money in an amount which shall be sufficient, or federal securities (as defined below) which are not subject to redemption prior to maturity except by the holder thereof (including any such federal securities issued or held in book entry form) or tax-exempt obligations of a state or a political subdivision thereof which have been defeased under irrevocable escrow instructions with federal securities, the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the CIEDB, shall be sufficient to pay when due the principal installments of such portions thereof on and prior to their payment dates or their dates of prepayment, as the case may be, and the prepayment premiums, if any, applicable thereto, and (ii) an opinion of nationally recognized bond counsel acceptable to the CIEDB is filed with the CIEDB to the effect that the action taken pursuant to this section will not cause the interest on the Bonds to be includable in gross income under the Code for federal income tax purposes. As used in this section, "federal securities" means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations of, or obligations guaranteed directly or indirectly by, the United States of America, or securities evidencing ownership interests in such obligations or in specified portions of the interest on or principal of such obligations.

(b) Prior to the Bond Date, upon payment of the principal of, interest and all other amounts owed to the CIEDB, the Loan Agreement shall terminate (except for Section 8.12).

SECTION 8.06. Amendment.

(a) This Loan Agreement may be amended in writing as may be mutually agreed by the Borrower and the CIEDB, subject after the Bond Date to the written approval of the Trustee; provided, that after the Bond Date no such amendment which materially adversely affects the rights of the Owners shall be effective unless it shall have been consented to by the Owners of more than fifty percent (50%) in value of the Bonds outstanding, and provided further, that after the Bond Date no such amendment shall (i) extend the payment date of any principal or interest payment, or reduce the interest, principal or prepayment premium component of any payment, without the prior written consent of the Owner of each Bond so affected, or (ii) reduce the percentage of the value of the Bonds outstanding the consent of the Owners of which is required for the execution of any amendment hereof. "Owners," as used in this Section 8.06, means any person who shall be the registered owner of the Bonds as shown on the registration books maintained by the trustee of the Bonds.

(b) After the Bond Date, this Loan Agreement and the rights and obligations of the CIEDB and the Borrower hereunder may also be amended or supplemented at any time by an amendment hereof or supplement hereto which shall become binding upon execution without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the agreements, conditions, covenants and terms required by the CIEDB or the Borrower to be observed or performed herein and other agreements, conditions, covenants and terms thereafter to be observed or performed by the CIEDB or the Borrower, or to surrender any right or power reserved herein to or conferred herein on the CIEDB or the Borrower, and which in either case shall not materially adversely affect the interests of the Owners;

(2) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the CIEDB or the Borrower may deem desirable or necessary and not inconsistent herewith, and which shall not materially adversely affect the interests of the Owners; and

(3) to make any other addition, amendment or deletion which does not materially adversely affect the interests of the Owners.

SECTION 8.07. Waiver of Personal Liability. No member, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of the principal of premium if any, or the interest under this Loan Agreement; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 8.08. Payment on Business Days. Whenever in this Loan Agreement any amount is required to be paid on a day that is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day and no further interest shall accrue.

SECTION 8.09. Notices. All written notices to be given under this Loan Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time, except that notices from the Borrower to the CIEDB shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to the CIEDB or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the CIEDB: California Infrastructure and Economic Development Bank  
California Technology, Trade and Commerce Agency  
1102 Q Street, Suite 6000  
Sacramento, California 95814  
Attention: Credit Support Manager  
CIEDB # 02-042

Or to such other address as may be designated in writing by the CIEDB.

If to the Borrower: Redevelopment Agency of the City of Novato  
900 Sherman Avenue  
Novato, California 94945  
Attention: Executive Director

Or to such other address as may be designated in writing by the Borrower.

SECTION 8.10. Partial Invalidity. If any portion of this Loan Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity and enforceability of the remaining portions of this Loan Agreement.

SECTION 8.11. Governing Law. This Loan Agreement shall be construed and governed in accordance with the laws of the State.

SECTION 8.12. Indemnification. The Borrower shall, to the extent permitted by law, indemnify and hold harmless the CIEDB and its respective members, directors, officers, employees and agents, and the Bond trustee and underwriter and its members, directors, officers, employees and agents, from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims, damages, liabilities or expenses arising out of, resulting from or in any way connected with (i) this Loan Agreement or the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Project or any part thereof; (ii) the carrying out of any of the transactions contemplated by this Loan Agreement or any related document; (iii) information provided by the Borrower which is used in the offering for sale of the Bonds; or (iv) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance on or near, the Project. The Borrower shall, to the extent permitted by law, pay or reimburse the CIEDB and its members, directors, officers, employees and agents for the Borrower's pro rata share of any and all reasonable costs, reasonable attorneys' fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions. Notwithstanding anything to the contrary in this Loan Agreement, the CIEDB and its members, directors, officers, employees and agents shall not be entitled to payment, reimbursement or indemnification with respect to actions involving willful misconduct, default or gross negligence on the part of the CIEDB or its members, directors, officers, employees and agents.

The provisions of this Section 8.12 shall survive the discharge of the Borrower's obligations hereunder and shall apply to any trustee or other successor or assignee covered in Section 8.02.

SECTION 8.13. Contact Persons.

(a) The executive director of the CIEDB or such other person as designated in writing by the CIEDB shall manage this Loan Agreement for the CIEDB and shall have authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under this Agreement.

(b) The Borrower Project manager shall be the executive director of the Redevelopment Agency of the City of Novato or such other person as designated in writing by the Borrower. The Borrower Project manager shall be the Borrower's representative for the administration of this Loan Agreement and shall have full authority to act on behalf of the Borrower. All communications given to the Borrower Project manager shall be as binding as if given to the Borrower.

SECTION 8.14. Effective Date; Execution. This Loan Agreement shall become effective upon its execution and delivery. This Agreement may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be signed by the respective officers, all as of the day and year first above written.

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

By   
Stanton C. Hazelroth  
Executive Director

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By   
Roderick Wood  
Executive Director

REDEVELOPMENT AGENCY OF THE CITY OF NOVATO

RESOLUTION NO. R-6-03

A RESOLUTION OF THE GOVERNING BODY OF THE REDEVELOPMENT AGENCY OF THE CITY OF NOVATO MAKING CERTAIN FINDINGS, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND APPROVING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

BE IT RESOLVED BY THE GOVERNING BODY OF THE REDEVELOPMENT AGENCY OF THE CITY OF NOVATO (THE "BORROWER"), AS FOLLOWS:

Section 1. Pursuant to Section 33445 of the Health and Safety Code of the State of California, the Borrower makes the following findings in support of the Loan.

(a) The development and construction of the Grant Avenue Improvement Project (the "Project") is of benefit to the Redevelopment Agency of the City of Novato Downtown Novato Redevelopment Project Area (the "Project Area");

(b) There is no other reasonable means of financing all of the costs of the Project except for tax increment fund available to Borrower;

(c) The use of tax increment for the Project will assist in the elimination of the following blighting conditions, including, but not limited to unsafe, uneven and uprooted sidewalks along Grant Avenue, and the crowning of Grant Avenue between Seventh Street and Scott Court;

(d) The Project is in compliance with, and such tax increment use is consistent with, the Redevelopment Plan and the Five Year Plan for the Project Area adopted by the Borrower on June 29, 1999 pursuant to Section 33490 of the Health and Safety Code of the State of California.

Section 2. Roderick Wood, Executive Director, is authorized and directed to execute and deliver the Tax Allocation Loan Agreement (the "Loan Agreement") proposed to be entered into by the Borrower and the California Infrastructure and Economic Development Bank (the "CIEDB"), to be dated as of December 17, 2002, for and on behalf of the Borrower.

Section 3. Roderick Wood, Executive Director, is hereby authorized and directed, in the name and on behalf of the Borrower, to take any and all steps and to execute and deliver any and all certificates, contracts and other documents which he might deem necessary or appropriate in order to consummate the delivery of the Loan Agreement and otherwise to effectuate the

CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting City Clerk of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the governing body of the Borrower authorizing the execution and delivery of the Loan Agreement dated as of December 17, 2002 between the Borrower and the California Infrastructure and Economic Development Bank, adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

(3) I further certify that I have carefully compared the attached copy of the resolution with the original minutes of said meeting on file and of record in my office; that said copy is a true, correct and complete copy of the original resolution duly adopted by said governing body at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since its adoption and is in full force and effect as of the date hereof.

(4) I further certify that in accordance with Government Code section 54954.2, the agenda of the meeting contained a brief description of the resolution to be considered at the meeting, and a copy thereof was posted at least seventy-two (72) hours before the meeting in a location freely accessible to members of the public.

Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels  
Name Shirley Gremmels  
Title City Clerk

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. 35-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NOVATO MAKING CERTAIN FINDINGS AND APPROVING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY THE REDEVELOPMENT AGENCY OF THE CITY OF NOVATO

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NOVATO (THE "CITY"), AS FOLLOWS:

WHEREAS, the Redevelopment Agency of the City of Novato desires to engage in the Grant Avenue Improvement Project (the "Project"), within Downtown Novato Redevelopment (the "Project Area"), described as follows:

Resurfacing of Grant Avenue; installation of wider pedestrian sidewalks, improvement of on-street parking; upgrades to storm drainage; and installation of lighting, irrigation, landscaping and street furnishings.

WHEREAS, there are insufficient City resources to pay for all of the costs associated with the development and construction of the Project;

WHEREAS, the California Infrastructure and Economic Development Bank (the "CIEDB") is prepared to provide a loan in an amount not to exceed three million, seven hundred thousand dollars (\$3,700,000) (the "Loan") for development and construction of the Project, to be repaid from tax increment revenues of the Project Area.

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

Section 1. Pursuant to Section 33445 of the Health and Safety Code of the State of California, the City makes the following findings in support of the Loan;

(a) The development and construction of the Project is of benefit to the Downtown Novato Redevelopment Project Area;

(b) There is no other reasonable means of financing all of the costs of the Project except for tax increment funds; and

(c) The use of tax increment for the Project will assist in the elimination of the following blighting conditions, including, but not limited to unsafe, uneven and uprooted sidewalks along Grant Avenue, and the crowning of Grant Avenue between Seventh Street and Scott Court, and such tax increment use is consistent with the Redevelopment Plan and

CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting City Clerk of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the legislative body of the Borrower authorizing the execution and delivery of the Loan Agreement dated as of December 17, 2002 between the Borrower and the California Infrastructure and Economic Development Bank, adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

(3) I further certify that I have carefully compared the attached copy of the resolution with the original minutes of said meeting on file and of record in my office; that said copy is a true, correct and complete copy of the original resolution duly adopted by said governing body at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since its adoption and is in full force and effect as of the date hereof.

(4) I further certify that in accordance with Government Code section 54954.2, the agenda of the meeting contained a brief description of the resolution to be considered at the meeting, and a copy thereof was posted at least seventy-two (72) hours before the meeting in a location freely accessible to members of the public.

Dated: May 5, 2003.

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels

Name Shirley Gremmels  
Title City Clerk

EXHIBIT B

CERTIFICATE OF  
CHIEF FINANCIAL OFFICER OF THE REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

The undersigned hereby states and certifies:

- (1) I am the duly qualified and acting chief financial officer of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.
- (2) The financial data submitted by Borrower in the application for financing (including supplements thereto) in connection with the Tax Allocation Loan Agreement by and between the Borrower and the California Infrastructure and Economic Development Bank (the "CIEDB") dated as of December 17, 2002 (the "Loan Agreement") was true at the time submitted to the CIEDB and as of the date of this certification, remains true and correct in all material respects, and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.
- (3) The Borrower is not in breach of or in default under any bond indenture, loan agreement, note or other instrument to which it is a party.
- (4) The representations and warranties made in the Loan Agreement are true and correct as if made on the date of this certificate.
- (5) The CIEDB financing secured by this Loan Agreement is the only obligation secured by a lien on tax increment revenue.

Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Roderick J. Wood

Name	Roderick J. Wood
Title	Executive Director

## EXHIBIT C

### CONDITIONS PRECEDENT TO DISBURSEMENT

(a) Initial Disbursement. Disbursement for the Borrower's origination fee in the amount of thirty-one thousand, four hundred fifty dollars (\$31,450) shall be made concurrent with the initial disbursement. No funds shall be disbursed pursuant to this Loan Agreement until and unless Borrower, in the good faith judgment of the CIEDB, has specifically complied with each of the following and has provided certification or documentation satisfactory to the CIEDB:

(1) An opinion of legal counsel that Borrower has the legal authority to enter into this Loan Agreement and that the Loan Agreement is a legal, binding and enforceable agreement of Borrower;

(2) Resolution adopted by Borrower and Certification of Resolution in a form substantially similar to Exhibit A-1.

(3) Resolution adopted by City Council and Certification of Resolution in a form substantially similar to Exhibit A-2.

(4) Certificate of the Borrower's authorized representative in a form substantially similar to Exhibit B.

(5) Evidence acceptable to the CIEDB that the City has complied with all pre-disbursement conditions of the grant received from the California Department of Transportation, State Transportation Improvement Program Grants Awards No. 04-MRN-0-NVTO, RPL-5361 (012).

(6) Evidence that the CIEDB financing will be a senior pledge on the Downtown Novato Redevelopment Project Area Tax Revenues and Special Fund, specifically, a resolution from the City of Novato that the loans to the Borrower dated as of January 12, 1999 with principal outstanding in the amount of two hundred and one thousand, four hundred and seventy-two dollars (\$201,472) as of December 17, 2002 and dated as of January 13, 1998 with principal outstanding in the amount of forty-seven thousand, six hundred and forty-six dollars (\$47,646) as of December 17, 2002 are subordinate to this Loan Agreement.

(7) Insurance certificates documenting worker's compensation insurance covering all Borrower's employees.

(8) Tax Certificate executed by Borrower in a form substantially similar to Exhibit G.

(b) Preliminary Costs. When all the requirements of section (a) herein are met in a manner satisfactory to the CIEDB, disbursement shall be allowed for the following costs: Preliminary costs as specified in Exhibit D.

(c) Construction Costs. Other than the origination fee and costs described in section (b)

herein, no funds shall be disbursed pursuant to this Loan Agreement until and unless Borrower has, in the good faith judgment of the CIEDB, provided the CIEDB with all the documents required in section (a) herein and the following documents:

(1) Certificate of the Borrower's executive director or legal counsel that Borrower has obtained any and all lands, rights-of-way, easements, lot line adjustments, and orders of possession which are required for construction and operation of the Project;

(2) Certificate of the Borrower that all required permits have been obtained for the construction of the Project;

(3) Certificate of the Borrower's executive director or legal counsel that:

(A) All construction contracts and subcontracts necessary for Project construction have been awarded, and were awarded pursuant to competitive bidding and Borrower procedures normally required for similar construction projects;

(B) Costs are consistent with the Exhibit D sources and uses chart;

(C) All prime contracts require the contractor to maintain appropriate builder's risk insurance and name Borrower as an additional insured and loss payee, require the contractor to maintain liability insurance and name the Borrower as an additional insured, and include the performance and payment bond provisions set forth in Section 5.18 of this Loan Agreement and name the Borrower as an additional payee;

(D) All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by Borrower, and damages or delays authorized by the laws of the State;

(E) All construction contracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code;

(F) All construction contracts require payment of workers' compensation insurance by contractors and subcontractors;

(G) All construction contracts include the nondiscrimination provisions set forth in Section 6.03; and

(H) Borrower utilized contractor pre-qualification forms developed by the Director of Industrial Relations as set forth in AB 574 (Chapter 972 of the Statutes of 1999) codified in Public Contract Code section 20101 et seq., receipt of which is acknowledged by CIEDB.

(d) Final disbursement: The final disbursement of Loan Funds allocated for construction costs shall not be made until and unless Borrower, in the good faith judgment of the CIEDB, has

specifically complied with each of the following and provided certification or documentation satisfactory to the CIEDB:

- (1) Recorded Project notice of completion or other evidence of completion;
- (2) Lien waivers for the Project, or passage of the applicable statutory time periods for filing mechanics and other similar liens;
- (3) Certificate of the Borrower that the Project has been completed according to its approved final plans and specifications, that the completed Project is consistent with the definition of Project in this Loan Agreement and is acceptable to the Borrower and that the requirements of Section 5.14(c) have been met;
- (4) Certification of Recycled Content as set out in Section 6 of Exhibit F; and
- (5) Project operating permits, if applicable.

EXHIBIT D

DESCRIPTION AND PROJECT SOURCES AND USES

Project Title:

Grant Avenue Improvement Project

Project Description:

Resurfacing of Grant Avenue; installation of wider pedestrian sidewalks, improvement of on-street parking; upgrades to storm drainage; and installation of lighting, irrigation, landscaping and street furnishings.

Project Sources and Uses:

PROJECT SOURCES AND USES						
Uses of Funds	Sources of Funds					
	CIEDB	Borrower	City	*State STIP Grant	**Federal TLC Grant	TOTAL
Land Acquisition			\$1,345			\$1,345
Street Construction/Acquisition	\$3,249,635	\$1,828,592	\$1,406,278	\$450,000	\$1,017,000	\$7,951,505
Construction Contingency	\$364,565			\$50,000	\$113,000	\$527,565
Engineering/Architectural/Design	\$54,350		\$1,381,936	\$130,000		\$1,566,286
Construction Management		\$398,294	\$234,055			\$632,349
SUBTOTAL	\$3,668,550	\$2,226,886	\$3,023,614	\$630,000	\$1,130,000	\$10,679,050
CIEDB Origination Fee	\$31,450					\$31,450
TOTAL	\$3,700,000	\$2,226,886	\$3,023,614	\$630,000	\$1,130,000	\$10,710,500

\* State Transportation Improvement Program Grant.

\*\* Federal Transportation for Livable Communities Grant.

Any line item financed by CIEDB may be amended up to twenty percent (20%) upon the prior written approval of the CIEDB.

The CIEDB shall not be responsible for the payment of any cost overruns.

The Borrower shall submit invoices only for expenses incurred. Expenses contained in the invoices shall be listed according to the categories contained in the above Project sources and uses chart. The CIEDB shall pay ninety percent (90%) of all approved invoices for construction costs submitted to the Borrower prior to compliance with Exhibit C, section (d). Provided however, that if the Borrower is obliged by law to make payments to certain construction contractors for one hundred percent (100%) for invoiced amounts or to establish a retention fund for final payment to certain contractors, the CIEDB shall disburse Loan Funds in the amount required by law.

Borrower shall not approve any change orders cumulatively resulting in an

increase in Project costs of more than five percent (5%) of the original construction contract amount without having funds committed for the increased Project costs.

Project costs not covered by this Loan Agreement will be paid by the Borrower.

No costs of the Project to be paid by CIEDB can be incurred prior to December 17, 2002 except Engineering/Architectural/Design.

EXHIBIT E

*Revised  
7/29/04*

AMORTIZATION SCHEDULE

**NOTE:** This amortization schedule is an estimate only. It assumes that the total amount of Loan Funds will be disbursed as of the date of the Agreement. Please note that prior to the Bond Date during the interest only period, interest payments will be calculated on amounts disbursed. Principal shall be due as scheduled below. A replacement amortization schedule will be sent to the Borrower upon the Bond Date.

Payment Date	Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending 30-Jun
17-Dec-2002	\$3,700,000						
1-Aug-2003			\$78,045	\$78,045		\$78,045	
1-Feb-2004			\$62,715	\$62,715	\$11,100	\$73,815	\$151,860
1-Aug-2004			\$62,715	\$62,715		\$62,715	
1-Feb-2005	\$3,618,727	\$81,273	\$62,715	\$143,988	\$11,100	\$155,088	\$217,803
1-Aug-2005			\$61,337	\$61,337		\$61,337	
1-Feb-2006	\$3,534,698	\$84,029	\$61,337	\$145,366	\$10,856	\$156,222	\$217,560
1-Aug-2006			\$59,913	\$59,913		\$59,913	
1-Feb-2007	\$3,447,821	\$86,877	\$59,913	\$146,790	\$10,604	\$157,394	\$217,308
1-Aug-2007			\$58,441	\$58,441		\$58,441	
1-Feb-2008	\$3,357,998	\$89,822	\$58,441	\$148,263	\$10,343	\$158,606	\$217,047
1-Aug-2008			\$56,918	\$56,918		\$56,918	
1-Feb-2009	\$3,265,131	\$92,867	\$56,918	\$149,785	\$10,074	\$159,859	\$216,777
1-Aug-2009			\$55,344	\$55,344		\$55,344	
1-Feb-2010	\$3,169,116	\$96,016	\$55,344	\$151,359	\$9,795	\$161,155	\$216,499
1-Aug-2010			\$53,717	\$53,717		\$53,717	
1-Feb-2011	\$3,069,845	\$99,270	\$53,717	\$152,987	\$9,507	\$162,494	\$216,211
1-Aug-2011			\$52,034	\$52,034		\$52,034	
1-Feb-2012	\$2,967,209	\$102,636	\$52,034	\$154,670	\$9,210	\$163,879	\$215,913
1-Aug-2012			\$50,294	\$50,294		\$50,294	
1-Feb-2013	\$2,861,094	\$106,115	\$50,294	\$156,409	\$8,902	\$165,311	\$215,605
1-Aug-2013			\$48,496	\$48,496		\$48,496	
1-Feb-2014	\$2,751,382	\$109,712	\$48,496	\$158,208	\$8,583	\$166,791	\$215,287
1-Aug-2014			\$46,636	\$46,636		\$46,636	
1-Feb-2015	\$2,637,950	\$113,432	\$46,636	\$160,068	\$8,254	\$168,322	\$214,958
1-Aug-2015			\$44,713	\$44,713		\$44,713	
1-Feb-2016	\$2,520,673	\$117,277	\$44,713	\$161,990	\$7,914	\$169,904	\$214,617
1-Aug-2016			\$42,725	\$42,725		\$42,725	
1-Feb-2017	\$2,399,421	\$121,253	\$42,725	\$163,978	\$7,562	\$171,540	\$214,265
1-Aug-2017			\$40,670	\$40,670		\$40,670	
1-Feb-2018	\$2,274,058	\$125,363	\$40,670	\$166,033	\$7,198	\$173,232	\$213,902
1-Aug-2018			\$38,545	\$38,545		\$38,545	
1-Feb-2019	\$2,144,445	\$129,613	\$38,545	\$168,158	\$6,822	\$174,980	\$213,526
1-Aug-2019			\$36,348	\$36,348		\$36,348	
1-Feb-2020	\$2,010,438	\$134,007	\$36,348	\$170,355	\$6,433	\$176,788	\$213,137
1-Aug-2020			\$34,077	\$34,077		\$34,077	
1-Feb-2021	\$1,871,888	\$138,550	\$34,077	\$172,627	\$6,031	\$178,658	\$212,735
1-Aug-2021			\$31,729	\$31,729		\$31,729	
1-Feb-2022	\$1,728,642	\$143,246	\$31,729	\$174,975	\$5,616	\$180,591	\$212,319

Payment Date	Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending 30-Jun
1-Aug-2022			\$29,300	\$29,300		\$29,300	
1-Feb-2023	\$1,580,539	\$148,103	\$29,300	\$177,403	\$5,186	\$182,589	\$211,889
1-Aug-2023			\$26,790	\$26,790		\$26,790	
1-Feb-2024	\$1,427,416	\$153,123	\$26,790	\$179,913	\$4,742	\$184,655	\$211,445
1-Aug-2024			\$24,195	\$24,195		\$24,195	
1-Feb-2025	\$1,269,102	\$158,314	\$24,195	\$182,509	\$4,282	\$186,791	\$210,986
1-Aug-2025			\$21,511	\$21,511		\$21,511	
1-Feb-2026	\$1,105,421	\$163,681	\$21,511	\$185,192	\$3,807	\$188,999	\$210,511
1-Aug-2026			\$18,737	\$18,737		\$18,737	
1-Feb-2027	\$936,192	\$169,230	\$18,737	\$187,967	\$3,316	\$191,283	\$210,020
1-Aug-2027			\$15,868	\$15,868		\$15,868	
1-Feb-2028	\$761,225	\$174,967	\$15,868	\$190,835	\$2,809	\$193,644	\$209,512
1-Aug-2028			\$12,903	\$12,903		\$12,903	
1-Feb-2029	\$580,327	\$180,898	\$12,903	\$193,801	\$2,284	\$196,084	\$208,987
1-Aug-2029			\$9,837	\$9,837		\$9,837	
1-Feb-2030	\$393,297	\$187,030	\$9,837	\$196,867	\$1,741	\$198,608	\$208,444
1-Aug-2030			\$6,666	\$6,666		\$6,666	
1-Feb-2031	\$199,926	\$193,371	\$6,666	\$200,037	\$1,180	\$201,217	\$207,883
1-Aug-2031			\$3,389	\$3,389		\$3,389	
1-Feb-2032		\$199,926	\$3,389	\$203,315	\$600	\$203,914	\$207,303
<b>Total Payments:</b>		\$3,700,000	\$2,228,457	\$5,928,457	\$195,852	\$6,124,309	\$6,124,309

## EXHIBIT F

### STATE CONTRACT REQUIREMENTS

#### SECTION 1. Record Establishment, Access and Retention.

(a) The Borrower agrees that the CIEDB shall have the right to review, obtain, and copy all records pertaining to performance of this Loan Agreement. The Borrower agrees to provide the CIEDB with any relevant information requested and shall permit the access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code section 8546.7. The Borrower further agrees to maintain records concerning costs paid with State funds for three (3) years following the CIEDB's receipt of a notice of completion or payment of an invoice, whichever is later. In the event of a Loan Agreement performance or payment dispute, the three-year minimum shall automatically be extended until the dispute is resolved.

(b) Upon inspection, the Borrower shall promptly implement any corrective measures recommended by the CIEDB, its representatives, or the Bureau of State Audits ("BSA") regarding the requirements of this section.

(c) The Borrower shall keep all books, records, accounts and documents pertaining to this Loan Agreement separate from other activities unrelated to this Loan Agreement.

#### SECTION 2. Nondiscrimination Clause and Compliance Statement.

(a) By signing this Loan Agreement, the Borrower and its contractors agree that each shall not, during the performance of this Loan Agreement, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave or denial of pregnancy disability leave. The Borrower and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Borrower and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Loan Agreement by reference and made a part hereof as if set forth in full. The Borrower and its contractor shall give written notice of their obligations under this subsection to labor organizations with which they have a collective bargaining or other agreement.

(b) The Borrower shall include the nondiscrimination and compliance provisions as detailed in subsection (a) of this section, in all contracts to perform work under this Loan Agreement.

SECTION 3. Americans with Disabilities Act Certification. By signing this Loan Agreement, the Borrower assures the CIEDB that it complies with the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

SECTION 4. National Labor Relations Board Certification. By signing this Loan Agreement, the Borrower does swear under the penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Borrower within the immediately preceding two year period because of the Borrower's failure to comply with an order of a federal court which orders the Borrower to comply with an order of the National Labor Relations Board.

SECTION 5. Certification of Drug Free Workplace.

(a) By signing this Loan Agreement, the Borrower hereby certifies under penalty of perjury under the laws of the State of California that the Borrower shall comply with the requirements of the Drug Free Workplace Act of 1990 (Government Code section 8350 et seq.) and shall provide a drug free workplace by:

(1) publishing a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a).

(2) establishing a Drug Free Awareness Program as required by Government Code section 8355(b), to inform employees about:

- (A) the dangers of drug abuse in the workplace;
- (B) the person's or organization's policy of maintaining a drug-free workplace;
- (C) any available counseling, rehabilitation and employee assistance programs; and,
- (D) penalties that may be imposed upon employees for drug abuse violations; and,

(3) providing, as required by Government Code section 8355(c), that every employee who performs work under this Borrower shall:

- (A) receive a copy of the Borrower's drug-free policy statement; and,
- (B) agree to abide by the terms of the Borrower's statement as a condition of employment under this Borrower.

(b) In addition to any other consequences specified in this Loan Agreement, failure to comply with these requirements may result in the Borrower being ineligible for award of any future State contracts if the CIEDB determines that the Borrower:

- (1) has made a false certification; or,
- (2) violates the certification by failing to carry out the requirements as noted above.

SECTION 6. Certification of Recycled Content. The Borrower shall certify in writing, under penalty of perjury, the minimum, if not exact, percentage of recycled content of both post-consumer material and secondary material as defined in Public Contract Code sections 12161 and 12200, in materials, goods or supplies offered, or products used in the performance of this Loan Agreement, regardless of whether the product meets the required recycled product percentage as defined in Public Contract Code sections 12161 and 12200. The Borrower may certify that the product contains zero recycled content. The Recycle Certification shall be delivered to the CIEDB not more than thirty (30) calendar days following the date of the notice of completion.

SECTION 7. Child Support Compliance Act.

(a) The Borrower recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

(b) The Borrower, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry, maintained by the California Employment Development Department.

SECTION 8. Welfare Recipients.

(a) The Borrower shall give priority consideration in filling vacancies in positions funded by the Borrower to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(b) Nothing in this provision shall be construed to:

- (1) interfere with or create a violation of the terms of valid collective bargaining agreements;
- (2) require the Borrower to hire an unqualified recipient of aid;
- (3) interfere with or create a violation of any federal affirmative action obligation of the Borrower for hiring disabled veterans or veterans of the Vietnam era; or,

(4) interfere with or create a violation of the requirements of Government Code section 12990.

SECTION 9. Prevailing Wages.

(a) By signing this Loan Agreement, the Borrower agrees to comply with the provisions of Section 1720 et seq. of the California Labor Code in the award of public works contracts and subcontracts involving the expenditure of funds provided in this Loan Agreement, and to insure that its contractor and subcontractors meet the requirements of those enactments.

(b) The Borrower shall comply with Labor Code provisions that include but are not limited to the following requirements: The Borrower shall obtain, from the Director of the Department of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the Loan Agreement. The Borrower shall either specify the general prevailing rates in bid and contract documents or include a statement in those documents that such information is available; take cognizance of any violations of prevailing wage law and notify the Department of Industrial Relations of such violations; require that the contractor and subcontractors keep adequate payroll and other records and withhold funds pending investigation of violations.

(c) The Borrower shall require its contractor and subcontractors to adhere to prevailing wage requirements, including but not limited to the following requirements: contracts between the contractor and subcontractors must include provisions regarding prevailing wage; the contractor shall monitor subcontractors' payment of prevailing wage by periodically reviewing certified payroll records and diligently taking corrective action if the subcontractors fail to pay prevailing wage; contractor and subcontractors shall maintain certified payroll records and time records. The contractor to whom a contract is awarded, and any subcontractor under him, shall not pay less than the specified prevailing wage; contractor and subcontractors are subject to penalties for violations of prevailing wage provisions.

(d) The Borrower acknowledges that it has been informed by the CIEDB that the CIEDB will contract with the Department of Industrial Relations to conduct audits of some contracts to assure compliance with prevailing wage requirements. The Borrower shall require its contractor and subcontractors to cooperate in an audit if requested to do so by the CIEDB and shall inform its contractor and subcontractors that spot audits are planned.

EXHIBIT G

**BORROWER TAX CERTIFICATE**

This Tax Certificate is executed and delivered by the Redevelopment Agency of the City of Novato (the "Borrower") in connection with the Tax Allocation Loan Agreement between the Borrower and the California Infrastructure and Economic Development Bank (the "CIEDB"), dated as of December 17, 2002 (the "Obligation") in the amount of three million, seven hundred thousand dollars (\$3,700,000). The Borrower certifies, covenants, warrants and represents as follows:

**ARTICLE I. IN GENERAL**

1.1 **The Borrower.** The Borrower is a redevelopment agency duly organized and existing under the laws of the State of California.

1.2 **Purpose of Tax Certificate.** In the future, the CIEDB intends to issue bonds (the "Bonds") to refinance the Obligation. The Borrower is delivering this Tax Certificate to the CIEDB with the understanding that the CIEDB will rely in part upon this Tax Certificate in obtaining an opinion from bond counsel that interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code (as defined below).

1.3 **Purpose of Financing.** The Obligation is being issued to finance the Grant Avenue Improvement Project (the "Project"), as described in more detail in the application of the Borrower to the CIEDB, dated October 7, 2002, including amendments thereto and in Exhibit D of the Obligation.

1.4 **Definitions.** Unless the context otherwise requires, the following capitalized terms have the following meanings:

"*Code*" means the Internal Revenue Code of 1986 (including amendments thereto).

"*Current Revenues*" has the meaning given thereto in Section 2.7 hereof.

"*Governmental Unit*" means any state, or political subdivision of a state, but excludes the United States and its agencies or instrumentalities.

"*Investment Property*" means any security or obligation, any annuity contract, or any other investment-type property, but does not include any Tax-Exempt Bond unless such obligation is a "specified private activity bond" within the meaning of Section 57(a)(5)(C) of the Code.

"*Nongovernmental Person*" means any person or entity other than a Governmental Unit.

"*Payment Account*" has the meaning given thereto in Section 2.7 hereof.

“*Preliminary Expenditures*” means architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project in an aggregate amount not exceeding twenty percent (20%) of the Obligation. However, Preliminary Expenditures do not include land acquisition, site preparation or similar costs incident to the commencement of construction.

“*Tax-Exempt Bond*” means any obligation the interest on which is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code or Section 103 of the Internal Revenue Code of 1954, as amended, and Title XIII of the Tax Reform Act of 1986, as amended, as well as stock in a regulated investment company to the extent at least ninety-five percent (95%) of income to the stockholder is treated as interest that is excludable from gross income under Section 103 of the Code.

## ARTICLE II. TAX LIMITATIONS

2.1 **Expenditure of Proceeds.** Proceeds of the Obligation shall be used exclusively for the following purposes: (i) architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project incurred prior to the commencement of construction and in an aggregate amount not exceeding twenty percent (20%) of the Obligation; (ii) capital expenditures originally paid by the Borrower on or after the date hereof, (iii) interest on the Obligation through the later of three (3) years after the date hereof or one (1) year after the Project is placed in service, and (iv) initial operating expenses directly associated with the Project (in aggregate amount not exceeding five percent (5%) of the amount of the Obligation).

2.2 **Governmental Bond Status.** The Borrower will not loan any of the proceeds of the Obligation to one or more Nongovernmental Persons. The Borrower will not allow more than five percent (5%) of proceeds of the Obligation or more than five percent (5%) of the Project to be used directly or indirectly by any Nongovernmental Person, other than as a member of the general public. In addition, a Nongovernmental Person will be treated as “using” proceeds of the Obligation to the extent the Nonexempt Person:

- (i) borrows proceeds of the Obligation, or
- (ii) uses the Project (e.g., as owner, lessee, service provider, operator or manager).

2.3 **Change in Use.** The Borrower reasonably expects to use all proceeds of the Obligation and all of the Project as set forth in Section 2.2 for the entire stated term to maturity of the Obligation. Absent written agreement by the CIEDB, the Borrower in fact will use all proceeds of the Obligation and all of the Project as set forth in Section 2.2.

2.4 **Federal Guarantee.** The Borrower will not directly or indirectly use or permit the use of any proceeds of the Obligation or take or omit to take any action that would cause the Bonds to be obligations that are “federally guaranteed” within the meaning of Section 149(b) of the Code. In furtherance of this covenant, the Borrower will not allow the payment of principal or interest with respect to the Obligation to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof. The Borrower will not use

five percent (5%) or more of the proceeds of the Obligation to make or finance loans the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States or any agency or instrumentality thereof.

**2.5 No Refunding.** Proceeds of the Obligation will not be used directly or indirectly to make principal, interest or premium payments with respect to any obligation other than the Obligation.

**2.6 No Hedge Bonds.** The Borrower reasonably expects that more than eighty-five percent (85%) of proceeds of the Obligation will be expended for the purposes of the Obligation within three (3) years.

**2.7 Loan Payments.** "Payment Account" means the funds or accounts (or any portions of any funds or accounts) that will hold monies that are expected by the Borrower to be used to pay debt service on the Obligation. "Current Revenues" means revenues which are both received by the Borrower and utilized for the payment of debt service on the Obligation within a six (6) month period. The Payment Account will be used primarily to achieve a proper matching of revenues and debt service within each year; a matching of revenues means that revenue and debt service come in and go out at approximately the same level and the Payment Account is cleared out to a very low balance at least one (1) time during the year. Current Revenues in the Payment Account shall be invested without regard to yield. Revenues other than Current Revenues in the Payment Account will not be invested in Investment Property with a yield exceeding the yield on the Obligation.

**2.8 No Other Replacement Proceeds.** The Borrower will not use any proceeds of the Obligation to replace funds of the Borrower which are or will be used to acquire Investment Property reasonably expected to produce a yield that is materially higher than the yield on the Obligation.

**2.9 No Expected Sale.** It is not expected that the Project or any part thereof will be sold or otherwise disposed of so long as the Obligation is outstanding.

**2.10 Tax Covenant.** The Borrower will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code and specifically (i) the Borrower will not directly or indirectly use or make any use of the proceeds of the Bonds or any other funds of the Borrower or take or omit to take any action that would cause the Bonds or to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code or obligations subject to federal income taxation because they are "federally guaranteed" as provided in Section 149(b) of the Code, as applicable; and (ii) to that end the Borrower, with respect to the proceeds of the Bonds will comply with all requirements of such sections of the Code to the extent that such requirements are, at the time, applicable and in effect; provided, that if the Borrower shall obtain an Opinion of Counsel nationally recognized in the area of the exemption of interest from gross income under of the Code to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest evidenced and represented by the Bonds

pursuant to Section 103 of the Code, as applicable, the Borrower may rely conclusively on such opinion in complying with the provisions hereof.

2.11 **Private Use.** No more than five percent (5%) of the Project (determined both on the basis of space and cost) shall be used for private use. Private use includes use in the trade or business of any nongovernmental persons, but does not include the portion of the proceeds properly allocable to facilities expected to be used by an organization described in Section 501(c)(3) of the Code in a manner that does not constitute an unrelated trade or business of such organization, as defined in Section 513(a) of the Code. For purposes of this section, the federal government is considered a nongovernmental person.

(a) For purposes of this section, private use shall include any contract for the management or operation of any portion of the Project unless each of the following conditions is met: (i) the term of such contract (including renewal options) does not exceed five (5) years; (ii) the manager or operator under such contract is not compensated on the basis of a share of net profits; (iii) the compensation of the manager or operator is reasonable; (iv) the Borrower must be able to cancel such contract without penalty or cause at the end of the third year of the contract; and (v) neither the Borrower nor the manager or operator may control more than twenty percent (20%) of the voting power of the other's governing board; and

(b) The service provider's compensation for management or operation services rendered must be pursuant to one (1) of the following four (4) methods: (i) at least fifty percent (50%) of annual compensation is based on a periodic fixed fee; (ii) the compensation is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee; (iii) in the case of certain contracts with a term not longer than three (3) years, the compensation is based on a per-unit fee or a combination of a per-unit fee and periodic fixed fee and the contract is cancelable after two (2) years; and (iv) in the case of certain contracts with a term not longer than two (2) years, the compensation is based on a percentage of fees charged and the contract is cancelable after one (1) year.

### ARTICLE III. OTHER MATTERS

3.1 **Expectations.** The undersigned is an authorized representative of the Borrower acting for and on behalf of the Borrower in executing this Tax Certificate. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

3.2 **Amendments.** Notwithstanding any other provision of this Tax Certificate, the Borrower may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is signed by an authorized officer and is supported by formal written agreement by the CIEDB.

3.3 **Survival of Defeasance.** Notwithstanding any provision in this Tax Certificate to the contrary, the obligation to comply with all requirements contained in this Tax Certificate shall survive defeasance or prepayment of the Obligation.

Dated: May 5, 2003.

By Roderick G. Wood  
Roderick Wood  
Executive Director

Need Copy  
of

R-6-03

Resolution  
to go here.

CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting City Clerk of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the governing body of the Borrower authorizing the execution and delivery of the Loan Agreement dated as of December 17, 2002 between the Borrower and the California Infrastructure and Economic Development Bank, adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

(3) I further certify that I have carefully compared the attached copy of the resolution with the original minutes of said meeting on file and of record in my office; that said copy is a true, correct and complete copy of the original resolution duly adopted by said governing body at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since its adoption and is in full force and effect as of the date hereof.

(4) I further certify that in accordance with Government Code section 54954.2, the agenda of the meeting contained a brief description of the resolution to be considered at the meeting, and a copy thereof was posted at least seventy-two (72) hours before the meeting in a location freely accessible to members of the public.

Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels

Name	Shirley Gremmels
Title	City Clerk

CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting City Clerk of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the governing body of the Borrower authorizing the execution and delivery of the Loan Agreement dated as of December 17, 2002 between the Borrower and the California Infrastructure and Economic Development Bank, adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

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Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels

Name Shirley Gremmels  
Title City Clerk

CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

- (1) I am the duly qualified and acting City Clerk of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.
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Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels

Name	Shirley Gremmels
Title	City Clerk

Need Copy  
of Results

35-03

to go here

CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting City Clerk of the Redevelopment Agency of the City of Novato (the "Borrower"), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the legislative body of the Borrower authorizing the execution and delivery of the Loan Agreement dated as of December 17, 2002 between the Borrower and the California Infrastructure and Economic Development Bank, adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

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Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels  
Name Shirley Gremmels  
Title City Clerk

CERTIFICATION OF RESOLUTION

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Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels  
Name Shirley Gremmels  
Title City Clerk

CERTIFICATION OF RESOLUTION

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- (2) Attached hereto is a true, correct and complete copy of the resolution of the legislative body of the Borrower authorizing the execution and delivery of the Loan Agreement dated as of December 17, 2002 between the Borrower and the California Infrastructure and Economic Development Bank, adopted at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.
- (3) I further certify that I have carefully compared the attached copy of the resolution with the original minutes of said meeting on file and of record in my office; that said copy is a true, correct and complete copy of the original resolution duly adopted by said governing body at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since its adoption and is in full force and effect as of the date hereof.
- (4) I further certify that in accordance with Government Code section 54954.2, the agenda of the meeting contained a brief description of the resolution to be considered at the meeting, and a copy thereof was posted at least seventy-two (72) hours before the meeting in a location freely accessible to members of the public.

Dated: May 5, 2003

REDEVELOPMENT AGENCY OF THE CITY OF  
NOVATO

By Shirley Gremmels  
Name Shirley Gremmels  
Title City Clerk

---

**FIRST AMENDMENT TO  
TAX ALLOCATION LOAN AGREEMENT**

by and between the

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**

as Borrower

and the

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK**

---

Dated as of December 1, 2005

Agreement No. CIEDB 02-042

---

**Section 3.** Section 2.12(b) of the Loan Agreement is hereby deleted and replaced with the following:

Borrower must both: 1) begin Project construction no later than twelve months after December 17, 2002; and 2) submit invoices to the CIEDB for the entire Loan amount no later than May 17, 2006. If the Borrower fails to meet either of these conditions, the CIEDB may unencumber any and all undisbursed Loan amounts and the unencumbered amounts shall henceforth not be available to the Borrower. If the Borrower fails to submit its final invoice by May 17, 2006, the CIEDB may elect to hold any or all undisbursed funds and apply such funds to the optional redemption of Secured Bonds (in which event the principal amount of the Loan amount shall be reduced by the principal amount of Secured Bonds so redeemed).

**Section 4.** Section 2.03 of the Loan Agreement is deleted and replaced with the following:

**SECTION 2.03. Prepayment and Reduction in Loan Funds.**

(a) Borrower may at any time request CIEDB's approval for Borrower to prepay all or a portion of the principal component of the Loan Funds. A request for reduction in the Loan Funds is a request for a prepayment. The CIEDB shall promptly respond to any such request, and shall make every effort to accommodate the request, subject to the prepayment restrictions of the Secured Bonds.

(b) Notwithstanding subsection (a), Borrower shall be authorized to prepay all or a portion of the principal amount of the Loan amount without premium on or after October 14, 2014.

(c) Notwithstanding the prepayment provisions of this section, the Borrower may, on any date, provide for the legal defeasance of the amount outstanding hereunder by providing amounts sufficient to pay, in full, the Loan Funds and Additional Payments when due, until the date set forth in subsection (b).

**Section 5.** Section 5.03(a) of the Loan Agreement is hereby deleted and replaced with the following:

(a) The Borrower will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the tax increment revenues from the Project Area (which may be consolidated with other project areas or activities of the Borrower). Such books of record and accounts shall at all times during business hours be subject to the inspection of the CIEDB or its designee.

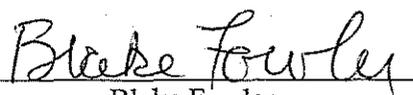
**Section 10.** All other terms and conditions of the Loan Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this First Amendment to be signed by the respective officers, all as of the day and year first above written.

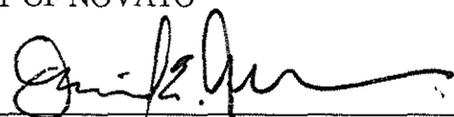
CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

By   
Stanton C. Hazelroth  
Executive Director

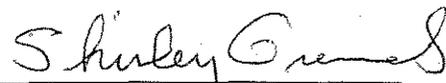
Attest

By   
Blake Fowler  
Assistant Executive Director

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By   
Daniel E. Keen  
Executive Director

Attest

By   
Shirley Gremmels  
City Clerk

Payment Date	Ending Principal Balance	Principal Payment	Interest Payment	Total Principal & Interest	Annual Fee	Total Payment	Total Payment Fiscal Year Ending 30-Jun
1-Aug-2025			\$21,511.28	\$21,511.28		\$21,511.28	
1-Feb-2026	\$1,105,421.24	\$163,680.90	\$21,511.28	\$185,192.18	\$3,807.31	\$188,999.49	\$210,510.77
1-Aug-2026			\$18,736.89	\$18,736.89		\$18,736.89	
1-Feb-2027	\$936,191.56	\$169,229.68	\$18,736.89	\$187,966.57	\$3,316.26	\$191,282.84	\$210,019.73
1-Aug-2027			\$15,868.45	\$15,868.45		\$15,868.45	
1-Feb-2028	\$761,224.99	\$174,966.57	\$15,868.45	\$190,835.02	\$2,808.57	\$193,643.59	\$209,512.04
1-Aug-2028			\$12,902.76	\$12,902.76		\$12,902.76	
1-Feb-2029	\$580,327.05	\$180,897.94	\$12,902.76	\$193,800.70	\$2,283.67	\$196,084.37	\$208,987.14
1-Aug-2029			\$9,836.54	\$9,836.54		\$9,836.54	
1-Feb-2030	\$393,296.68	\$187,030.38	\$9,836.54	\$196,866.92	\$1,740.98	\$198,607.90	\$208,444.44
1-Aug-2030			\$6,666.38	\$6,666.38		\$6,666.38	
1-Feb-2031	\$199,925.97	\$193,370.71	\$6,666.38	\$200,037.08	\$1,179.89	\$201,216.97	\$207,883.35
1-Aug-2031			\$3,388.75	\$3,388.75		\$3,388.75	
1-Feb-2032	\$0.00	\$199,925.97	\$3,388.75	\$203,314.72	\$599.78	\$203,914.50	\$207,303.24
Total Payments:		\$3,700,000.00	\$2,082,884.28	\$5,782,884.28	\$186,818.13	\$5,969,702.41	\$5,969,702.41

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AGREEMENT #R-85B

**SECOND AMENDMENT TO  
TAX ALLOCATION LOAN AGREEMENT**

by and between the

**REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**

as Borrower

and the

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK**

---

Dated as of July 1, 2006

Agreement No. CIEDB 02-042

---

THIS SECOND AMENDMENT TO THE TAX ALLOCATION LOAN AGREEMENT (the "Second Amendment") is made and entered into as of July 1, 2006, by and between the Redevelopment Agency of the City of Novato, a public body, corporate and politic duly organized and existing under the laws of the State of California, as Borrower (the "Borrower"), and the California Infrastructure and Economic Development Bank (the "CIEDB"), duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended (the "Act").

**WITNESSETH**

**WHEREAS**, the Borrower and the CIEDB entered into that certain TAX ALLOCATION LOAN AGREEMENT dated as of December 17, 2002 and First Amendment dated December 1, 2005 (the "Loan Agreement");

**WHEREAS**, the Borrower and the CIEDB desire to amend certain terms of the Loan Agreement;

**WHEREAS**, all acts and proceedings required by law necessary to make this Second Amendment, when executed by the Borrower and the CIEDB, the valid, legal and binding obligation of the Borrower and the CIEDB, and to constitute this Second Amendment a legal, valid, and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution of this Second Amendment has been in all respects duly authorized; and

**WHEREAS**, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

**Section 1.** Section 2.12(b) of the Loan Agreement is hereby deleted and replaced with the following:

Borrower must both: 1) begin Project construction no later than eighteen (18) months after December 17, 2002; and 2) submit invoices to the CIEDB for the entire Loan amount by August 17, 2006. If the Borrower fails to meet either of these conditions, the CIEDB may unencumber any and all undisbursed Loan amounts and the unencumbered amounts shall henceforth not be available to the Borrower. If the Borrower fails to meet the August 17, 2006 requirement, the CIEDB may elect to hold any or all undisbursed funds and apply such funds to the optional redemption of Bonds in accordance with the Indenture (in which event the principal amount of the Loan amount shall be reduced by the principal amount of Bonds so redeemed).

**Section 2.** The following subsections are added to Section 5.03(c) of the Loan Agreement:

(7) Certification that the Borrower is in compliance with the Tax Certificate as set forth in Exhibit G;

(8) Such other information as may be reasonably requested.

**Section 3.** Section 8.09 of the Loan Agreement is hereby deleted and replaced with the following:

**SECTION 8.09.** Notices. All written notices to be given under this Loan Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time, except that notices from the Borrower to the CIEDB shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to the CIEDB or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the CIEDB:

California Infrastructure and Economic  
Development Bank  
Attn: Credit Support Manager, CIEDB 02-042  
P.O. Box 2830  
Sacramento, CA 95812-2830

If by overnight mail or personal delivery:

California Infrastructure and Economic  
Development Bank  
Attn: Credit Support Manager, CIEDB 02-042  
1001 I Street, 19<sup>th</sup> floor  
Sacramento, California 95814

Or to such other address as may be designated in writing by the CIEDB.

If to the Borrower:

Redevelopment Agency of the City of Novato  
Attn: Executive Director  
75 Rowland Way #200  
Novato, CA 94945-5054

Or to such other address as may be designated in writing by the Borrower.

**Section 4** All other terms and conditions of the Loan Agreement shall remain in full force and effect.

[The balance of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Second Amendment to be signed by the respective officers, all as of the day and year first above written.

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK

By   
Stanton C. Hazelroth  
Executive Director

Attest

By   
Roma Cristia-Plant  
Secretary

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

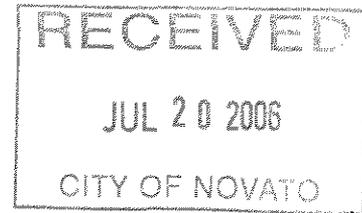
By   
Daniel E. Keen  
Executive Director

Attest

By   
Shirley Gremmels  
City Clerk



# California Infrastructure and Economic Development Bank



Arnold Schwarzenegger  
Governor

July 17, 2006

Board Members:

Sunne Wright McPeak  
Chair  
Secretary, Business,  
Transportation and Housing  
Agency

Philip Angelides  
State Treasurer

Michael C. Genest  
Director  
Department of Finance

Rosario Marin  
Secretary, State and  
Consumer Services Agency

Executive Director:

Stanton C. Hazelroth

Mailing Address:  
P.O. Box 2830  
Sacramento, CA 95812-2830

Office Address:  
1001 I Street, 19<sup>th</sup> Floor  
Sacramento, CA 95814

(916) 322-1399  
(916) 322-6314 FAX  
[www.ibank.ca.gov](http://www.ibank.ca.gov)

Daniel E. Keen, Executive Director  
Redevelopment Agency of the City of Novato  
75 Rowland Way #200  
Novato, California 94945-5054

RE: Second Amendment to Tax Allocation Loan Agreement  
#CIEDB 02-042.

Dear Mr. Keen,

Enclosed is your original of the final, signed Second Amendment to the Tax Allocation Loan Agreement #CIEDB 02-042.

Please contact me for any questions.

Sincerely,

Tom Martin, Loan Officer  
California Infrastructure and Economic and Development Bank

[tmartin@ibank.ca.gov](mailto:tmartin@ibank.ca.gov)  
(916) 322-6719

*enclosure*

COMMUNITY SERVICES AGREEMENT

This Agreement is entered into this 2nd day of August, 2001, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, hereafter referred to as "Agency" and NOVATO HUMAN NEEDS CENTER, a community service organization, hereafter referred to as "Contractor."

WITNESSETH:

WHEREAS, the Agency has been requested to provide a grant of financial assistance to the Contractor for programmatic and operating costs of said Contractor; and

WHEREAS, the Contractor proposes to provide services to and conduct activities for Novato residents; and

WHEREAS, such services provide public benefit to the citizens of Novato and will benefit the Redevelopment project consistent with Agency Resolution No. R-21-83; and

THEREFORE, the Agency and the Contractor agree as follows:

AGREEMENT

ARTICLE 1. SCOPE OF SERVICES.

Contractor agrees to perform all those services described in Exhibit "A" attached hereto and made a part hereof, in accordance with the terms and conditions stated therein.

ARTICLE 2. TIME OF PERFORMANCE.

Contractor shall begin performance under this agreement during the year commencing July 1, 2001, and ending June 30, 2002.

ARTICLE 3. COMPENSATION.

A. Agency agrees to pay Contractor those sums for those purposes specified in Exhibit "A" not to exceed a total of \$105,000.

Under no circumstances may any of the funds granted or paid to Contractor by Agency hereunder be expended for (1) any purpose other than as described in Exhibit "A"; (2) critical needs assistance (such as medical bills, medications, or car repair); or (3) any purpose other than as permitted or authorized by Cal. Health & Safety Code §§ 33334.2, 33334.3.

B. Contractor shall receive payment for each of the items described in Exhibit "A" as follows:

- Initial payment of \$26,250 (25% of total grant amount of \$105,000) upon execution of the Agreement.
- Three progress payments of \$26,250 each (balance of \$78,750) for each succeeding quarter within 30 days of Agency receipt and acceptance of Contractor's program/fund accounting report evidencing Contractor's compliance with Agreement provisions for the preceding three month period.

In no event shall Contractor receive any payment under this Agreement until the Agreement and all other forms and documents reasonably required by the Agency are first approved and executed by an authorized agent or officer of the Contractor.

C. Any expenditures incurred by the Contractor and paid for with the funds provided hereunder must be in strict conformity with this Agreement.

D. The Contractor's accounting records of the funds provided to Contractor by the Agency hereunder shall be kept separately and not commingled with any records of other funds received by or controlled by the Contractor. At the end of the contract period, all unexpended Agency funds shall be returned to the Agency within sixty (60) days after this Contract's termination. Any interest accrued during the holding period of such funds shall, upon request of the Agency, be returned to the Agency.

E. The Contractor shall notify the Agency in writing of the name and address of the person authorized to receive any and all payments hereunder.

F. Other than the portion of the Agency's funds provided hereunder which are used by the Contractor for authorized administrative and employee costs, all of the funds provided to the Contractor shall be paid to or in behalf of residents of the City of Novato.

G. At least quarterly, the Contractor shall account in writing to the Agency for all the funds which the Agency has previously paid to the Contractor. Said account shall be verified by a qualified officer or employee of the Contractor. Within 30 days after the completion of this Agreement, or its earlier termination, Contractor shall submit a written accounting to the Agency of all funds received by the Contractor hereunder.

#### ARTICLE 4. EXAMINATION OF RECORDS

Contractor agrees to maintain and preserve records identified herein during the period from the start of contract performance specified in Article 2, above, until four years thereafter. Such records shall include the following:

A. Records relating to property and program activities described herein.

- B. Financial records sufficient to document that program expenditures and receipts have been authorized under this Agreement.

Authorized representatives of the Agency shall have access to and the right to examine and copy all such records related to this Agreement.

#### ARTICLE 5. ASSIGNMENT.

Without written consent of the Agency, this Agreement is not assignable by the Contractor, either in whole or in part.

#### ARTICLE 6. ALTERATION.

No alteration or variation in the terms of this Agreement shall be valid unless made in writing and signed by both parties.

#### ARTICLE 7. GENERAL TERMS AND AGREEMENTS.

A. Nothing in this agreement shall be construed to mean that the Agency has made or is making any covenants or promises with respect to further grants issued to the Contractor.

#### ARTICLE 8. TERMINATION.

A. It is understood and agreed that either party shall have the right to terminate this Agreement without cause upon fifteen (15) days written notice to the other party.

B. The Agency reserves the right to terminate or to reduce the Agreement compensation amount upon written notification to the Contractor under the following conditions:

- (1) Failure of the Contractor to file any required reports.
- (2) Failure of the Contractor to meet any projected project dates.
- (3) Expenditure of funds under this Agreement for ineligible services or items.
- (4) The Contractor's material breach of this Agreement.

C. If this contract is terminated, the Contractor will repay the Agency all unexpended funds and reimburse the Agency any ineligible expenditures.

#### ARTICLE 9. SPECIAL TERMS AND CONDITIONS.

A. The Contractor represents that it does not now have any interest, and shall not acquire any interest, in the area covered by any project of the Agency or any other interest which would conflict in any manner with the performance of its services hereunder.

B. No member of the Agency Board of Directors, and no other officer, employee, or agent of the Agency shall be personally liable to the Contractor or any successor in interest or to any other party, whether transacting matters with the Contractor or otherwise, in the event of any default or breach of the Agency or for any amount which may become due to the Contractor or any successor in interest or for any obligations directly or indirectly incurred under the terms of this Agreement.

C. The Contractor hereby agrees to defend, indemnify and save harmless the Agency from and against any and all claims arising out of negligent acts, errors or omissions or the performance hereunder of the Contractor.

D. The Contractor is not an agent of the Agency.

E. If either party becomes involved in litigation with the other party arising out of this Agreement or the performance thereof, the court in such litigation, or in a separate suit, shall award reasonable costs and expenses, including attorney's fees, to the prevailing party.

F. No member of the Agency, and no other officer or agent of the Agency, who exercises any functions or responsibilities in connection with the carrying out of any program to which this Agreement pertains shall have any financial interest, as that term is defined in Government Code 1090 et seq. in this Agreement.

G. Notices: Any notices sent pursuant to this Agreement shall be sent:

If to Agency: Deputy City Manager  
City of Novato  
900 Sherman Avenue  
Novato, CA 94945

If to Contractor: Executive Director  
Novato Human Needs Center  
1907 Novato Boulevard  
Novato, CA 94945

IN WITNESS WHEREOF, the Agency and the Contractor have executed this Agreement as of the date first above written.

REDEVELOPMENT AGENCY OF THE CITY OF NOVATO

Wally Bohnering for  
Executive Director

Shirley Grammes  
Agency Secretary

“CONTRACTOR”

Carson James  
Contractor

APPROVED AS TO FORM:

John Abaci  
~~Jeffrey A. Walter~~, Agency Attorney  
John Abaci, Assistant

**NOVATO HUMAN NEEDS CENTER**  
**Proposal to City of Novato, Redevelopment Agency**

**ATTACHMENT "A"**  
**Project Budget, FY 2001-2002**

Item	City of Novato	Match	Total
Personnel	\$ 28,500	\$ 15,000	\$ 43,500
Benefits @ 24% of Salary	6,600	3,750	10,350
Operating Costs	7,900	10,000	17,900
Direct Rental Assistance to Clients	62,000	156,000	218,000
<b>TOTAL</b>	<b>\$105,000</b>	<b>\$184,750</b>	<b>\$289,750</b>

**Budget Narrative**

*Personnel:* NHNC is requesting \$35,100 in salary and benefits to support a portion of case managers' salaries for the Housing Assistance Fund project. These staff persons conduct outreach, client needs assessments, development of case management plans, provision of rental assistance, and follow-up services.

*Indirect Costs:* NHNC is requesting \$7,900 to support operating costs and administrative oversight of the program. Operating costs include utilities, telephone, office supplies, copying and printing, etc. Administrative oversight includes bookkeeping and audit costs associated with the program, as well as general oversight by the Executive Director and Associate Director.

*Direct Rental Assistance:* \$62,000 is requested for direct rental assistance to clients, with \$51,500 distributed by NHNC and \$10,500 distributed by MHA. Funds would be allocated for Novato residents only with proof of residency required. With match funding, direct assistance to clients in this project will total \$218,000.

*Funding Leverage:* As the project budget illustrates, community donations will match the City of Novato proposed funds in a ratio of 1.8 to 1. Both NHNC and MHA have secured significant match funding to leverage the City of Novato's investment in rental assistance programs.

NHNC has obtained the commitment of a private donor to provide \$156,000 in direct rental assistance this year. In addition, NHNC brings a match commitment of approximately \$19,750 in private foundation and private donor funds which help support the Community Services program (funding the emergency food and clothing, case management, counseling, transportation and other critical services). These services provide a supportive framework that greatly enhances the long-term effectiveness of rental assistance.

## AMENDMENT TO AGREEMENT

This Amendment to Agreement #R-69 is entered into as of this 9th day of March, by and between the **NOVATO REDEVELOPMENT AGENCY**, a municipal corporation, hereinafter called "Agency" and **NOVATO HUMAN NEEDS CENTER**, hereinafter called "Consultant" or "Contractor."

### RECITALS

WHEREAS, the Agency and Consultant/Contractor entered into Agreement # R-69 dated August 2, 2001; and

WHEREAS, the parties desire to amend that Agreement;

### AGREEMENTS

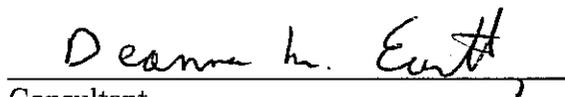
NOW, THEREFORE, Agreement #R-69 is hereby amended as set forth herein.

1. Article 2 *Time of Performance* is amended to read: "Contractor shall begin performance under this agreement during the year commencing July 1 and ending June 30.
  - a. This contract will automatically renew every fiscal year for the next ten (10) years starting with fiscal year 2011/2012.
  - b. If the Governor's budget proposal of the elimination of redevelopment agencies is not approved, this agreement amendment will only run from July 1, 2011 to June 30, 2012.
2. Article 3. *Compensation* is amended to read: Agency agrees to pay Contractor for those sums for those purposes specified in Exhibit "A" not to exceed a total of \$105,000.
  - a. Beginning in Fiscal Year 2012, this amount shall increase by the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco-Oakland-San Jose Area, released in October of every year.
3. Article 8. "*Termination*" is amended to read:
  - D. If the Contractor organization dissolves or ceases to function during the term of this contract, the Contractor will repay the City of Novato all unexpended funds and reimburse the City any ineligible expenditures.
    - a. The City of Novato may, in its own discretion, continue this contract with any successor Contractor.

All other terms and conditions of said Agreement #R-69 shall remain the same.

IN WITNESS WHEREOF, the Agency and the Consultant/Contractor have executed this Amendment as of the date first above written.

  
Agency

  
Deanna M. Ewert, Executive Director  
Consultant

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the 29th day of JUNE, 2010, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a municipal corporation (hereinafter referred to as "Agency") and MERJE (hereinafter referred to as "Consultant").

WHEREAS, Agency desires to obtain professional services in connection with Downtown Novato Wayfinding Signage Program; and

WHEREAS, Consultant hereby warrants to the Agency that Consultant is skilled and able to competently provide such services described in Section 1 of this Agreement; and

WHEREAS, Agency desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Scope of Services. Subject to such policy direction and approvals as the Agency through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Services" attached hereto as Exhibit A and incorporated herein by reference. Consultant shall not commence any work exceeding the Scope of Services without prior written authorization from Agency.

Section 2. Time of Performance.

Subsections 2.A. and 2.B. are in the alternative. For purposes of this Agreement, Subsection 2.A. [X] 2.B. [ ] applies. (Check ONE box only.)

A. [Non Cost-Covered Services] The services of Consultant are to commence upon the execution of this Agreement and shall be undertaken and completed within the time limits set forth in Exhibit A. Such time limits may be amended by mutual agreement between the Agency and Consultant.

B. [Cost-Covered Services] Execution of this Agreement does not constitute authorization to proceed with the work described in the Scope of Services. Consultant shall not begin the work described in Exhibit A until after the Agency has issued a written Notice to Start Work, following verification by Agency staff that the project sponsor has deposited with the Agency adequate funds to pay for completion of the work described in Exhibit A. Agency and Consultant understand that it is the Agency's policy for routine projects to obtain full payment from development applicants prior to execution of any consultant services agreements relating to the processing of development applications. In unusual circumstances (such as large, complex projects and projects where the Agency is serving as the applicant), Agency may allow deposit of processing costs in phases. In such cases, Consultant shall not begin work on any of the tasks described in Exhibit A until after the Agency has issued a written Notice to Start Work for that particular task. Each

Notice to Start Work will specify the task authorized to be undertaken and will be issued only following verification by the Agency that the project sponsor has deposited with the Agency (or the Agency has budgeted) adequate funds to pay for the completion of the authorized task. For all projects, following issuance of a Notice to Start Work, the services of Consultant shall be undertaken and completed within applicable time limits set forth in *Exhibit A*. Such time limits may be amended by mutual agreement between the Agency and Consultant. Consultant shall not commence any work exceeding the Scope of Services without prior written authorization from Agency.

**Section 3. Compensation and Method of Payment.**

A. Compensation. Consultant shall charge for services performed in accordance with the compensation schedule incorporated in *Exhibit A*, not to exceed a total amount of \$ 50,000.

B. Method of Payment.

*Subsections 3.B.(1) and 3.B.(2) are in the alternative. For purposes of this Agreement, Subsection 3.B.(1) [] 3.B.(2) [] applies. (Check ONE box only.)*

(1) Monthly Statements. [Contract Planners, etc.] As a condition precedent to any payment to Consultant under this Agreement, Consultant shall submit monthly to the Agency a statement of account which clearly describes the work for which the billing is submitted.

(2) Statements Following Completion of Work Tasks. [EIR Consultants, etc.] As a condition precedent to any payment under this Agreement, Consultant shall submit to the Agency a detailed statement of account which clearly sets forth the designated work tasks for which the billing is submitted. Payments shall be made following completion of each of the individual work tasks described in the Scope of Services. No payments shall be made for tasks which have not been satisfactorily completed.

C. Payment. Agency shall review Consultant's statements and pay Consultant for services rendered hereunder at the rates and in the amounts provided hereunder in accordance with the approved statements.

**Section 4. Standard of Quality.** All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals in Consultant's field of expertise.

**Section 5. Ownership of Documents.** All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement this shall become the sole property of the Agency upon payment to the Consultant for such work, and the Agency shall have the exclusive right to use such materials in its sole discretion without further compensation to Consultant or to any other party.

**Section 6. Retention of Other Consultants, Specialists or Experts.** Consultant will not retain or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the Agency. In addition, the persons who shall provide the services agreed to be performed hereunder by Consultant are identified below. No other person may provide services under this agreement on behalf of Consultant without the prior, written consent of the Agency.

Names of Persons Permitted to Perform  
Under this Agreement

MERJE  
Rick Engineering Company

**Section 7. Interest of Consultant.** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have and shall not acquire any investment or interest, direct or indirect, in real property which is located within the area covered by this Agreement. Consultant further covenants and represents that it does not now have and shall not acquire any source of income, business entity, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that no person having any such investment or interest shall perform any services under this Agreement.

Consultant shall comply with the City's conflict of interest code and all other conflict of interest laws, including but not limited to the Political Reform Act of 1974 and the regulations promulgated thereunder. Without limiting the generality of the foregoing and in the event that the Consultant is a "consultant" as defined in 2 Cal. Code Regs. § 18701(a)(2) or its successor regulation and is otherwise required by the City's conflict of interest code to complete and execute the economic disclosure statement required under the City's conflict of interest code, as a condition to commencing the work described herein, Consultant shall complete, execute and deliver to the City said economic disclosure statement.

**Section 8. Interest of Members and Employees of Agency.** No member of the Agency Board and no other officer, employee or agent of the Agency who exercises any function or responsibility in connection with the review, approval or carrying out of any project to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, association, or other legal entity in which he/she is directly or indirectly interested. If Consultant learns of any such interest, he/she shall promptly disclose such interest in writing to the Executive Director.

**Section 9. Liability of Members and Employees of Agency.** No member of the Agency Board and no other officer, employee or agent of the Agency shall be personally liable to Consultant or otherwise in the event of any default or breach of the Agency, or for any amount which

may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

**Section 10. Indemnification of Agency.** Consultant hereby agrees to defend, indemnify and hold harmless the Agency from and against any and all claims arising out of the willful or negligent acts, errors or omissions of Consultant relating to this Agreement. The Agency has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise.

**Section 11. Consultant Not an Agent of Agency.** Consultant is not an agent of the Agency, and the Agency retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the Agency to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the Agency or that it or they have the power to bind or commit the Agency.

**Section 12. Compliance with Laws.**

A. **General.** Consultant shall comply with all applicable federal, state and local laws, code, ordinances and regulations. Consultant represents and warrants to Agency that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Agency that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall, at all times during the term of this Agreement and for one year thereafter, provide written proof of such licenses, permits, insurance and approvals upon request by the Agency.

B. **Novato Business License.** Unless otherwise exempt, Consultant will maintain a valid City of Novato business license pursuant to Chapter VIII of the Novato Municipal Code during the term of this Agreement. Concurrently with execution of this Agreement, and upon request of Agency thereafter, Consultant will submit proof of compliance with this Subsection.

C. **Workers' Compensation.** Consultant shall take out and maintain at all times during the life of this agreement, up to the date of acceptance of the work by the Agency, workers' compensation insurance as required by the Labor Code of the State of California. The Consultant shall require all subconsultants similarly to provide such insurance for all of subconsultants' employees. The amount of said insurance shall be \$1 million per accident. Consultant certifies that it is aware of the provision of the California Labor Code which requires every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

D. **Injury and Illness Prevention Program.** Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Agency Not Responsible. The Agency is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

**Section 13. Insurance.**

A. Minimum Scope of Insurance

(1a) Consultant agrees to have and maintain, for the duration of the Agreement, a Commercial General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. At the time the Agreement is entered into the Agency may require higher limits depending on the nature of the services being provided by the Consultant. Such determination shall be made by the City's Risk Manager.

(1b) In lieu of commercial general liability insurance, the Consultant may secure and maintain a minimum of One Million Dollars (\$1,000,000) of excess limit (umbrella) coverage on his/her homeowner's or renter's insurance policy.

(2) Consultant agrees to have and maintain for the duration of the Agreement an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage. At the time the Agreement is entered into the Agency may require higher limits depending on the nature of the service being provided by the Consultant. Such determination shall be made by the City's Risk Manager.

(3) Consultants shall have and maintain a Professional Liability insurance policy insuring him/her and his/her staff to an amount not less than one million Dollars (\$1,000,000) for injuries arising out of the rendering of services or the failure to render services under this Agreement.

(4) Consultant shall provide to the Agency all certificates of insurance with original endorsements reflecting coverage required by this section. Certificates of such insurance shall be filed with the Agency on or before commencement or performance of this Agreement. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

(5) Any Consultant utilizing the services of a secondary consultant in the performance of this Agreement shall either provide the required insurance(s) for the type of service being provided by the secondary consultant or provide evidence acceptable to the Agency demonstrating that the secondary consultant has in effect the required insurance(s).

B. General Liability.

(1) The Agency, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Consultant;

products and completed operations of Consultant; premises owned or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant.

(2) Consultant's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.

(4) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Current certification of such insurance shall be kept on file with the Agency Secretary at all times during the term of this Agreement.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its officers, officials, employees and volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

**Section 14. Assignment Prohibited.** Consultant shall not assign any right or obligation pursuant to this Agreement without the Agency's prior written consent. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

**Section 15. Expiration and Termination of Agreement.** Unless extended by mutual agreement or terminated pursuant to this section, this Agreement shall expire upon Consultant's satisfactory and timely completion of the services contracted for hereunder.

This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Agency within its sole discretion upon written notice to the Consultant. Consultant may terminate this Agreement upon thirty (30) days' written notice to the Agency only for good cause, including without limitation, serious illness or material breach of this Agreement by Agency. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the Agency, become its sole property and shall, at Consultant's expense, be delivered to the Agency or to any party the Agency may so designate. In the event of termination by the Consultant, the Consultant shall only be compensated for all work

Consultant satisfactorily performs prior to the time Consultant delivers to the Agency the termination notice, unless other arrangements are agreed to by the Agency. In the event of termination by the Agency, the Consultant shall be compensated for all work satisfactorily performed prior to the time Consultant receives the termination notice, and shall be compensated for materials ordered by the Consultant, and services of others ordered by the Consultant prior to receipt of the Agency's termination notice whether or not such materials or instruments of services of others have actually been delivered to Consultant or to the Agency, provided that the Consultant is not able to cancel such orders for materials or services of others. In the event this agreement is terminated pursuant to this section, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this agreement by the Agency pursuant to this section.

**Section 16. Entire Agreement; Amendment.** This Agreement, including *Exhibit A* and any other exhibits or attachments made a part hereof constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All memoranda, and representations, are superseded in total by this Agreement. This Agreement may be amended or extended from time to time by written agreement of the parties hereto.

**Section 17. Litigation Costs.** If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least sixty-six percent (66%) of the dollar amount requested in the complaint's prayer for relief.

**Section 18. Remedies.** In addition to any other available rights and remedies, either party may institute legal action to cure, correct or remedy any default, enforce any covenant herein, or enforce by specific performance the rights and obligation of the parties hereto.

**Section 19. Time of the Essence.** It is understood and agreed by Agency and Consultant that time is of the essence in the completion of the work tasks described in the Scope of Services.

**Section 20. Interpretation of Agreement.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California and the City of Novato.

**Section 21. Written Notification.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within two business days from the time of mailing if mailed within the State of California as provided in this Section.

If to Agency: Redevelopment Agency of the City of Novato  
75 Rowland Way #200  
Novato, CA 94945-5054

If to Consultant: MERCSE  
120 N. Church Street, Suite 208  
West Chester, PA 19380

**Section 22. Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

**Section 23. Execution.** This Agreement may be executed in several original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 24. Further Assurances.** Each party to this agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide, within a reasonable time, but not exceeding 14 days, such assurance of due performance as is adequate under the circumstances is a repudiation of this agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

IN WITNESS WHEREOF, the Agency and Consultant have executed this Agreement as of the date first above written.

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

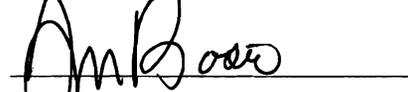
By:

  
Executive Director

By:

  
Agency Secretary

CONSULTANT



Principal  
Title

Approved as to form:

\_\_\_\_\_  
Agency Attorney

**EXHIBIT A**

June 4, 2010

Ms. Sandra Stohler  
City of Novato  
Redevelopment Agency  
75 Rowland Way, Room 200  
Novato, CA 94945

RE: CITY OF NOVATO WAYFINDING SIGNAGE PROGRAM – SCOPE & COMPENSATION

Thank you for selecting MERJE for the City of Novato Downtown Wayfinding Signage Program.

Based on our tele-conference last week, we have revisited our Scope of Work and Compensation so that it works in conjunction with you current available funding and anticipated project schedule. We understand the project to follow the following phased work-plan.

Phase I	Strategy, Analysis And Schematic Design	July – September 2010
Phase II	Planning & Design Development	January – April 2011
Phase III	Pre-Production (Documentation)	May – June 2011
Phase IV	Implementation	July – December 2011

Our and fees and reimbursable costs for this work have not changed and are consistent with our original proposal – all that has been revised is the Phasing of the project and the sequencing of individual steps. This approach will provide you the opportunity to receive deliverables that can be used to secure additional funding and still remain with you current available funding.

Based on the Phasing outlined above, MERJE will utilize a 7- step approach for the strategy, planning, design and implementation of the project. This design process provides a basic structure for advancing through the project and provides opportunities to address individual project issues that are unique to Novato. While our terminology and sequencing may differ from the steps outlined in your RFP – I can assure you all tasks and services you originally requested have been included in our scope and process.

**PHASE I STRATEGY, ANALYSIS AND SCHEMATIC DESIGN****Step 1 Strategic Implementation Plan**

Define wayfinding system goals and mission. Document the project process, including organization chart, approval process, project schedule, project tasks and communication tools.

Develop criteria for destination inclusion, including designations, main attractions, districts, heritage trails, etc.

Develop a project budget for fabrication, installation and maintenance of the system. Outline potential Phasing plans if necessary.

Develop maintenance and management requirements and criteria for cleaning, replacing and expansion of the sign program.



Present Strategic Implementation Plan to Steering Committee and Stakeholder Group. (included with Wayfinding Analysis)

## **Step 2 Wayfinding Analysis**

Kick Off meeting with Steering Committee and Stakeholder Group. This may include DOT, County and City representatives, as well as representatives from each destination.

Tour and photograph project area.

Review City Zoning Ordinances and sign regulations.

Review existing relevant documents and planning work accomplished to date, including graphic standards and complementary plans.

Identify city gateways, districts, primary routes, major areas, points of interest and destinations (cultural, business, shopping, education, parking, recreation, neighborhoods, etc).

Conduct working meetings with wayfinding Stakeholders, to review program criteria: primary and secondary routes, circulation, State & County roadways, assigned speed limits, parking lots, pedestrian requirements, districts/zones, transition points, decision points, information hierarchy, create a general menu of sign types, terminology/nomenclature, audience considerations, daytime vs. evening travel, design criteria, image, marketing goals, functional requirements, flexibility, vandal resistance and maintenance.

Community Presentation #1: Introduction to Wayfinding

Provide Meeting Minutes; this written document outlines the comments and notes discussed during the Steering Committee, Stakeholder and Community meetings.

Develop Destination List and determine terminology (or abbreviations) necessary for each destination/attraction.

Evaluate access to parking, including direction, identification and information.  
Identify a preliminary budget based on information gathered to date and estimated number of signs required.

Present preliminary findings and recommendations based on analysis and wayfinding committee comments and recommendations (presentation to Steering Committee and Stakeholders)

Confirm traffic engineering and design criteria.  
Incorporate wayfinding committee decisions and recommendations into the analysis.

Step 2 deliverable: Based upon our wayfinding analysis, we will provide an outline of existing conditions and make recommendations in the form of a Wayfinding Analysis report. The report will address vehicular and pedestrian signage guidelines. This report will establish the criteria upon which the sign system will be based. (10 color copies and 1 original)

## **Step 3 Schematic Design**

Analyze architectural/historic elements, including, imagery of the city, marketing materials and additional information needed to formulate sign design concepts.

Prepare preliminary sign design based on a limited number of sign types.  
(2 - 3 options)

Schematic Design Presentation to Steering Committee, of proposed updated/enhanced signage system. This would include typical sign types and systems, location, size, shape and colors.

Schematic Design Presentation to Stakeholders/Community Review (#2)

Meet with City engineers, general public and local merchants to receive feedback on proposed design concepts.

Meet with CalTrans to review concepts and wayfinding approach on State and Local roadways.

Preliminary budget for fabrication and installation of the signage system. Develop Phasing Plan for priority sign types

Step 3 deliverable: 2 formal presentations (Steering Committee and 1 Public Open House) and 10 color copies + 1 original. Note: Approval meetings shall be coordinated on the same day.

### **PHASE 1 MEETINGS AND PRESENTATIONS**

JULY 2010

Trip #1      3 Days      Steering Committee Meeting #1: Kick-Off Meeting  
Stakeholder Meetings: 8 – 10 (1 hour each, during the 3 day period)  
Community Meeting #1 (Introduction to Wayfinding) – evening day #1 or 2

AUGUST / SEPTEMBER 2010

Trip #2      2 Days      Steering Committee Meeting #2: Analysis/Schematic Design Presentation  
Stakeholder/Community Meeting #2: Analysis/Schematic Design  
Presentation

*Potential Additional Presentation, if required;*

SEPTEMBER

Trip #3      2 Days      Additional Presentation for final Phase 1 approval.  
(City Council, Steering Committee or other Agency)

### **PHASE II PLANNING & DESIGN DEVELOPMENT**

#### **Step 4      Programming (Sign Locations and Messages)**

Inventory location of existing wayfinding signage. Recommend existing signage that should be removed, replaced, and/or consolidated. Evaluate feasibility of reusing existing locations, poles, hardware on an individual location basis. (Additional Service - GIS DATABASE)

Prepare preliminary sign location plans, typical messages and general sign types.

Site check (drive by) locations for appropriateness, available space, and general environment conditions. Note: this does not include detailed field mark-outs, it is a general review only.

Preliminary Submittal of a message schedule and sign location plans for review and approval by city representatives and destinations. (Submittal #1). The preliminary submittal includes a maximum of a 1-day working session with stakeholders (small groups @ 1 hour).

Secondary Submittal, revise message schedule and sign location plan for review and approval by city representatives and each destination. (Submittal #2). City internal review only.

Submit revised Sign Location Plans to City representatives and other required agencies.

Review in the field all locations with City representatives and other required agencies. Note: this does not include detailed field mark-outs, it is a general review only.

Final Submittal, revise message schedule and sign location plan for review and approval by City representatives and other required agencies. (Submittal #3)

Step 3 deliverable: Based on working meetings and project reviews a sign location plan and message schedule will be developed and submitted for final approval. This will include sign locations, messages/terminology and required sign types. (5 B/W sets and 1 original)

## **Step 5 Design Development**

Refine or revise selected option.

Finalize functional aspects of program, size, materials, contrasts, nomenclature, typography, symbols, hardware, architectural elements, placement, construction details, mounting methods and installation.

Prepare models, full size mock-ups, sample materials, colors and photo renderings.

Develop first draft of Graphic Sign Standards Manuals, including format, program description, inclusion criteria, graphic standards, sign type drawings and general specifications

Fabricate Prototype signs for review and approval in the field.

Coordinate with other consultants, landscape design, lighting, traffic, structural and civil engineering.

Submit "design development" drawings to fabricators for preliminary pricing and constructability reviews. Value engineer if necessary.

Receive preliminary cost estimates from fabricators.

Field survey and mark-out of sign locations with City representative (est. 65 locations – max 2 days).

Prepare final Maintenance and Management Plan.

Present for final review and approval, including Community Review #2

Step 5 deliverable: Design Development package, which will provide general information regarding material, color, finish, typography installation and sign size. (10 B/W copies, 1 color copy and 1 original)

A maximum of 3 formal presentations (Steering Committee, Community Review #2 and City Council).  
Note: Approval Steering Committee and Community Review meetings shall be coordinated on the same day. City Council meetings are conducted during an additional visit.

## **III PRE-PRODUCTION (DOCUMENTATION)**

### **Step 6 Documentation**

Documentation drawings for all sign types; final design, fabrication, construction details and installation methods.

Prepare Final Sign Location Plans (route planning) as described in Step 3.

Prepare final cost estimate based on final design and sign counts.

Graphic Sign Standards (Owner's) Manual, includes: Introduction, Administration and Management Responsibilities, Maintenance Procedures, Financing Strategies, Policies and Procedures



Graphic Sign Standards: Design intent drawings indicating, material specifications for all sign types, illustrating size, typefaces, graphic elements, pictograms, letter spacing, materials, finishes, construction details, installation methods, colors and locations.

Technical Specifications describing materials, products, submittals, coordination, execution, quality assurance, installation, etc.

Step 6 deliverable: The Graphics Sign Standards Manual will provide the City with an "off the shelf" guide to implementing a consistent sign program. (3 color copies and 1 original copy)

**PHASE IV IMPLEMENTATION**

**Step 7 Bid Analysis and Construction Administration**

**Bid Analysis**

- Prepare minimum requirements for qualification of bidders
- Provide a list of potential bidders
- Attend bid meeting (via tele-conference)
- Provide clarification or addendum to bidders
- Review / Evaluate bids and provide recommendations

**Construction Administration**

- Review shop drawings & samples prior to fabrication
- Confer with fabricators
- Attend construction meetings (via-teleconference)
- In field review of locations (N.I.C.: qty of days and scope to be determined)
- Review of the installation (N.I.C.: qty of days and scope to be determined)

Upon substantial completion of the signage, punch-list (on-site) all items that must be completed and/or corrected prior to final acceptance by the City.

Step 7 deliverable: Punchlist Document and hard-copies and electronic files of all necessary information and drawings. Provide Wayfinding and Signage Reference Manual that serves as a guide for reordering, and maintaining the new wayfinding system.

**PRELIMINARY PROJECT SCHEDULE**

Phase I	Strategy, Analysis and Schematic Design	July 1 <sup>st</sup> – September 17th, 2010
Phase II	Planning & Design Development	January – March 2011
Phase III	Pre-Production (Documentation)	April – May 2011
Phase IV	Implementation	June – December 2011

**COMPENSATION**

Thank you for considering MERJE for the development of the City of Novato Wayfinding Program.

I hope you have found this proposal to be informative. We are deeply appreciative of this opportunity and based on the scope of the project, your requirements, and the services outlined in our proposal, we propose the following compensation.

**PHASE I STRATEGY, ANALYSIS AND SCHEMATIC DESIGN**

Step 1	Strategic Implementation Plan	--
Step 2	Wayfinding Analysis	\$ 22,500
Step 3	Schematic Design	\$ 12,000
	Estimated Reimbursables	\$ 7,500

**TOTAL PHASE 1 \$ 42,000**



**PHASE 2 PLANNING AND DESIGN DEVELOPMENT**

Step 4	Programming	\$26,400
Step 5	Design Development	\$18,000
	Estimated Reimbursables	\$ 3,000

**TOTAL PHASE 2 \$47,400**

**PHASE 3 PRE-PRODUCTION (DOCUMENTATION)**

Step 6	Documentation	\$ 16,000
	Estimated Reimbursables	\$ 2,000

**TOTAL PHASE 3 \$18,000**

**PHASE 4 IMPLEMENTATION**

Step 7	Construction Administration	\$17,000
	Estimated Reimbursables	\$ 3,000

**TOTAL PHASE 4 \$20,000**

**OPTIONAL ADDITIONAL SERVICE**  
(during Step 4 - Programming)

Inventory (including GIS Visual Database)	\$ 25,400
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**Reimbursable Expenses**

Reimbursable expenses are in addition to the basic compensation cited above and will be billed to the client at 1.15 times the expenses incurred by MERJE and our consultants in the interest of the project. These expenses include, but are not limited to, CADD machine plots, photocopies, photography, models, renderings, travel, food, lodging, facsimiles, art materials, typesetting, first-class mail, special overnight mail and delivery services, long distance telephone calls, and messenger services.

**Potential Additional Services**

The following items are potential additional signage services, and if authorized by City of Novato, a separate proposal will be developed to address a specific project requirement.

**Additional Destinations / Sign Quantity**

This proposal is based on 15 – 20 destinations and 50 – 65 signs. Wayfinding is considered to the “front door” of the destination’s building or campus.

**Additional Consultation and Design (not in contract)**

- Meetings beyond those outlined in this proposal
- Orientation Map Design
- Design of logo/logotype for identity for the city, program or districts.
- Interpretive Signage for historic areas (scope, quantity to be determined)
- Historic Markers or special historic walking tour (scope, quantity to be determined)
- Print material design (brochures, etc.)
- Design of Banners, wall murals, super graphics or other sign types outside the agreed upon menu.
- Inventory and/or Removal Plan for existing signs.
- Special Presentation Materials
- Web Site or Mobile Phone Wayfinding Apps.

- Development of Base Maps
- Detailed Sign Location Plans, including dimensioned set backs, site-lines and placement.
- Documentation and Specification of Highway Signage

#### Additional Reviews and Meetings

Presentations and meetings beyond the maximum quantities outlined in this proposal.

Presentation of project to parties outside the core client group such as art commission, historic commission, planning board, city council, etc.; preparation of additional presentation materials for such meetings. These presentations will be billed on an hourly basis as requested.

#### Document Translation

Development or translation of master plan report into clients computer format (if not Macintosh).

#### **Client Responsibilities**

Coordination of all meetings, including schedules, locations and notification of individuals and or groups.

The appointment of one representative with full authority to provide or obtain any necessary information and approvals that may be required by the designer; coordination of the decision-making process with parties other than the designer.

Timely provision of information and materials requested by designers.

Timely communication of design, administrative or operational decisions if they affect the design or production of manual or graphic items.

Arranging for the drawing and coordination of all work on site, electrical or architectural elements needed to support, house or power signage; coordination of sign bids and installation with other trades.

Coordination, procurement and payment for sign permits, variances, engineering seals or plan reviews.

Bid solicitation and bid or contract negotiation. Establishment of payment terms directly with fabrication vendors.

#### **Payment**

You will be billed monthly for services rendered, and payment will be due upon receipt of the invoice.

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**AMENDMENT TO AGREEMENT**

This Amendment to Agreement R150A is entered into as of this 9th day of March 2011, by and between the **REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**, a redevelopment agency, hereinafter called "Agency" and **MERJE**, hereinafter called "Consultant".

**RECITALS**

WHEREAS, the Agency and Consultant entered into Agreement R150 dated June 29, 2010; and  
WHEREAS, the parties desire to amend that Agreement;

**AGREEMENTS**

NOW, THEREFORE, Agreement R150 is hereby amended to read as follows:

1. Section 3A . Compensation. Consultant shall charge for services performed in accordance with the compensation schedule incorporated in Exhibit A attached hereto, not to exceed a total of \$460,800.

2. Section 15. Expiration and Termination. Unless extended by mutual agreement or terminated pursuant to this section, this Agreement shall expire upon Consultant's satisfactory and timely completion of the services contracted for hereunder.

This Agreement and all obligations hereunder may be terminated at any time, with or without cause, upon the mutual agreement of the parties to terminate this Agreement. Any agreement to terminate this Agreement that is mutually entered into by the parties shall be in writing and shall include the date that the termination shall take effect and the compensation that Consultant shall be entitled to receive, if any, for all of the following: 1) work performed by the Consultant; 2) services of others provided to Consultant within the scope of this Agreement; and 3) materials ordered; occurring prior to the date of termination. "

3. All other terms and conditions of said Agreement R150 shall remain the same.

4. This Amendment to Agreement may be executed in several original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties upon execution of both parties hereto. In approving this Amendment to Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**CONSULTANT SERVICES AGREEMENT**

R-108

THIS AGREEMENT is entered into as of the 31<sup>st</sup> day of May, 2007, by and between the **REDEVELOPMENT AGENCY OF THE CITY OF NOVATO**, a municipal corporation (hereinafter referred to as "Agency") and Berkeley MicroDesign (hereinafter referred to as "Consultant").

WHEREAS, Agency desires to obtain professional services with respect to Housing and Database System (HDS); and

WHEREAS, Consultant hereby warrants to the Agency that Consultant is skilled and able to competently provide such services described in Section 1 of this Agreement; and

WHEREAS, Agency desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Scope of Services.** Subject to such policy direction and approvals as the Agency through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Services" attached hereto as **Exhibit A** and incorporated herein by reference. Consultant shall not commence any work exceeding the Scope of Services without prior written authorization from Agency.

**Section 2. Time of Performance.**

**Subsections 2.A. and 2.B. are in the alternative. For purposes of this Agreement, Subsection 2.A. [ x ] 2.B. [ ] applies. (Check ONE box only.)**

A. [Non Cost-Covered Services] The services of Consultant are to commence upon the execution of this Agreement and shall be undertaken and completed within the time limits set forth in **Exhibit A**. Such time limits may be amended by mutual agreement between the Agency and Consultant.

B. [Cost-Covered Services] Execution of this Agreement does not constitute authorization to proceed with the work described in the Scope of Services. Consultant shall not begin the work described in **Exhibit A** until after the Agency has issued a written Notice to Start Work, following verification by Agency staff that the project sponsor has deposited with the Agency adequate funds to pay for completion of the work described in **Exhibit A**. Agency and Consultant understand that it is the Agency's policy for routine projects to obtain full payment from development applicants prior to execution of any consultant services agreements relating to the processing of development applications. In unusual circumstances (such as large, complex projects and projects where the Agency is serving as the applicant), Agency may allow deposit of processing costs in phases. In such cases, Consultant shall not begin work on any of the tasks described in **Exhibit A** until after the Agency has issued a written Notice to Start Work for that particular task. Each Notice to Start Work will specify the task authorized to be undertaken and will be issued only

following verification by the Agency that the project sponsor has deposited with the Agency (or the Agency has budgeted) adequate funds to pay for the completion of the authorized task. For all projects, following issuance of a Notice to Start Work, the services of Consultant shall be undertaken and completed within applicable time limits set forth in **Exhibit A**. Such time limits may be amended by mutual agreement between the Agency and Consultant. Consultant shall not commence any work exceeding the Scope of Services without prior written authorization from Agency.

**Section 3. Compensation and Method of Payment.**

A. Compensation. Consultant shall charge for services performed in accordance with the compensation schedule incorporated in **Exhibit A**, not to exceed a total amount of \$12,600.00.

B. Method of Payment.

***Subsections 3.B.(1) and 3.B.(2) are in the alternative. For purposes of this Agreement, Subsection 3.B.(1) [] 3.B.(2) [] applies. (Check ONE box only.)***

(1) Monthly Statements. As a condition precedent to any payment to Consultant under this Agreement, Consultant shall submit monthly to the Agency a statement of account which clearly describes the work for which the billing is submitted.

(2) Statements Following Completion of Work Tasks. As a condition precedent to any payment under this Agreement, Consultant shall submit to the Agency a detailed statement of account which clearly sets forth the designated work tasks for which the billing is submitted. Payments shall be made following completion of each of the individual work tasks described in the Scope of Services. No payments shall be made for tasks which have not been satisfactorily completed.

C. Payment. Agency shall review Consultant's statements and pay Consultant for services rendered hereunder at the rates and in the amounts provided hereunder in accordance with the approved statements.

**Section 4. Standard of Quality.** All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals in Consultant's field of expertise.

**Section 5. Ownership of Documents.** All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement this shall become the sole property of the Agency upon payment to the Consultant for such work, and the Agency shall have the exclusive right to use such materials in its sole discretion without further compensation to Consultant or to any other party.

**Section 6. Retention of Other Consultants, Specialists or Experts.** Consultant will not retain or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the Agency. In addition, the persons who shall provide the services agreed to be performed hereunder by Consultant are identified below. No other person may provide services under this agreement on behalf of Consultant without the prior, written consent of the Agency.

Names of Persons Permitted to Perform  
Under this Agreement

David Warren

**Section 7. Interest of Consultant.** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have and shall not acquire any investment or interest, direct or indirect, in real property which is located within the area covered by this Agreement. Consultant further covenants and represents that it does not now have and shall not acquire any source of income, business entity, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that no person having any such investment or interest shall perform any services under this Agreement.

Consultant shall comply with the City's conflict of interest code and all other conflict of interest laws, including but not limited to the Political Reform Act of 1974 and the regulations promulgated thereunder. Without limiting the generality of the foregoing and in the event that the Consultant is a "consultant" as defined in 2 Cal. Code Regs. § 18701(a)(2) or its successor regulation and is otherwise required by the City's conflict of interest code to complete and execute the economic disclosure statement required under the City's conflict of interest code, as a condition to commencing the work described herein, Consultant shall complete, execute and deliver to the City said economic disclosure statement.

**Section 8. Interest of Members and Employees of Agency.** No member of the Agency Board and no other officer, employee or agent of the Agency who exercises any function or responsibility in connection with the review, approval or carrying out of any project to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, association, or other legal entity in which he/she is directly or indirectly interested. If Consultant learns of any such interest, he/she shall promptly disclose such interest in writing to the Executive Director.

**Section 9. Liability of Members and Employees of Agency.** No member of the Agency Board and no other officer, employee or agent of the Agency shall be personally liable to Consultant or otherwise in the event of any default or breach of the Agency, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

**Section 10. Indemnification of Agency.** Consultant hereby agrees to defend, indemnify and hold harmless the Agency from and against any and all claims arising out of the willful or negligent

acts, errors or omissions of Consultant relating to this Agreement. The Agency has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise.

**Section 11. Consultant Not an Agent of Agency.** Consultant is not an agent of the Agency, and the Agency retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the Agency to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the Agency or that it or they have the power to bind or commit the Agency.

**Section 12. Compliance with Laws.**

A. **General.** Consultant shall comply with all applicable federal, state and local laws, code, ordinances and regulations. Consultant represents and warrants to Agency that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Agency that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall, at all times during the term of this Agreement and for one year thereafter, provide written proof of such licenses, permits, insurance and approvals upon request by the Agency.

B. **Novato Business License.** Unless otherwise exempt, Consultant will maintain a valid City of Novato business license pursuant to Chapter VIII of the Novato Municipal Code during the term of this Agreement. Concurrently with execution of this Agreement, and upon request of Agency thereafter, Consultant will submit proof of compliance with this Subsection.

C. **Workers' Compensation.** Consultant shall take out and maintain at all times during the life of this agreement, up to the date of acceptance of the work by the Agency, workers' compensation insurance as required by the Labor Code of the State of California. The Consultant shall require all subconsultants similarly to provide such insurance for all of subconsultants' employees. The amount of said insurance shall be \$1 million per accident. Consultant certifies that it is aware of the provision of the California Labor Code which requires every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

D. **Injury and Illness Prevention Program.** Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. **Agency Not Responsible.** The Agency is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

**Section 13. Insurance.**

A. Minimum Scope of Insurance

(1a) Consultant agrees to have and maintain, for the duration of the Agreement, a Commercial General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. At the time the Agreement is entered into the Agency may require higher limits depending on the nature of the services being provided by the Consultant. Such determination shall be made by the City's Risk Manager.

(1b) In lieu of commercial general liability insurance, the Consultant may secure and maintain a minimum of One Million Dollars (\$1,000,000) of excess limit (umbrella) coverage on his/her homeowner's or renter's insurance policy.

(2) Consultant agrees to have and maintain for the duration of the Agreement an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage. At the time the Agreement is entered into the Agency may require higher limits depending on the nature of the service being provided by the Consultant. Such determination shall be made by the Agency's Risk Manager.

(3) Consultant shall provide to the Agency all certificates of insurance with original endorsements reflecting coverage required by this section. Certificates of such insurance shall be filed with the Agency on or before commencement or performance of this Agreement. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

(4) Any Consultant utilizing the services of a secondary consultant in the performance of this Agreement shall either provide the required insurance(s) for the type of service being provided by the secondary consultant or provide evidence acceptable to the Agency demonstrating that the secondary consultant has in effect the required insurance(s).

B. General Liability.

(1) The Agency, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant.

(2) Consultant's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.

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(4) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Current certification of such insurance shall be kept on file with the Agency Secretary at all times during the term of this Agreement.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its officers, officials, employees and volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

**Section 14. Assignment Prohibited.** Consultant shall not assign any right or obligation pursuant to this Agreement without the Agency's prior written consent. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

**Section 15. Expiration and Termination of Agreement.** Unless extended by mutual agreement or terminated pursuant to this section, this Agreement shall expire upon Consultant's satisfactory and timely completion of the services contracted for hereunder.

This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Agency within its sole discretion upon written notice to the Consultant. Consultant may terminate this Agreement upon thirty (30) days' written notice to the Agency only for good cause, including without limitation, serious illness or material breach of this Agreement by Agency. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the Agency, become its sole property and shall, at Consultant's expense, be delivered to the Agency or to any party the Agency may so designate. In the event of termination by the Consultant, the Consultant shall only be compensated for all work Consultant satisfactorily performs prior to the time Consultant delivers to the Agency the termination notice, unless other arrangements are agreed to by the Agency. In the event of termination by the Agency, the Consultant shall be compensated for all work satisfactorily performed prior to the time Consultant receives the termination notice, and shall be compensated for materials ordered by the Consultant, and services of others ordered by the Consultant prior to receipt of the Agency's termination notice whether or not such materials or instruments of services of others have actually been delivered to Consultant or to the Agency, provided that the Consultant is not able to cancel such orders for materials or services of others. In the event this agreement is terminated pursuant to this section, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this agreement by the Agency pursuant to this section.

**Section 16. Entire Agreement; Amendment.** This Agreement, including **Exhibit A** and any other exhibits or attachments made a part hereof constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All memoranda, and representations, are superseded in total by this Agreement. This Agreement may be amended or extended from time to time by written agreement of the parties hereto.

**Section 17. Litigation Costs.** If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least sixty-six percent (66%) of the dollar amount requested in the complaint's prayer for relief.

**Section 18. Remedies.** In addition to any other available rights and remedies, either party may institute legal action to cure, correct or remedy any default, enforce any covenant herein, or enforce by specific performance the rights and obligation of the parties hereto.

**Section 19. Time of the Essence.** It is understood and agreed by Agency and Consultant that time is of the essence in the completion of the work tasks described in the Scope of Services.

**Section 20. Interpretation of Agreement.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California and the City of Novato.

**Section 21. Written Notification.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within two business days from the time of mailing if mailed within the State of California as provided in this Section.

If to Agency:                   Redevelopment Agency of the City of Novato  
75 Rowland Way #200  
Novato, CA 94945-5054  
Attention:

If to Consultant:             David Warren  
Berkeley Micro Design  
2158 Emerson St.  
Berkeley, CA 94705

**Section 22. Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

**Section 23. Execution.** This Agreement may be executed in several original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the

parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 24. Further Assurances.** Each party to this agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide, within a reasonable time, but not exceeding 30 days, such assurance of due performance as is adequate under the circumstances is a repudiation of this agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

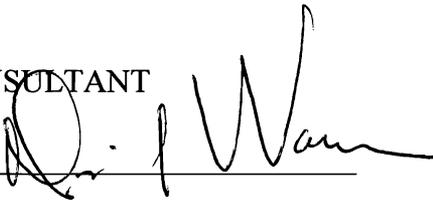
IN WITNESS WHEREOF, the Agency and Consultant have executed this Agreement as of the date first above written.

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By:

  
Executive Director

CONSULTANT

  
\_\_\_\_\_

By:

  
Agency Secretary

Software Consultant  
Title

JBA Berkeley Micro Design  
Sole proprietor

Approved as to form:

\_\_\_\_\_  
Agency Attorney

## EXHIBIT "A" – SCOPE OF SERVICES

**This document specifies the scope of services performed for the City of Novato ("Client") with a principal place of business at Community Development Office 75 Rowland Way #200 Novato, CA 94945, by David Warren, sole proprietor, DBA Berkeley MicroDesign, Inc. ("Consultant"), with a principal place of business at 2158 Emerson Street, Berkeley CA 94705.**

### **1. Services Performed by Consultant:**

Consultant agrees to perform services requested by the Client with respect to the Housing Database System (HDS), its database and the supporting interface programs, known as HDS loader and client program, which is used to access and maintain the database. Services include but are not limited to training and support to Client's employees and staff in the use of HDS, monitoring HDS performance, providing HDS maintenance and upgrades necessary to function efficiently with other non-HDS software upgrades and changes, and developing HDS enhancements as requested and specified by the Client.

### **2. Compensation:**

Consultant shall be compensated at the rate of \$ 110.00 per hour.

**AMENDMENT TO AGREEMENT**

This Amendment to Agreement #R-108 is entered into as of this 13<sup>th</sup> day of June 2011, by and between the **CITY OF NOVATO**, a municipal corporation, hereinafter called "City" and **David Warren dba Berkeley MicroDesign**, hereinafter called "Consultant" or "Contractor."

**RECITALS**

WHEREAS, the City and Consultant/Contractor entered into Agreement R-108 dated May 31, 2007; and

WHEREAS, the parties desire to amend that Agreement;

**AGREEMENTS**

NOW, THEREFORE, Agreement #R-108 is hereby amended as set forth herein. Paragraph 2A is amended to read:

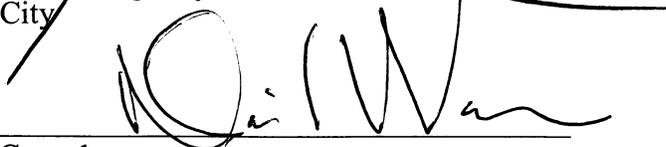
"...The services of Consultant are to commence upon the execution of this Agreement and shall be undertaken and completed within the time limits set forth in *Exhibit A*." (*Commencing July 1, 2011 and ending June 30, 2012*)

***NEW P.O. TOTAL "NOT TO EXCEED" \$50,400.00***

All other terms and conditions of said Agreement #R-108 shall remain the same.

IN WITNESS WHEREOF, the City and the Consultant/Contractor have executed this Amendment as of the date first above written.

  
\_\_\_\_\_  
City

  
\_\_\_\_\_  
Consultant

**CONSULTANT SERVICES AGREEMENT**

THIS AGREEMENT is entered into as of the 10<sup>th</sup> day of February, 20 09, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO, a municipal corporation (hereinafter referred to as "Agency") and David Tattersall & Co. (hereinafter referred to as "Consultant").

WHEREAS, Agency desires to obtain professional services in connection with Appraisal of 7546 Redwood Blvd.; and

WHEREAS, Consultant hereby warrants to the Agency that Consultant is skilled and able to competently provide such services described in Section 1 of this Agreement; and

WHEREAS, Agency desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Scope of Services.** Subject to such policy direction and approvals as the Agency through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Services" attached hereto as *Exhibit A* and incorporated herein by reference. Consultant shall not commence any work exceeding the Scope of Services without prior written authorization from Agency.

**Section 2. Time of Performance.**

*Subsections 2.A. and 2.B. are in the alternative. For purposes of this Agreement, Subsection 2.A.  2.B. [ ] applies. (Check ONE box only.)*

A. [Non Cost-Covered Services] The services of Consultant are to commence upon the execution of this Agreement and shall be undertaken and completed within the time limits set forth in *Exhibit A*. Such time limits may be amended by mutual agreement between the Agency and Consultant.

B. [Cost-Covered Services] Execution of this Agreement does not constitute authorization to proceed with the work described in the Scope of Services. Consultant shall not begin the work described in *Exhibit A* until after the Agency has issued a written Notice to Start Work, following verification by Agency staff that the project sponsor has deposited with the Agency adequate funds to pay for completion of the work described in *Exhibit A*. Agency and Consultant understand that it is the Agency's policy for routine projects to obtain full payment from development applicants prior to execution of any consultant services agreements relating to the processing of development applications. In unusual circumstances (such as large, complex projects and projects where the Agency is serving as the applicant), Agency may allow deposit of processing costs in phases. In such cases, Consultant shall not begin work on any of the tasks described in *Exhibit A* until after the Agency has issued a written Notice to Start Work for that particular task. Each

Notice to Start Work will specify the task authorized to be undertaken and will be issued only following verification by the Agency that the project sponsor has deposited with the Agency (or the Agency has budgeted) adequate funds to pay for the completion of the authorized task. For all projects, following issuance of a Notice to Start Work, the services of Consultant shall be undertaken and completed within applicable time limits set forth in *Exhibit A*. Such time limits may be amended by mutual agreement between the Agency and Consultant. Consultant shall not commence any work exceeding the Scope of Services without prior written authorization from Agency.

**Section 3. Compensation and Method of Payment.**

A. Compensation. Consultant shall charge for services performed in accordance with the compensation schedule incorporated in *Exhibit A*, not to exceed a total amount of \$ 4,900<sup>00</sup>.

B. Method of Payment.

*Subsections 3.B.(1) and 3.B.(2) are in the alternative. For purposes of this Agreement, Subsection 3.B.(1)  3.B.(2) [ ] applies. (Check ONE box only.)*

(1) Monthly Statements. [Contract Planners, etc.] As a condition precedent to any payment to Consultant under this Agreement, Consultant shall submit monthly to the Agency a statement of account which clearly describes the work for which the billing is submitted.

(2) Statements Following Completion of Work Tasks. [EIR Consultants, etc.] As a condition precedent to any payment under this Agreement, Consultant shall submit to the Agency a detailed statement of account which clearly sets forth the designated work tasks for which the billing is submitted. Payments shall be made following completion of each of the individual work tasks described in the Scope of Services. No payments shall be made for tasks which have not been satisfactorily completed.

C. Payment. Agency shall review Consultant's statements and pay Consultant for services rendered hereunder at the rates and in the amounts provided hereunder in accordance with the approved statements.

**Section 4. Standard of Quality.** All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals in Consultant's field of expertise.

**Section 5. Ownership of Documents.** All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement this shall become the sole property of the Agency upon payment to the Consultant for such work, and the Agency shall have the exclusive right to use such materials in its sole discretion without further compensation to Consultant or to any other party.

**Section 6. Retention of Other Consultants, Specialists or Experts.** Consultant will not retain or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the Agency. In addition, the persons who shall provide the services agreed to be performed hereunder by Consultant are identified below. No other person may provide services under this agreement on behalf of Consultant without the prior, written consent of the Agency.

Names of Persons Permitted to Perform  
Under this Agreement

DAVID N. TATTERSALL

**Section 7. Interest of Consultant.** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have and shall not acquire any investment or interest, direct or indirect, in real property which is located within the area covered by this Agreement. Consultant further covenants and represents that it does not now have and shall not acquire any source of income, business entity, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that no person having any such investment or interest shall perform any services under this Agreement.

Consultant shall comply with the City's conflict of interest code and all other conflict of interest laws, including but not limited to the Political Reform Act of 1974 and the regulations promulgated thereunder. Without limiting the generality of the foregoing and in the event that the Consultant is a "consultant" as defined in 2 Cal. Code Regs. § 18701(a)(2) or its successor regulation and is otherwise required by the City's conflict of interest code to complete and execute the economic disclosure statement required under the City's conflict of interest code, as a condition to commencing the work described herein, Consultant shall complete, execute and deliver to the City said economic disclosure statement.

**Section 8. Interest of Members and Employees of Agency.** No member of the Agency Board and no other officer, employee or agent of the Agency who exercises any function or responsibility in connection with the review, approval or carrying out of any project to which this Agreement pertains shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, association, or other legal entity in which he/she is directly or indirectly interested. If Consultant learns of any such interest, he/she shall promptly disclose such interest in writing to the Executive Director.

**Section 9. Liability of Members and Employees of Agency.** No member of the Agency Board and no other officer, employee or agent of the Agency shall be personally liable to Consultant or otherwise in the event of any default or breach of the Agency, or for any amount which

may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

**Section 10. Indemnification of Agency.** Consultant hereby agrees to defend, indemnify and hold harmless the Agency from and against any and all claims arising out of the willful or negligent acts, errors or omissions of Consultant relating to this Agreement. The Agency has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise.

**Section 11. Consultant Not an Agent of Agency.** Consultant is not an agent of the Agency, and the Agency retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the Agency to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the Agency or that it or they have the power to bind or commit the Agency.

**Section 12. Compliance with Laws.**

A. **General.** Consultant shall comply with all applicable federal, state and local laws, code, ordinances and regulations. Consultant represents and warrants to Agency that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Agency that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall, at all times during the term of this Agreement and for one year thereafter, provide written proof of such licenses, permits, insurance and approvals upon request by the Agency.

B. **Novato Business License.** Unless otherwise exempt, Consultant will maintain a valid City of Novato business license pursuant to Chapter VIII of the Novato Municipal Code during the term of this Agreement. Concurrently with execution of this Agreement, and upon request of Agency thereafter, Consultant will submit proof of compliance with this Subsection.

C. **Workers' Compensation.** Consultant shall take out and maintain at all times during the life of this agreement, up to the date of acceptance of the work by the Agency, workers' compensation insurance as required by the Labor Code of the State of California. The Consultant shall require all subconsultants similarly to provide such insurance for all of subconsultants' employees. The amount of said insurance shall be \$1 million per accident. Consultant certifies that it is aware of the provision of the California Labor Code which requires every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

D. **Injury and Illness Prevention Program.** Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. Agency Not Responsible. The Agency is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

**Section 13. Insurance.**

A. Minimum Scope of Insurance

(1a) Consultant agrees to have and maintain, for the duration of the Agreement, a Commercial General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. At the time the Agreement is entered into the Agency may require higher limits depending on the nature of the services being provided by the Consultant. Such determination shall be made by the City's Risk Manager.

(1b) In lieu of commercial general liability insurance, the Consultant may secure and maintain a minimum of One Million Dollars (\$1,000,000) of excess limit (umbrella) coverage on his/her homeowner's or renter's insurance policy.

(2) Consultant agrees to have and maintain for the duration of the Agreement an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage. At the time the Agreement is entered into the Agency may require higher limits depending on the nature of the service being provided by the Consultant. Such determination shall be made by the City's Risk Manager.

(3) Consultants shall have and maintain a Professional Liability insurance policy insuring him/her and his/her staff to an amount not less than ~~Two Million Dollars~~ 1 million Dollars (\$1,000,000) for injuries arising out of the rendering of services or the failure to render services under this Agreement.

(4) Consultant shall provide to the Agency all certificates of insurance with original endorsements reflecting coverage required by this section. Certificates of such insurance shall be filed with the Agency on or before commencement or performance of this Agreement. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

(5) Any Consultant utilizing the services of a secondary consultant in the performance of this Agreement shall either provide the required insurance(s) for the type of service being provided by the secondary consultant or provide evidence acceptable to the Agency demonstrating that the secondary consultant has in effect the required insurance(s).

B. General Liability.

(1) The Agency, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Consultant;

products and completed operations of Consultant; premises owned or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant.

(2) Consultant's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, its officers, officials, employees or volunteers.

(4) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency. Current certification of such insurance shall be kept on file with the Agency Secretary at all times during the term of this Agreement.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, its officers, officials, employees and volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

**Section 14. Assignment Prohibited.** Consultant shall not assign any right or obligation pursuant to this Agreement without the Agency's prior written consent. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

**Section 15. Expiration and Termination of Agreement.** Unless extended by mutual agreement or terminated pursuant to this section, this Agreement shall expire upon Consultant's satisfactory and timely completion of the services contracted for hereunder.

This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the Agency within its sole discretion upon written notice to the Consultant. Consultant may terminate this Agreement upon thirty (30) days' written notice to the Agency only for good cause, including without limitation, serious illness or material breach of this Agreement by Agency. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the Agency, become its sole property and shall, at Consultant's expense, be delivered to the Agency or to any party the Agency may so designate. In the event of termination by the Consultant, the Consultant shall only be compensated for all work

Consultant satisfactorily performs prior to the time Consultant delivers to the Agency the termination notice, unless other arrangements are agreed to by the Agency. In the event of termination by the Agency, the Consultant shall be compensated for all work satisfactorily performed prior to the time Consultant receives the termination notice, and shall be compensated for materials ordered by the Consultant, and services of others ordered by the Consultant prior to receipt of the Agency's termination notice whether or not such materials or instruments of services of others have actually been delivered to Consultant or to the Agency, provided that the Consultant is not able to cancel such orders for materials or services of others. In the event this agreement is terminated pursuant to this section, Consultant shall not be entitled to any additional compensation over that provided herein; nor shall Consultant be entitled to payment for any alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this agreement by the Agency pursuant to this section.

**Section 16. Entire Agreement; Amendment.** This Agreement, including *Exhibit A* and any other exhibits or attachments made a part hereof constitutes the complete and exclusive expression of the understanding and agreement between the parties with respect to the subject matter hereof. All memoranda, and representations, are superseded in total by this Agreement. This Agreement may be amended or extended from time to time by written agreement of the parties hereto.

**Section 17. Litigation Costs.** If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least sixty-six percent (66%) of the dollar amount requested in the complaint's prayer for relief.

**Section 18. Remedies.** In addition to any other available rights and remedies, either party may institute legal action to cure, correct or remedy any default, enforce any covenant herein, or enforce by specific performance the rights and obligation of the parties hereto.

**Section 19. Time of the Essence.** It is understood and agreed by Agency and Consultant that time is of the essence in the completion of the work tasks described in the Scope of Services.

**Section 20. Interpretation of Agreement.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California and the City of Novato.

**Section 21. Written Notification.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within two business days from the time of mailing if mailed within the State of California as provided in this Section.

If to Agency:           Redevelopment Agency of the City of Novato  
75 Rowland Way #200  
Novato, CA 94945-5054

If to Consultant:       DAVID TATTERSALL & Co  
523 4<sup>th</sup> STREET, STE 224  
SAN RAFAEL CA 94901

**Section 22. Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

**Section 23. Execution.** This Agreement may be executed in several original counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

**Section 24. Further Assurances.** Each party to this agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a demand for assurance, either party's failure to provide, within a reasonable time, but not exceeding \_\_\_\_\_ days, such assurance of due performance as is adequate under the circumstances is a repudiation of this agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

IN WITNESS WHEREOF, the Agency and Consultant have executed this Agreement as of the date first above written.

REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO

By: Mary Neelan  
Executive Director *ALM*

By: Shirley Green  
Agency Secretary

CONSULTANT

[Signature]

owner  
Title

Approved as to form:

\_\_\_\_\_  
Agency Attorney

David N. Tattersall, MAI



January 13, 2009

Mr. Ron Gerber,  
City of Novato Redevelopment Agency,  
75 Rowland Way, Suite 200,  
Novato, Ca. 94945-5054

Dear Mr. Gerber:

Further to your request, this letter sets forth terms and conditions for appraisal services.

AGREEMENT made between *MR. RON GERBER FOR THE CITY OF NOVATO REDEVELOPMENT AGENCY*, hereinafter referred to as "Client," and *DAVID TATTERSALL & COMPANY, 523 FOURTH STREET, SUITE 224, SAN RAFAEL, CA*, hereinafter referred to as "Appraiser," agree as follows:

*I - PROPERTY TYPE:* Commercial/Industrial Improved

*II - LOCATION:* 7546 Redwood Blvd., Novato, Marin County, CA.

*III - PURPOSE, SCOPE AND INTENDED USE OF APPRAISAL:* Appraiser agrees to estimate the market value of the *Fee Simple* interest and provide client with 1 hard copy and 1 PDF electronic copy of the Summary Appraisal Report for *acquisition negotiation purposes*. The report(s) shall comply with the professional and ethical requirements of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice. Any further requirements specific to the client will be subject to additional charges. The report will be subject to the assumptions and limiting conditions contained therein. The Appraiser will not be required to give testimony or appear in court by reason of this appraisal unless prior arrangements have been made.

*IV - COMPENSATION AND TERMS:* Client hereby agrees to pay appraiser for professional services a total fee of \$ 4,900. A retainer in the amount of \$0 is required prior to commencement of the assignment. The balance of the fee of \$ 4,900 is due and payable upon delivery of the written reports or other completion of the assignment. Past due balances (if applicable) in excess of 30 days shall accrue an office charge at a rate of 1.5% per month.

*V - CANCELLATION OR MODIFICATION:* Any changes in the scope of the assignment must be mutually agreed upon, in writing, and the fee will be adjusted accordingly, if necessary. The Appraiser reserves the right to amend the fee, whereupon inspection of the subject property reveals other valuation aspects related to physical, zoning, use, legal, or economic factors not previously discussed. If the assignment is canceled prior to completion, for any reason, the client

523 4th Street, Suite 224 ~ San Rafael, CA 94901

Tel: (415) 453-4195 ~ Fax: (415) 453-4795 ~ Email: davidtattersall@sbcglobal.net

will be billed for time expended at the rate of \$250 per hour. Likewise, if additional work is requested, time required will be charged at the same hourly rate. Court testimony and deposition is charged at \$300 per hour.

*VI - ESTIMATED COMPLETION DATE:* Appraiser agrees to utilize his best efforts to complete 1 original and 1 PDF copy of the report in 4-5 weeks from the date of execution of this agreement. The estimated completion date as outlined above could change if this contract is not executed within five business days. This completion date is an estimate and does not provide for delays beyond the control of the appraiser such as illness, lack of necessary data, or Acts of God. Any additional copies of the report will be provided to the client only for a cost of \$50 per copy.

*VII - DISPUTES & INDEMNIFICATION:* Client agrees to refer all unresolved disputes with the appraiser with respect to this assignment to mediation. Client accepts and agrees that the liability of David Tattersall & Company and its staff is limited to the Client only as named above and to the amount of the appraisal fee only. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than the Client, the Client shall make such party aware of all Assumptions and Limiting Conditions of the assignment and related discussions. David Tattersall & Company is in no way to be responsible for any cost incurred to discover or correct any deficiencies of any type present in the property, physically, financially, and/or legally. Client also agrees that in the event of a lawsuit brought by a lender, partner, or part owner in any form of ownership or tenancy, or by any other party, the Client will hold David Tattersall & Company completely harmless from and against any liability, loss, cost, or expense incurred or suffered to Client in such action regardless of its outcome except such as is solely caused by Appraiser's negligence or misconduct.

Please sign and return this contract together with the retainer. Upon receipt, work shall commence on the assignment. If you have any questions, please feel free to call.

Respectfully submitted,



David N. Tattersall, MAI

Agreed:

Date:

Client: Mr. Ron Gerber, City of Novato Redevelopment Agency



**MEMORANDUM OF UNDERSTANDING  
(DOWNTOWN NOVATO REDEVELOPMENT PROJECT)**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of June 22, 1999, by and between the REDEVELOPMENT AGENCY OF THE CITY OF NOVATO ("Agency"), the MARIN COUNTY FREE LIBRARY DISTRICT ("Library District") and the MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("Flood Control District"), in implementation of the proposed Redevelopment Plan ("Redevelopment Plan") for the Downtown Novato Redevelopment Project ("Project") in the City of Novato ("City").

WHEREAS:

A. Agency and City are considering the adoption of the Redevelopment Plan and have duly noticed and scheduled a joint public hearing for such purpose on June 22, 1999.

B. The Library District's Novato Branch Library facilities are located outside of but immediately adjacent to the boundaries of the proposed Project ("Project Area") and provide a direct benefit to the businesses and occupants of the Project Area as well as to the citizens of the City. Subject to the availability of funds for such purposes, the Redevelopment Plan contemplates certain improvements to the Novato Branch Library facilities to benefit the Project. The Flood Control District's responsibilities include the Project Area. Subject to the availability of funds for such purposes, the Redevelopment Plan contemplates certain flood control improvements to benefit the Project.

C. Library District and Flood Control District are both separate taxing entities and desire to participate in and cooperate with Agency in the implementation of the Redevelopment Plan if it is adopted, with respect to the understandings set forth in this MOU.

6-29-99  
A. I. L.

D. Agency has determined that the understandings set forth in this MOU will further the implementation of the Redevelopment Plan by the Agency.

NOW, THEREFORE, the Agency, Library District and Flood Control District set forth their mutual agreements and understandings as follows:

1. Net Tax Increment Defined.

For purposes of this Agreement and with respect to each of the taxing entities that are parties to this Agreement, "Net Tax Increment" means the net amount of property taxes levied and collected for each taxing entity within the Project Area which are allocated to the Agency as tax increments from the Project pursuant to Health and Safety Code Section 33670 after deduction of: (a) all amounts paid to the affected taxing entities pursuant to Health and Safety Code Section 33607.5, and (b) the amount required to be allocated to and set aside by the Agency in the Agency's Low and Moderate Income Housing Fund for the Project pursuant to Health and Safety Code Section 33334.2.

2. Novato Branch Library Facilities.

(a) The Agency shall establish a County Library Account for the Project.

(b) Annually, the Agency shall deposit into the County Library Account the amount of the Net Tax Increment received by the Agency and attributable to the Library District until the total amount deposited equals \$100,000.

(c) The moneys in the County Library Account (together with any actual investment earnings on such moneys) shall be expended by the Agency to pay, in whole or in part, for the costs of new capital improvements to the Novato Branch Library facilities which are determined in accordance with applicable requirements of the Community Redevelopment Law (Health and Safety Code Section 33000 et. seq.) to benefit the Project Area and qualify as eligible Agency expenditures ("Qualifying Improvements"). Such Qualifying Improvements shall

be proposed by the Library District from time to time in consultation with the Agency.

(d) In no event shall the Agency incur any obligation to pay for Qualifying Improvements for Novato Branch Library facilities in excess of the amount required to be deposited into the County Library Account under subsection (b) of this Section 2. Upon a determination by the Library District that no further Qualifying Improvements will be needed, or upon the expiration of the period under the Redevelopment Plan for the Agency to incur indebtedness, whichever occurs first, the County Library Account may be terminated by the Agency and any remaining moneys in said account not otherwise pledged to pay for Qualifying Improvements shall become the unrestricted funds of the Agency.

3. Flood Control.

(a) The Agency shall establish a Flood Control Account for the Project.

(b) Annually, the Agency shall deposit into the Flood Control Account the amount of the Net Tax Increment received by the Agency and attributable to the Flood Control District.

(c) The moneys in the Flood Control Account (together with any actual investment earnings on such moneys) shall be expended by the Agency to pay, in whole or in part, for the capital costs of flood control improvements which are determined in accordance with applicable requirements of the Community Redevelopment Law (Health and Safety Code Section 33000 et. seq.) to benefit the Project Area and qualify as eligible Agency expenditures ("Qualifying Improvements"). Such Qualifying Improvements shall be proposed by the Flood Control District from time to time in consultation with the Agency.

(d) In no event shall the Agency incur any obligation to pay for Qualifying Improvements for flood control improvements in excess of the amount required to be deposited into the Flood Control Account under subsection (b) of this Section 3. Upon a determination by the Flood Control District that no further

Qualifying Improvements will be needed, or upon the expiration of the period under the Redevelopment Plan for the Agency to incur indebtedness, whichever occurs first, the Flood Control Account may be terminated by the Agency and any remaining moneys in said account not otherwise pledged to pay for Qualifying Improvements shall become the unrestricted funds of the Agency.

4. Redevelopment Plan.

(a) This MOU shall take effect upon the effective date of the ordinance adopting the Redevelopment Plan.

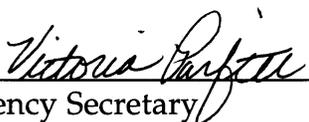
(b) If the Redevelopment Plan is not adopted or does not become effective, this MOU shall terminate.

Executed as of the date first above written.

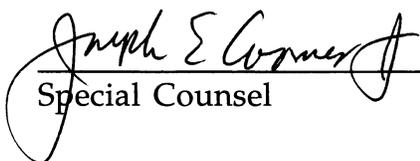
REDEVELOPMENT AGENCY OF THE  
CITY OF NOVATO ("Agency")

By:   
Executive Director

Attested:

  
Agency Secretary

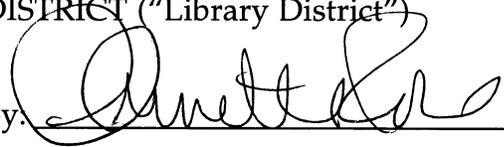
Approved as to Form:

  
Special Counsel

-AND-

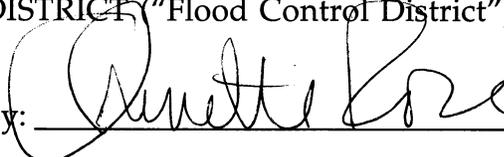
MARIN COUNTY FREE LIBRARY  
DISTRICT ("Library District")

By: \_\_\_\_\_



MARIN COUNTY FLOOD CONTROL  
AND WATER CONSERVATION  
DISTRICT ("Flood Control District")

By: \_\_\_\_\_



Approved as to Form:

  
\_\_\_\_\_  
County Counsel