

S&P: "AAA"  
FITCH: "AAA"  
See "RATINGS"

## NEW ISSUE

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however, to certain qualifications described herein, under existing law, the interest on the 2007 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "LEGAL MATTERS – Tax Matters" herein.*

**\$11,915,000**  
**CITY OF NOVATO**  
**COMMUNITY FACILITIES DISTRICT NO. 2002-1**  
**(POINTE MARIN)**  
**SPECIAL TAX REFUNDING BONDS, SERIES 2007**

**Dated: Date of Delivery**

**Due: September 1, as shown on inside cover**

**Authority for Issuance.** The bonds captioned above (the "2007 Bonds") are being issued under the Mello-Roos Community Facilities Act of 1982 (the "Act") and a Fiscal Agent Agreement, dated as of July 1, 2007 (the "Fiscal Agent Agreement"), by and between the City and U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"). The City Council of the City (the "City Council"), acting as legislative body of the City of Novato Community Facilities District No. 2002-1 (Pointe Marin) (the "Community Facilities District"), and the eligible landowner voters in the Community Facilities District, have authorized the issuance of bonds. See "THE 2007 BONDS – Authority for Issuance."

**Security and Sources of Payment.** The 2007 Bonds are payable from "Special Tax Revenues," which consist of certain proceeds of an annual Special Tax to be levied on property located within the Community Facilities District, and from certain other funds pledged under the Fiscal Agent Agreement. See "SECURITY FOR THE 2007 BONDS."

**Use of Proceeds.** The 2007 Bonds are being issued to refund the City's outstanding \$11,990,000 initial principal amount City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Bonds, Series 2002 (the "Prior Bonds"), fund a debt service reserve fund for the 2007 Bonds and pay the costs of issuing the 2007 Bonds. See "FINANCING PLAN."

**Bond Terms.** The 2007 Bonds shall be issued as fully registered bonds without coupons, and shall mature and become payable on each September 1 shown on the inside cover. Interest is payable on March 1, 2008 and semiannually thereafter on March 1 and September 1 each year. The 2007 Bonds will be issued in denominations of \$5,000 or integral multiples of \$5,000. The 2007 Bonds, when delivered, will be initially registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the 2007 Bonds. See "THE 2007 BONDS – General Bond Terms" and "APPENDIX D – DTC and the Book-Entry Only System."

**Redemption.** The 2007 Bonds are subject to extraordinary redemption from Special Tax prepayments, optional redemption from any source other than prepayments, and mandatory sinking fund redemption before maturity. See "THE 2007 BONDS - Redemption."

**Insurance.** The scheduled payment of principal of and interest on the 2007 Bonds when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the 2007 Bonds by XL Capital Assurance, Inc.



THE 2007 BONDS, THE INTEREST ON THE 2007 BONDS, AND ANY PREMIUMS PAYABLE ON THE REDEMPTION OF ANY OF THE 2007 BONDS, ARE NOT AN INDEBTEDNESS OF THE CITY, THE STATE OF CALIFORNIA (THE "STATE") OR ANY OF ITS POLITICAL SUBDIVISIONS, AND NEITHER THE CITY (EXCEPT TO THE LIMITED EXTENT DESCRIBED IN THIS OFFICIAL STATEMENT), THE STATE NOR ANY OF ITS POLITICAL SUBDIVISIONS IS LIABLE ON THE 2007 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY (EXCEPT TO THE LIMITED EXTENT DESCRIBED IN THIS OFFICIAL STATEMENT) OR THE STATE OR ANY POLITICAL SUBDIVISION OF THE CITY OR THE STATE IS PLEDGED TO THE PAYMENT OF THE 2007 BONDS. OTHER THAN THE SPECIAL TAXES, NO TAXES ARE PLEDGED TO THE PAYMENT OF THE 2007 BONDS. THE 2007 BONDS ARE NOT A GENERAL OBLIGATION OF THE CITY, BUT ARE LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE SPECIAL TAXES AS MORE FULLY DESCRIBED IN THIS OFFICIAL STATEMENT.

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**MATURITY SCHEDULE**  
(see inside cover)

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*This cover page contains certain information for quick reference only. It is not a summary of the issue. Potential investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision. Investment in the 2007 Bonds involves risks which may not be appropriate for some investors. See "BOND OWNERS' RISKS" for a discussion of special risk factors that should be considered in evaluating the investment quality of the 2007 Bonds.*

The 2007 Bonds are being offered when, as, and if issued by the City and received by the Underwriter, subject to the approval of validity by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Jones Hall will also act as Disclosure Counsel. It is anticipated that the 2007 Bonds, in book-entry form, will be available for delivery on or about August 7, 2007.

The date of this Official Statement is: July 26, 2007

## MATURITY SCHEDULE

(Base CUSIP†: 669883)

<u>Maturity (September 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP No. †</u>
2008	\$255,000	3.500%	3.500%	100.000	FF2
2009	295,000	3.600	3.600	100.000	FG0
2010	305,000	4.000	3.650	101.004	FH8
2011	320,000	4.000	3.700	101.120	FJ4
2012	330,000	4.000	3.730	101.233	FK1
2013	340,000	4.000	3.750	101.343	FL9
2014	355,000	4.000	3.850	100.918	FM7
2015	370,000	4.000	3.950	100.340	FN5
2016	390,000	4.000	4.000	100.000	FP0
2017	400,000	4.000	4.000	100.000	FQ8
2018	415,000	4.000	4.000	100.000	FR6
2019	435,000	4.000	4.150	98.585	FS4
2020	455,000	4.250	4.250	99.997	FT2
2021	475,000	4.250	4.300	99.473	FU9
2022	490,000	4.300	4.350	99.448	FV7
2023	510,000	4.250	4.350	98.849	FW5
2024	535,000	4.375	4.450	99.107	FX3
2025	555,000	4.500	4.500	100.000	FY1
2026	585,000	4.500	4.550	99.364	FZ8
2027	610,000	4.500	4.600	98.695	GA2
2028	635,000	4.500	4.620	98.391	GB0
2029	665,000	4.625	4.650	99.654	GC8
2030	695,000	4.625	4.650	99.645	GD6
2031	730,000	4.700	4.700	100.000	GE4
2032	765,000	4.700	4.700	100.000	GF1

† Copyright 2007, American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the City nor the Underwriter assumes any responsibility for the accuracy of these CUSIP data.

## **CITY OF NOVATO**

### **CITY COUNCIL**

Jeanne MacLeamy, Mayor  
Pat Eklund, Mayor Pro Tem  
Ernie Gray, Councilmember  
Carole Dillon-Knutson, Councilmember  
Jim Leland, Councilmember

### **CITY STAFF**

Daniel Keen, City Manager  
Mary Neilan, Assistant City Manager  
Debbie Lauchner, Finance Manager  
Shirley Gremmels, City Clerk

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### **BOND COUNSEL AND DISCLOSURE COUNSEL**

Jones Hall, A Professional Law Corporation  
*San Francisco, California*

### **SPECIAL TAX CONSULTANT**

Economic & Planning Systems, Inc.  
*Sacramento, California*

### **FISCAL AGENT**

U.S. Bank National Association  
*San Francisco, California*

### **ESCROW VERIFICATION AGENT**

Causey Demgen & Moore Inc.  
Denver, Colorado

### **FINANCIAL ADVISOR**

E. Wagner & Associates, Inc.  
*Pleasanton, California*

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## GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

**No Offering May Be Made Except by this Official Statement.** No dealer, broker, salesperson or other person has been authorized to give any information or to make any representations with respect to the 2007 Bonds other than as contained in this Official Statement, and if given or made, such other information or representation must not be relied upon as having been authorized.

**No Unlawful Offers or Solicitations.** This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy in any state in which such offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

**Effective Date.** This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the 2007 Bonds will, under any circumstances, create any implication that there has been no change in the affairs of the City, the Community Facilities District, any other parties described in this Official Statement, or in the condition of property within the Community Facilities District since the date of this Official Statement.

**Use of this Official Statement.** This Official Statement is submitted in connection with the sale of the 2007 Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract with the purchasers of the 2007 Bonds.

**Preparation of this Official Statement.** The information contained in this Official Statement has been obtained from sources that are believed to be reliable, but this information is not guaranteed as to accuracy or completeness.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

**Document References and Summaries.** All references to and summaries of the Fiscal Agent Agreement or other documents contained in this Official Statement are subject to the provisions of those documents and do not purport to be complete statements of those documents.

**Stabilization of and Changes to Offering Prices.** The Underwriter may over allot or take other steps that stabilize or maintain the market price of the 2007 Bonds at a level above that which might otherwise prevail in the open market. If commenced, the Underwriter may discontinue such market stabilization at any time. The Underwriter may offer and sell the 2007 Bonds to certain dealers, dealer banks and banks acting as agent at prices lower than the public offering prices stated on the cover page of this Official Statement, and those public offering prices may be changed from time to time by the Underwriter.

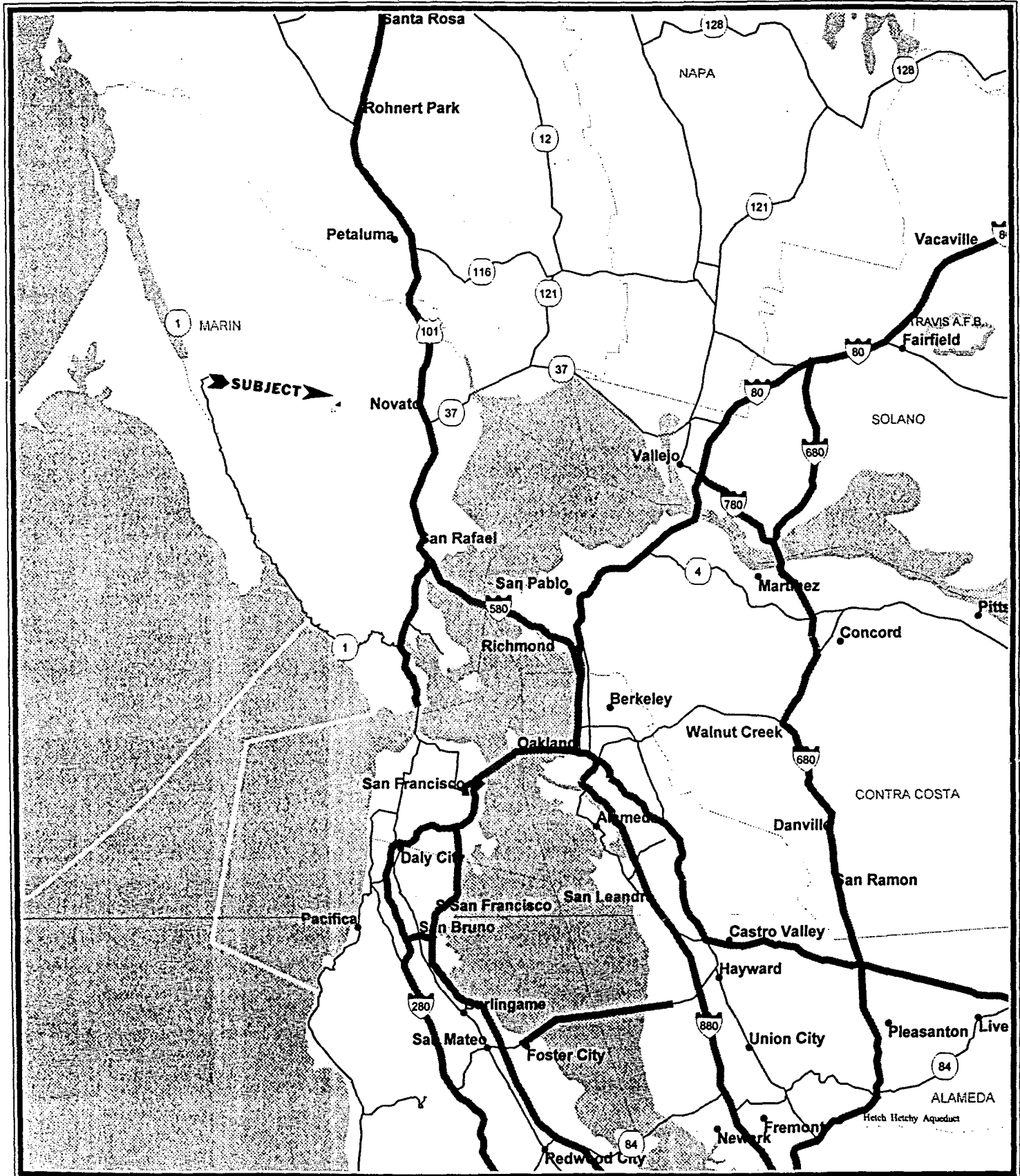
**Bonds are Exempt from Securities Laws Registration.** The issuance and sale of the 2007 Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exemptions for the issuance and sale of municipal securities provided under Section 3(a)(2) of the Securities Act of 1933 and Section 3(a)(12) of the Securities Exchange Act of 1934.

**Estimates and Projections.** Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE CITY DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.

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# Regional Location Map



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- APPENDIX B – Rate and Method of Apportionment of Special Tax
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- APPENDIX D – DTC and the Book-Entry Only System
- APPENDIX E – Form of Issuer Continuing Disclosure Certificate
- APPENDIX F – Form of Opinion of Bond Counsel
- APPENDIX G – Specimen Insurance Policy

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## OFFICIAL STATEMENT

**\$11,915,000**  
**CITY OF NOVATO**  
**COMMUNITY FACILITIES DISTRICT NO. 2002-1**  
**(POINTE MARIN)**  
**SPECIAL TAX REFUNDING BONDS, SERIES 2007**

### INTRODUCTION

This Official Statement, including the cover page and attached appendices, is provided to furnish information regarding the bonds captioned above (the “**2007 Bonds**”) to be issued by the City of Novato (the “**City**”) on behalf of the City of Novato Community Facilities District No. 2002-1 (Pointe Marin) (the “**Community Facilities District**”).

*This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and attached appendices, and the documents summarized or described in this Official Statement. A full review should be made of the entire Official Statement. The offering of the 2007 Bonds to potential investors is made only by means of the entire Official Statement.*

*Capitalized terms used but not defined in this Official Statement have the definitions given in the Fiscal Agent Agreement (as defined below).*

**The City.** The City is located in the County of Marin (the “**County**”). For additional information regarding the City and the County, see “APPENDIX A – General Information About the City of Novato and the County of Marin.”

**The Community Facilities District.** The Community Facilities District was formed and established by the City on May 28, 2002, under the Mello-Roos Community Facilities Act of 1982, as amended (the “**Act**”), following a public hearing by the City Council of the City (the “**City Council**”), as legislative body of the Community Facilities District. On May 28, 2002, a landowner election was held within the Community Facilities District which authorized the City to incur bonded indebtedness on behalf of the Community Facilities District and approved the levy of special taxes. See “THE 2007 BONDS – Authority for Issuance.”

**Authority for Issuance of the 2007 Bonds.** The 2007 Bonds are issued under the Act, certain resolutions adopted by the City Council, and a Fiscal Agent Agreement dated as of July 1, 2007, by and between the City and U.S. Bank National Association (the “**Fiscal Agent**”). See “THE 2007 BONDS – Authority for Issuance.”

**Purpose of the 2007 Bonds.** Proceeds of the 2007 Bonds will be used primarily for the following purposes: (i) to refund the City’s outstanding \$11,990,000 initial principal amount of City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Bonds, Series 2002 (the “**Prior Bonds**”), (ii) to fund a debt service reserve fund for the 2007 Bonds, and (iii) to pay the costs of issuing the 2007 Bonds. See “FINANCING PLAN.”

**Security and Sources of Payment for the 2007 Bonds.** The 2007 Bonds are payable from “**Special Tax Revenues**,” consisting of certain proceeds of an annual Special Tax to be

levied on property located within the Community Facilities District, and from certain other funds pledged under the Fiscal Agent Agreement. See “SECURITY FOR THE 2007 BONDS.”

Pursuant to the Act, the Resolution of Formation (as defined herein) and the Fiscal Agent Agreement, so long as any Bonds are outstanding, the City will annually levy the Special Taxes against all land within the Community Facilities District taxable under the Act in accordance with the proceedings for the formation of the Community Facilities District (“**Taxable Property**”) and to make provision for the collection of the Special Tax in amounts which will be sufficient to pay interest on, principal of and redemption premium (if any) on the Bonds as such becomes due and payable and to replenish the Reserve Fund (as defined herein) as necessary. See “SECURITY FOR THE 2007 BONDS – Collection of Special Taxes” herein.

Pursuant to the Act and the Rate and Method (as defined herein), all lands owned by a public entity shall be exempt from the levy of the Special Tax, *unless* the public entity acquires the property after the levy of the Special Taxes, in which case the public entity may be obligated to pay the Special Tax as described in the Rate and Method. See “BONDOWNERS' RISKS - Exempt Properties”.

The City has covenanted in the Fiscal Agent Agreement to cause foreclosure proceedings to be commenced and prosecuted against parcels with delinquent installments of the Special Tax under certain circumstances. For a more detailed description of the foreclosure covenant see “SECURITY FOR THE 2007 BONDS - Covenant to Foreclose.”

**Bond Insurance.** XL Capital Assurance, Inc. (the “**Bond Insurer**” or “**XLCA**”) has issued a commitment to issue, simultaneously with the issuance of the 2007 Bonds, a financial guaranty insurance policy (the “**Financial Guaranty Insurance Policy**”) guaranteeing the payment, when due, of the principal of and interest on the 2007 Bonds. See the caption “BOND INSURANCE” and “APPENDIX G – Specimen Insurance Policy”.

**Risk Factors Associated with Purchasing the 2007 Bonds.** Investment in the 2007 Bonds involves risks that may not be appropriate for some investors. See “BOND OWNERS' RISKS” for a discussion of certain risk factors which should be considered, in addition to the other matters set forth in this Official Statement, in considering the investment quality of the 2007 Bonds.

## FINANCING PLAN

### Refunding of the Prior Bonds

Proceeds of the 2007 Bonds, along with other available moneys, will be deposited into an Escrow Fund to be held by U.S. Bank National Association, as escrow agent (the “**Escrow Bank**”) pursuant to an Escrow Deposit and Trust Agreement, dated as of July 1, 2007 (the “**Escrow Agreement**”). Available moneys in the Escrow Fund will be used (i) to pay debt service on the Prior Bonds through September 1, 2008 and (ii) on September 1, 2008, to redeem the Prior Bonds maturing on and after September 1, 2009 at a redemption price equal to 102% of the principal amount to be redeemed, together with accrued interest to the redemption date. As of March 1, 2007, the Prior Bonds were outstanding in the principal amount of \$11,335,000.

See “Estimated Sources and Uses of Funds” below. See also “VERIFICATION OF MATHEMATICAL ACCURACY” below.

*Moneys in the Escrow Fund are not available to pay debt service on the 2007 Bonds.*

### Estimated Sources and Uses of Funds

The proceeds from the sale of the 2007 Bonds, along with moneys available as a result of the refunding of the Prior Bonds, will be deposited into the following funds established under the Fiscal Agent Agreement:

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#### SOURCES

Principal Amount of 2007 Bonds	\$11,915,000.00
Moneys Relating to the Prior Bonds	1,402,681.25
Less: Original Issue Discount	(28,892.80)
Less: Underwriter's Discount	<u>(119,150.00)</u>
<i>Total Sources</i>	\$13,169,638.45

#### USES

Deposit into Costs of Issuance Fund (1)	\$405,724.16
Deposit into Reserve Fund	801,828.76
Deposit into Escrow Fund	<u>11,962,085.53</u>
<i>Total Uses</i>	\$13,169,638.45

- 
- (1) Includes, among other things, the fees and expenses of Bond Counsel, Disclosure Counsel and Financial Advisor, the premium for the Financial Guaranty Insurance Policy, the cost of printing the Preliminary and final Official Statements, and fees and expenses of the Fiscal Agent.
-

## THE 2007 BONDS

### General Bond Terms

**Dated Date, Maturity and Authorized Denominations.** The 2007 Bonds will be dated the date of their delivery and will mature in the amounts and on the dates set forth on the inside cover page of this Official Statement. The 2007 Bonds will be issued in fully registered form in denominations of \$5,000 each or any integral multiple of \$5,000 (not exceeding the principal amount of 2007 Bonds maturing at any one time).

**Interest.** The 2007 Bonds will bear interest at the rates set forth on the inside cover page of this Official Statement. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. Each 2007 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof unless (i) it is authenticated on an Interest Payment Date, in which event it shall bear interest from such date of authentication, or (ii) it is authenticated prior to an Interest Payment Date and after the close of business on the Record Date preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (iii) it is authenticated on or before the Record Date preceding the first Interest Payment Date, in which event it shall bear interest from the Dated Date; provided, however, that if at the time of authentication of a 2007 Bond, interest is in default thereon, the 2007 Bond will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

**Payments of Interest and Principal.** Interest is payable on March 1, 2008 and each September 1 and March 1 thereafter. Principal of and interest on the 2007 Bonds (including the final interest payment upon maturity or earlier redemption), is payable by check of the Fiscal Agent mailed by first class mail to the registered Owner thereof at such registered Owner's address as it appears on the registration books maintained by the Fiscal Agent at the close of business on the Record Date preceding the Interest Payment Date, or by wire transfer made on such Interest Payment Date upon written instructions of any Owner of \$1,000,000 or more in aggregate principal amount of 2007 Bonds delivered to the Fiscal Agent prior to the applicable Record Date, which instructions shall continue in effect until revoked in writing, or until such 2007 Bonds are transferred to a new Owner. The principal of the 2007 Bonds and any premium on the 2007 Bonds are payable in lawful money of the United States of America upon surrender of the 2007 Bonds at the Principal Office of the Fiscal Agent.

*However, so long as the 2007 Bonds are registered in the name of Cede & Co. (DTC's partnership nominee), as described below and in Appendix D, payment of interest on and principal of and redemption premiums, if any, on the 2007 Bonds, will be made through the facilities of DTC. See Appendix D.*

**DTC and Book-Entry Only System.** DTC will act as securities depository for the 2007 Bonds. The 2007 Bonds will be issued as fully-registered securities registered initially in the name of Cede & Co. (DTC's partnership nominee). See "APPENDIX D – DTC and the Book-Entry Only System."

### Authority for Issuance

**Community Facilities District Proceedings.** The 2007 Bonds are issued pursuant to the Act and the Fiscal Agent Agreement. In addition, as required by the Act, the City Council

has taken the following actions with respect to establishing the Community Facilities District and authorizing issuance of the 2007 Bonds:

*Resolution of Intention:* On March 26, 2002, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Novato of Intention to Establish a Community Facilities District" and a resolution entitled "A Resolution of the City Council of the City of Novato of Intention to Incur Bonded Indebtedness" (collectively, the "**Resolution of Intention**"), stating its intention to form the Community Facilities District, to authorize the levy of a special tax and to incur bonded indebtedness in an amount not to exceed \$14,000,000 within the Community Facilities District for the purpose of financing certain public improvements (collectively, the "**Facilities**") and certain services (the "**Services**"). (See "FACILITIES TO BE FINANCED WITH PROCEEDS OF THE BONDS.")

*Resolution of Formation:* Subsequent to a noticed public hearing on May 28, 2002, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Novato of Formation of Community Facilities District" (the "**Resolution of Formation**") which established the Community Facilities District and authorized the levy of a special tax within the Community Facilities District.

*Resolution of Necessity:* On May 28, 2002, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Novato Determining Necessity to Incur Bonded Indebtedness," which determined the necessity to incur bonded indebtedness in an amount not to exceed \$14,000,000 within the Community Facilities District and called an election on that proposition.

*Resolution Calling Election:* On May 28, 2002, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Novato Calling Election," pursuant to which it called an election for May 28, 2002, on the issues of the levy of the Special Tax, the incurring of bonded indebtedness and the establishment of an appropriations limit.

*Landowner Election and Declaration of Results:* On May 28, 2002, an election was held within the Community Facilities District in which the landowners eligible to vote, being the qualified electors within the Community Facilities District, approved a ballot proposition by a 100% "yes" vote authorizing the issuance of up to \$14,000,000 in bonds to finance the acquisition and construction of the Facilities, the levy of a special tax and the establishment of an appropriations limit for the Community Facilities District. On May 28, 2002, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Novato Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien," pursuant to which the City Council approved the canvass of the votes and declared the Community Facilities District to be fully formed with the authority to levy the Special Taxes, to incur the bonded indebtedness and to have the established appropriations limit. A Notice of Special Tax Lien has been recorded in the real property records of Marin County.

*Ordinance Levying Special Taxes:* On May 28, 2002, the City Council introduced for adoption an ordinance entitled “An Ordinance of the City Council of the City of Novato Levying Special Taxes Within Community Facilities District No. 2002-1 (Pointe Marin) of the City of Novato” (the “**Ordinance**”).

*Resolution Authorizing Issuance of the 2007 Bonds:* On July 10, 2007, the City Council adopted a resolution approving issuance of the 2007 Bonds.

**City’s Goals and Policies.** As required by the Act, the City adopted goals and policies for community facilities districts by Resolution 34-02 adopted on March 26, 2002

**Redemption**

**Optional Redemption.** The 2007 Bonds maturing on and after September 1, 2017 are subject to redemption prior to their stated maturities, on any Interest Payment Date on and after September 1, 2016, in whole or in part, at a redemption price (expressed as a percentage of the principal amount of the 2007 Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

<u>Redemption Date</u>	<u>Redemption Price</u>
On September 1, 2016 and March 1, 2017	101%
On September 1, 2017 and thereafter	100%

**Mandatory Sinking Fund Redemption.** The 2007 Bonds do not include any term bonds.

**Redemption from Special Tax Prepayments.** Special Tax Prepayments and any corresponding transfers from the Reserve Fund pursuant to Fiscal Agent Agreement shall be used to redeem the 2007 Bonds on the next Interest Payment Date for which notice of redemption can timely be given under the Fiscal Agent Agreement, among maturities so as to maintain substantially the same debt service profile for the 2007 Bonds as in effect prior to such redemption and by lot within a maturity, at a redemption price (expressed as a percentage of the principal amount of the 2007 Bonds to be redeemed), as set forth below, together with accrued interest to the date fixed for redemption:

<u>Redemption Date</u>	<u>Redemption Price</u>
On or before August 31, 2016	102%
On September 1, 2016 and March 1, 2017	101
On or after September 1, 2017	100

**Purchase of Bonds in Lieu of Redemption.** In lieu of redemption under the Fiscal Agent Agreement, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2007 Bonds.

**Notice of Redemption.** The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, at least 30 days but not more than 60 days prior to the date fixed for redemption, to the Securities Depositories, to one or more Information Services, and to the respective registered Owners of any of the 2007 Bonds designated for redemption, at their addresses appearing on the 2007 Bond registration books in the Principal Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such 2007 Bonds.

**Effect of Redemption.** From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, 2007 Bonds called for redemption have been deposited in the Bond Fund, such 2007 Bonds will cease to be entitled to any benefit under the Fiscal Agent Agreement other than the right to receive payment of the redemption price, and no interest will accrue on or after the redemption date specified in the notice of redemption.

### **No Parity Bonds**

The City is not authorized under the Fiscal Agent Agreement to issue additional obligations secured by a pledge of Special Tax Revenues on a parity with the 2007 Bonds other than refunding bonds issued under the Act.

### **Registration, Transfer and Exchange**

The provisions for the registration, transfer and exchange of the 2007 Bonds set forth in the Fiscal Agent Agreement are summarized in "APPENDIX C – Summary of the Fiscal Agent Agreement."

*The provisions of the Fiscal Agent Agreement regarding the exchange and transfer of the 2007 Bonds apply only during any period in which the 2007 Bonds are not subject to DTC's book-entry system. While the 2007 Bonds are subject to DTC's book-entry system, their exchange and transfer will be effected through DTC and the Participants and will be subject to the procedures, rules and requirements established by DTC. See "APPENDIX D – DTC and the Book-Entry Only System."*

## Debt Service Schedule

The following table presents the annual debt service on the 2007 Bonds (including sinking fund redemptions), assuming there are no optional redemptions or redemptions from Special Tax prepayments.

<u>Year Ending September 1</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Debt Service</u>
2008	\$255,000.00	\$546,252.01	\$801,252.01
2009	295,000.00	503,186.26	798,186.26
2010	305,000.00	492,566.26	797,566.26
2011	320,000.00	480,366.26	800,366.26
2012	330,000.00	467,566.26	797,566.26
2013	340,000.00	454,366.26	794,366.26
2014	355,000.00	440,766.26	795,766.26
2015	370,000.00	426,566.26	796,566.26
2016	390,000.00	411,766.26	801,766.26
2017	400,000.00	396,166.26	796,166.26
2018	415,000.00	380,166.26	795,166.26
2019	435,000.00	363,566.26	798,566.26
2020	455,000.00	346,166.26	801,166.26
2021	475,000.00	326,828.76	801,828.76
2022	490,000.00	306,641.26	796,641.26
2023	510,000.00	285,571.26	795,571.26
2024	535,000.00	263,896.26	798,896.26
2025	555,000.00	240,490.00	795,490.00
2026	585,000.00	215,515.00	800,515.00
2027	610,000.00	189,190.00	799,190.00
2028	635,000.00	161,740.00	796,740.00
2029	665,000.00	133,165.00	798,165.00
2030	695,000.00	102,408.76	797,408.76
2031	730,000.00	70,265.00	800,265.00
2032	<u>765,000.00</u>	<u>35,955.00</u>	<u>800,955.00</u>
<b>Total</b>	\$11,915,000.00	\$8,041,133.43	\$19,956,133.43

## SECURITY FOR THE 2007 BONDS

### Pledge of Special Tax Revenues

**General.** The 2007 Bonds are payable from and secured by (i) “**Special Tax Revenues**”, which are defined in the Fiscal Agent Agreement as the proceeds of the Special Taxes received by the City, including any scheduled payments and any prepayments thereof, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien and interest thereon, but shall not include any interest in excess of the interest due on the 2007 Bonds or any penalties collected in connection with any such foreclosure, (ii) all moneys deposited in the Bond Fund (including the Special Tax Prepayments Account), (iii) the Reserve Fund, and (iv) the Special Tax Fund. The City’s pledge of Special Tax Revenues under the Fiscal Agent Agreement is a first lien for the benefit of the 2007 Bonds and any Parity Bonds.

**Special Taxes.** The Fiscal Agent Agreement defines the “**Special Tax**” as the special taxes levied by the City Council within the Community Facilities District under the Act, the Ordinance and the Fiscal Agent Agreement.

**Limited Obligation.** NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY, THE COUNTY OF MARIN, THE STATE OF CALIFORNIA, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE 2007 BONDS. THE 2007 BONDS ARE NOT GENERAL OBLIGATIONS OF THE CITY BUT ARE LIMITED OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE SPECIAL TAX REVENUES AND OTHER SOURCES DESCRIBED IN THE FISCAL AGENT AGREEMENT.

### Collection of Special Taxes

**Levy of the Special Tax.** The City Council will levy the Special Tax against property within the Community Facilities District on an annual basis according to the Rate and Method set forth in Appendix B. See “Rate and Method” below.

**Reductions in the Special Tax.** The Act prohibits the City Council from adopting a resolution to initiate proceedings to reduce the rate of the Special Tax or terminate the levy of the Special Tax unless the City Council determines that the reduction or termination of the Special Tax “would not interfere with the timely retirement” of outstanding 2007 Bonds secured by the Special Tax.

**Manner of Collection.** The Special Tax will be collected in the manner and at the same time as ad valorem property taxes are collected by the County and, except as described below under the caption “Delinquent Payments of Special Tax: Covenant for Foreclosure,” will be subject to the same penalties and the same procedures, sale and lien priority in the case of delinquency as is provided for ad valorem property taxes.

For so long as the Community Facilities District is included in the County’s Teeter Plan, the City’s receipt of special taxes will reflect the full levy of the Special Tax, regardless of delinquencies. See “- Alternative Method of Tax Apportionment (Teeter Plan)” below.

Taxes are levied by the County for each fiscal year on taxable real property that is situated in the County as of the preceding January 1. For collection purposes, property is

classified either as “secured” or “unsecured” and is listed accordingly on separate parts of the assessment roll. The “secured roll” is that part of the assessment roll containing State-assessed public utilities property and real property having a tax lien that is sufficient, in the opinion of the County Assessor, to secure payment of the taxes. Other property is assessed and collected on the “unsecured roll.”

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year. If unpaid, such taxes become delinquent on December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. Property on the secured roll with respect to which taxes are delinquent become tax defaulted on June 30 of the fiscal year, and such property may thereafter be redeemed by payment of a penalty of 1.5% per month to the date of redemption, together with the defaulted taxes, the delinquency penalty, costs, and a redemption fee. If taxes are unpaid for a period of five years or more, the property is subject to auction sale by the County.

If the County Assessor determines that the total property taxes assessed against a given parcel exceed the value of that parcel and, therefore, the tax lien against the parcel is *not* sufficient to secure payment of property taxes owed, the parcel will be transferred to the unsecured roll for assessment and collection. Property taxes on the unsecured roll are due as of the lien date and become delinquent, if unpaid, on August 31. Certain penalties attach to delinquent unsecured taxes in accordance with the California Revenue and Taxation Code.

***Special Tax is not a Personal Obligation.*** Although the Special Tax will constitute a lien on property subject to taxation within the Community Facilities District, it does not constitute a personal indebtedness of the owners of such property. There is no assurance that the owners will be financially able to pay the annual Special Tax or that they will pay such tax even if financially able to do so. The risk of the property owners not paying the annual Special Tax is more fully described in “BONDOWNERS’ RISKS – Levy and Collection of the Special Tax.”

*Because the Special Tax levy is limited to the maximum Special Tax rates set forth in the Rate and Method, no assurance can be given that, in the event of Special Tax delinquencies, the receipts of Special Taxes will, in fact, be collected in sufficient amounts in any given year to pay debt service on the 2007 Bonds.*

## **Alternative Method of Tax Apportionment (Teeter Plan)**

**Teeter Plan.** In June 1993, the Board of Supervisors of the County approved the implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the “**Teeter Plan**”), as provided for in Section 4701 et seq. of the California Revenue and Taxation Code.

Under the Teeter Plan, the County apportions secured property taxes on an accrual basis (irrespective of actual collections) to local political subdivisions for which the County acts as the tax-levying or tax-collecting agency. The Teeter plan was effective for Fiscal Year commencing July 1, 1993, and pursuant to the Teeter Plan the County purchased all delinquent receivables (comprising delinquent taxes, penalties, and interest) that had accrued as of June 30, 1993, from local taxing entities and selected special assessment districts and community facilities districts.

Under the Teeter Plan, the County distributes tax collections on a cash basis to taxing entities during the fiscal year and at year-end distributes 100% of any taxes delinquent as of June 30th to the respective taxing entities and those special assessment districts and community facilities districts (and individual parcels within each district) that the County determines are eligible to participate in the Teeter Plan. The County may make such eligibility determinations on an annual basis, and may exclude a district or individual parcel that had previously been included in the plan. The County has the discretion to determine which delinquent assessments will be paid through the Teeter Plan on a case-by-case basis.

**Certain Risks Associated with Teeter Plan.** The current practice of the County under the Teeter Plan is to pay the City 100% of the gross special taxes payable annually to the City and to retain any penalties or delinquencies collected to offset such gross payment. *There can be no assurances that the County will continue this practice in the future, or that the County will not discontinue the Teeter Plan or remove the City or the Special Taxes from the Teeter Plan in the future.*

*If the County determines that delinquent Special Taxes are not eligible for the Teeter Plan, the City retains the authority to collect such delinquencies by way of informal collection efforts and judicial foreclosure actions, as described below.*

In addition, the City could be required to make payments from the Reserve Fund in the following circumstances: (a) if the City initiates foreclosure proceedings against a delinquent parcel of Taxable Property in the Community Facilities District, in order to pursue foreclosure the City must transfer to the County an amount equal to one or more installments of the delinquent Special Tax (thereby creating a debt on which the City can foreclose); the City will make this transfer from the Reserve Fund; and (b) if the County conducts a tax sale against a delinquent parcel of Taxable Property in the Community Facilities District, and the sale proceeds realized by the County are insufficient to fully satisfy the parcel's delinquency attributable to Special Taxes, the County may request that the City pay the deficiency; however, the City is obligated to pay such deficiency only from (and to the extent of) the Reserve Fund.

## Rate and Method

**General.** The Special Tax is levied and collected according to the rate and method of apportionment set forth in "APPENDIX B - Rate and Method of Apportionment of Special Tax" (the "**Rate and Method**"). Capitalized terms used in the following paragraphs but not defined herein have the meanings given them in the Rate and Method.

The Rate and Method provides for the levy of a Special Tax on Taxable Parcels in the Community Facilities District to pay debt service on the Bonds, administrative expenses, the cost of replenishing reserve funds and making up deficits caused by delinquencies in the payment of the Special Tax (provided, however, that the City may not include in the Special Tax calculation a provision for delinquencies in excess of 10%) and "Maintenance Expenses" (annual expenses for the maintenance of parks, parkways and open space).

The Rate and Method provides the basis on which the City Council may annually levy the Special Taxes on Taxable Parcels in the Community Facilities District up to the Maximum Special Tax Rate to pay debt service on the 2007 Bonds, administrative expenses, the cost of replenishing reserve funds and making up deficits caused by delinquencies in the payment of the Special Tax (provided, however, that the City may not include in the Special Tax calculation a provision for delinquencies in excess of 10%) and "Maintenance Expenses" (annual expenses for the maintenance of parks, parkways and open space). Special Taxes applicable to each Taxable Parcel have been levied and collected according to the tax liability determined by the City through the application of the procedures described in the Rate and Method since Fiscal Year 2002-03.

Prior to July 1 of each Fiscal Year, the City Manager shall cause to be prepared a Special Tax Report setting forth: 1) the classification as of the Classification Date applicable for such Fiscal Year of each Parcel within the boundaries of the Community Facilities District, 2) a budget showing a projected sources and uses of funds for the Community Facilities District in such Fiscal Year and demonstrating that projected Annual Tax Revenues will be sufficient to pay projected Annual Costs, 3) the Annual Special Tax Rate necessary to satisfy Annual Costs applicable to each Dwelling Unit for such Fiscal Year, 4) the amount of Special Taxes to be levied on each Taxable Parcel for such Fiscal Year, and 5) a Special Tax Collection Schedule. "Annual Costs" are defined to include "Maintenance Expenses" and the amount necessary to pay debt service.

All parcels in the Community Facilities District are classified as Taxable Parcels or Tax-Exempt Parcels. Each Dwelling Unit shall be assigned to a Tax Rate Category according to the Approved Dwelling Unit Size for each such Dwelling Unit in accordance with the following table. An Annual Special Tax Rate shall be calculated for each Dwelling Unit; provided, however, the Annual Special Tax Rate shall not exceed the applicable maximum annual Special Tax as shown in the following table. The maximum annual Special Tax Rate shall increase at a rate of 0.3% per year, compounded, until the Fiscal Year ending June 30, 2042 (which is ten years after all of the Special Taxes necessary to pay the 2007 Bonds in full shall have been collected if collected on a timely basis) after which time the maximum annual Special Tax Rate shall be reduced as shown in the following table and shall thereafter increase at a rate of 2% per year, compounded.

**Table 1**

**Maximum Annual Special Tax Rates**

	Tax Rate Category Applicable to an Approved Dwelling Unit Size in Square Feet <sup>(1)</sup>	Anticipated Number of Approved Dwelling Units <sup>(2)</sup>	Base Year Maximum Annual Special Tax FY 2002-03	Compounded Rate of Increase until FY 2041-42	Maximum Annual Special Tax FY 2042-43	Compounded Rate of Increase in Perpetuity
1.	1,900 – and under	0	\$2,180	0.30%	\$524.18	2%
2.	1,901 – 2,200	78	2,220	0.30	533.79	2
3.	2,201 – 2,500	67	2,460	0.30	591.50	2
4.	2,501 – 2,900	42	2,600	0.30	625.16	2
5.	2,901 – 3,100	35	2,960	0.30	711.72	2
6.	3,101 – 3,300	15	3,060	0.30	735.77	2
7.	3,301 – 3,500	35	3,140	0.30	755.00	2
8.	3,501 – 3,700	0	3,440	0.30	827.14	2
9.	3,701 – 3,900	26	3,500	0.30	841.57	2
10.	3,901 – 4,200	24	3,640	0.30	875.23	2
11.	4,201 – and up	<u>20</u>	3,700	0.30	889.66	2
	Total	342				

(1) Excludes square footage of garages.

(2) There were originally 344 planned units in the Community Facilities District. However, three planned lots were combined into one Taxable Parcel in fiscal year 2003-04.

Source: *Economic & Planning Systems, Inc.*

The following table sets forth the maximum annual Special Tax that may be collected in each year, based on the number of Approved Dwelling Units in each Tax Rate Category (as set forth in the previous table), the scheduled debt service on the 2007 Bonds and the resulting debt service coverage.

**Table 2**

**Maximum Special Tax Coverage**

<b><u>Year</u></b>	<b><u>Maximum Annual Special Tax (Fiscal Year Ending June 30)</u></b>	<b><u>Debt Service (Year Ending September 1)</u></b>	<b><u>Coverage</u></b>
2008	\$972,842.12	\$801,252.01	121.42%
2009	975,760.64	798,186.26	122.25
2010	978,687.93	797,566.26	122.71
2011	981,623.99	800,366.26	122.65
2012	984,568.86	797,566.26	123.45
2013	987,522.57	794,366.26	124.32
2014	990,485.14	795,766.26	124.47
2015	993,456.59	796,566.26	124.72
2016	996,436.96	801,766.26	124.28
2017	999,426.27	796,166.26	125.53
2018	1,002,424.55	795,166.26	126.06
2019	1,005,431.82	798,566.26	125.90
2020	1,008,448.12	801,166.26	125.87
2021	1,011,473.46	801,828.76	126.15
2022	1,014,507.88	796,641.26	127.35
2023	1,017,551.41	795,571.26	127.90
2024	1,020,604.06	798,896.26	127.75
2025	1,023,665.87	795,490.00	128.68
2026	1,026,736.87	800,515.00	128.26
2027	1,029,817.08	799,190.00	128.86
2028	1,032,906.53	796,740.00	129.64
2029	1,036,005.25	798,165.00	129.80
2030	1,039,113.27	797,408.76	130.31
2031	1,042,230.61	800,265.00	130.24
2032	1,045,357.30	<u>800,955.00</u>	130.51

Source: Economic & Planning Systems, Inc.

The preceding discussion of the Rate and Method is only a summary, does not purport to be complete and is qualified by more complete and detailed information contained in Appendix B.

**Covenant to Foreclose**

***Sale of Property for Nonpayment of Taxes.*** The Fiscal Agent Agreement provides that the Special Tax is to be collected in the same manner as ordinary ad valorem property taxes are collected and, except as provided in the special covenant for foreclosure described below and in the Act, is to be subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for ad valorem property taxes. Under these procedures, if taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

**Foreclosure Under the Act.** Under Section 53356.1 of the Act, if any delinquency occurs in the payment of the Special Tax, the City may order the institution of a Superior Court action to foreclose the lien therefore within specified time limits. In such an action, the real property subject to the unpaid amount may be sold at judicial foreclosure sale.

The City has agreed in the Fiscal Agent Agreement that, on or about March 30 and June 30 of each Fiscal Year, the City's chief financial officer (defined as the "**Director of Finance**" in the Fiscal Agent Agreement) will compare the amount of Special Taxes levied in the Communities Facilities District to the amount of Special Tax Revenues received by the City, and:

**(A) Individual Delinquencies.** If the Director of Finance determines that any single parcel subject to the Special Tax in the Community Facilities District is delinquent in the payment of Special Taxes in the aggregate amount of \$3,000 or more, then the Director of Finance will send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 90 days of such determination. Notwithstanding the foregoing, in its sole discretion, the Director of Finance may defer such action if the amount in the Reserve Fund is at least equal to the Reserve Requirement.

**(B) Aggregate Delinquencies.** If the Director of Finance determines that (i) the total amount of delinquent Special Tax for the prior Fiscal Year for the entire Community Facilities District, (including the total of delinquencies under subsection (A) above), exceeds 5% of the total Special Tax due and payable for the prior Fiscal Year, or (ii) there are 10 or fewer owners of real property within the Community Facilities District, determined by reference to the latest available secured property tax roll of the County, the Director of Finance will notify or cause to be notified property owners who are then delinquent in the payment of Special Taxes (and demand immediate payment of the delinquency) within 45 days of such determination, and will commence foreclosure proceedings within 90 days of such determination against each parcel of land in the Community Facilities District with a Special Tax delinquency.

Notwithstanding the foregoing, the Director of Finance may defer any such actions with respect to a delinquent parcel if (1) the Community Facilities District is then participating in the Teeter Plan or an equivalent procedure, (2) the amount in the Reserve Fund is at least equal to the Reserve Requirement and (3) the subject parcel is not delinquent with respect to more than \$5,000 of Special Taxes.

**Sufficiency of Foreclosure Sale Proceeds; Foreclosure Limitations and Delays.** No assurances can be given that the real property subject to a judicial foreclosure sale will be sold or, if sold, that the proceeds of sale will be sufficient to pay any delinquent Special Tax installment. Subject to the maximum rates, the Special Tax Formula is designed to generate from all non-exempt property within the Community Facilities District the current year's debt service, administrative expenses, and replenishment of the Reserve Fund to the Reserve Requirement, including an amount equal to the prior year's delinquencies. However, if foreclosure proceedings are necessary, and the Reserve Fund has been depleted, there could be a delay in payments to Bondowners pending prosecution of the foreclosure proceedings and receipt by the City of the proceeds of the foreclosure sale.

The Act does not require the City to purchase or otherwise acquire any lot or parcel of property foreclosed upon if there is no other purchaser at such sale.

Section 53356.6 of the Act requires that property sold pursuant to foreclosure under the Act be sold for not less than the amount of judgment in the foreclosure action, plus post-judgment interest and authorized costs, unless the consent of the owners of 75% of the outstanding Bonds is obtained. However, under Section 53356.6 of the Mello-Roos Law, the City, as judgment creditor, is entitled to purchase any property sold at foreclosure using a “credit bid,” where the City could submit a bid crediting all or part of the amount required to satisfy the judgment for the delinquent amount of the Special Tax. If the City becomes the purchaser under a credit bid, the City must pay the amount of its credit bid into the redemption fund established for the 2007 Bonds, but this payment may be made up to 24 months after the date of the foreclosure sale.

Foreclosure by court action is subject to normal litigation delays, the nature and extent of which are largely dependent on the nature of the defense, if any, put forth by the debtor and the Superior Court calendar. In addition, the ability of the City to foreclose the lien of delinquent unpaid Special Taxes may be limited in certain instances and may require prior consent of the property owner if the property is owned by or in receivership of the Federal Deposit Insurance Corporation (the “**FDIC**”). See “**BOND OWNERS' RISKS - Bankruptcy and Foreclosure Delays.**”

### **Priority of Lien**

The Act specifies that the Special Tax will have the same lien priority as ad valorem property taxes in the case of delinquency but does not further specify the priority relationship, if any, between the Special Tax and other special taxes and ad valorem taxes on a taxed parcel. The City (and other jurisdictions) may levy additional special taxes or assessments to finance other infrastructure needed for the related area. See “**THE COMMUNITY FACILITIES DISTRICT – Direct and Overlapping Governmental Obligations**” for a description of current and anticipated overlapping liens affecting the property in the Community Facilities District.

If foreclosure proceedings were ever instituted, any holder of a mortgage or deed of trust on the affected property could, but would not be required to, advance the amount of the delinquent Special Tax payment to protect its security interest.

### **Special Tax Fund**

Under the Fiscal Agent Agreement, all proceeds of the annual Special Tax are to be deposited in the Special Tax Fund, which has been established under the Fiscal Agent Agreement and is held and maintained in trust by the Director of Finance. The City agrees in the Fiscal Agent Agreement to deposit all proceeds of the Special Tax (excluding any (i) prepayments, which are deposited in the Special Tax Prepayments Account; or (ii) collection of delinquencies, which, to the extent needed, are deposited in the Bond Fund or the Reserve Fund or retained in the Special Tax Fund; when and as received, in the Special Tax Fund).

No later than four Business Days prior to each Interest Payment Date, the Director of Finance shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority:

- first to the Fiscal Agent for deposit in the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Improvement Fund, the Reserve Fund and the Special Tax Prepayments Account to the Bond Fund, such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the 2007 Bonds on such Interest Payment Date and any past due principal or interest on the 2007 Bonds not theretofore paid,

- then to the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, such that the amount in the Reserve Fund is equal to the Reserve Requirement.

After the deposits described above have been made with respect to each September 1 Interest Payment Date, the Director of Finance will transfer any remaining amounts to the Administrative Expense Fund and the Services Fund (the Services Fund is established by the Fiscal Agent Agreement and held by the Director of Finance to pay for authorized services in the Community Facilities District).

### **Reserve Fund**

**General.** Under the Fiscal Agent Agreement, a Reserve Fund will be established at the time of issuance of the 2007 Bonds. The Fiscal Agent is obligated to maintain the Reserve Fund in an amount equal to the Reserve Requirement for the 2007 Bonds and any Parity Bonds.

The “**Reserve Requirement**” is an amount equal to the least of:

- (i) the Maximum Annual Debt Service on the 2007 Bonds and any Parity Bonds outstanding, or

- (ii) 125% of Average Annual Debt Service on the 2007 Bonds and any Parity Bonds outstanding, or

- (iii) 10% of the original principal amount of the 2007 Bonds and any Parity Bonds outstanding.

The proceeds of the sale of the 2007 Bonds will fund a deposit in the Reserve Fund in an amount equal to the Reserve Requirement.

**Use of Reserve Fund.** All amounts deposited in the Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the 2007 Bonds and any Parity Bonds or for the purpose of redeeming 2007 Bonds from the Bond Fund.

See “APPENDIX C – Summary of the Fiscal Agent Agreement” for a description of the timing, purpose and manner of disbursements from the Reserve Fund.

## **Investment of Moneys in Funds**

All money held by the Director of Finance or the Fiscal Agent in the funds established by the Fiscal Agent Agreement will be deposited by the Director of Finance or the Fiscal Agent, as applicable, in such investments as required by the Fiscal Agent Agreement. See “APPENDIX C – Summary of the Fiscal Agent Agreement” for a further description of the investment of fund established under the Fiscal Agent Agreement.

## BOND INSURANCE

*The full text of a specimen financial guaranty insurance policy is set forth in Appendix G hereto.*

*The information relating to the Bond Insurer contained below and in Appendix G has been furnished by the Bond Insurer. No representation is made in this Official Statement by the City as to the accuracy or the adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date of this Official Statement.*

*The Bond Insurer accepts no responsibility for the accuracy or completeness of this Official Statement or any other information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding the Bond Insurer and its affiliates set forth under this heading. In addition, the Bond Insurer makes no representation regarding the 2007 Bonds or the advisability of investing in the 2007 Bonds.*

### General

XL Capital Assurance Inc. (the “**Bond Insurer**” or “**XLCA**”) is a monoline financial guaranty insurance company incorporated under the laws of the State of New York. The Bond Insurer is currently licensed to do insurance business in, and is subject to the insurance regulation and supervision by, all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Singapore.

The Bond Insurer is an indirect wholly owned subsidiary of Security Capital Assurance Ltd (“**SCA**”), a company organized under the laws of Bermuda. Through its subsidiaries, SCA provides credit enhancement and protection products to the public finance and structured finance markets throughout the United States and internationally. XL Capital Ltd currently beneficially owns approximately 47.5% of SCA’s outstanding shares.

The common shares of SCA are publicly traded in the United States and listed on the New York Stock Exchange (NYSE: SCA). SCA is not obligated to pay the debts of or claims against the Bond Insurer.

### Financial Strength and Financial Enhancement Ratings of XLCA

The Bond Insurer’s insurance financial strength is rated “Aaa” by Moody’s and “AAA” by Standard & Poor’s and Fitch, Inc. (“**Fitch**”). In addition, the Bond Insurer has obtained a financial enhancement rating of “AAA” from Standard & Poor’s. These ratings reflect Moody’s, Standard & Poor’s and Fitch’s current assessment of the Bond Insurer’s creditworthiness and claims-paying ability as well as the reinsurance arrangement with XL Financial Assurance Ltd. (“**XLFA**”) described under “Reinsurance” below.

The above ratings are not recommendations to buy, sell or hold securities, including the 2007 Bonds and are subject to revision or withdrawal at any time by Moody’s, Standard & Poor’s or Fitch. Any downward revision or withdrawal of these ratings may have an adverse effect on the market price of the 2007 Bonds. The Bond Insurer does not guaranty the market price of the 2007 Bonds nor does it guaranty that the ratings on the 2007 Bonds will not be revised or withdrawn.

## Reinsurance

The Bond Insurer has entered into a facultative quota share reinsurance agreement with XLFA, an insurance company organized under the laws of Bermuda, and an affiliate of the Bond Insurer. Pursuant to this reinsurance agreement, the Bond Insurer expects to cede up to 75% of its business to XLFA. The Bond Insurer may also cede reinsurance to third parties on a transaction-specific basis, which cessions may be any or a combination of quota share, first loss or excess of loss. Such reinsurance is used by the Bond Insurer as a risk management device and to comply with statutory and rating agency requirements and does not alter or limit the Bond Insurer's obligations under any financial guaranty insurance policy. With respect to any transaction insured by XLCA, the percentage of risk ceded to XLFA may be less than 75% depending on certain factors including, without limitation, whether XLCA has obtained third party reinsurance covering the risk. As a result, there can be no assurance as to the percentage reinsured by XLFA of any given financial guaranty insurance policy issued by XLCA, including the Policy.

Based on the audited financial statements of XLFA, as of December 31, 2006, XLFA had total assets, liabilities, redeemable preferred shares and shareholders' equity of \$2,007,395,000, \$874,028,000, \$54,016,000 and \$1,079,351,000, respectively, determined in accordance with generally accepted accounting principles in the United States ("**US GAAP**"). XLFA's insurance financial strength is rated "Aaa" by Moody's and "AAA" by S&P and Fitch Inc. In addition, XLFA has obtained a financial enhancement rating of "AAA" from S&P.

The ratings of XLFA or any other member of the SCA group of companies are not recommendations to buy, sell or hold securities, including the 2007 Bonds and are subject to revision or withdrawal at any time by Moody's, Standard & Poor's or Fitch.

Notwithstanding the capital support provided to the Bond Insurer described in this section, the owners of the 2007 Bonds will have direct recourse against the Bond Insurer only, and XLFA will not be directly liable to the owners of the 2007 Bonds.

## Capitalization of the Bond Insurer

Based on the audited financial statements of XLCA, as of December 31, 2006, XLCA had total assets, liabilities, and shareholder's equity of \$1,224,735,000, \$974,230,000, and \$250,505,000, respectively, determined in accordance with U.S. GAAP.

Based on the unaudited statutory financial statements for XLCA as of December 31, 2006 filed with the State of New York Insurance Department, XLCA has total admitted assets of \$429,073,000, total liabilities of \$222,060,000, total capital and surplus of \$207,013,000 and total contingency reserves of \$20,876,000 determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities ("**SAP**").

Based on the audited statutory financial statements for XLCA as of December 31, 2005 filed with the State of New York Insurance Department, XLCA has total admitted assets of \$328,231,000, total liabilities of \$139,392,000, total capital and surplus of \$188,839,000 and total contingency reserves of \$13,031,000 determined in accordance with SAP.

## **Incorporation by Reference of Financials**

For further information concerning XLCA and XLFA, see the financial statements of XLCA and XLFA, and the notes thereto, incorporated by reference in this Official Statement. The financial statements of XLCA and XLFA are included as exhibits to the periodic reports filed with the Securities and Exchange Commission (the “**Commission**”) by SCA and may be reviewed at the EDGAR website maintained by the Commission. All financial statements of XLCA and XLFA included in, or as exhibits to, documents filed by SCA pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 on or prior to the date of this Official Statement, or after the date of this Official Statement but prior to termination of the offering of the 2007 Bonds, shall be deemed incorporated by reference in this Official Statement. Except for the financial statements of XLCA and XLFA, no other information contained in the reports filed with the Commission by SCA is incorporated by reference. Copies of the statutory quarterly and annual statements filed with the State of New York Insurance Department by XLCA are available upon request to the State of New York Insurance Department.

## **Regulation of the Bond Insurer**

The Bond Insurer is regulated by the Superintendent of Insurance of the State of New York. In addition, the Bond Insurer is subject to regulation by the insurance laws and regulations of the other jurisdictions in which it is licensed. As a financial guaranty insurance company licensed in the State of New York, the Bond Insurer is subject to Article 69 of the New York Insurance Law, which, among other things, limits the business of each insurer to financial guaranty insurance and related lines, prescribes minimum standards of solvency, including minimum capital requirements, establishes contingency, loss and unearned premium reserve requirements, requires the maintenance of minimum surplus to policyholders and limits the aggregate amount of insurance which may be written and the maximum size of any single risk exposure which may be assumed. The Bond Insurer is also required to file detailed annual financial statements with the New York Insurance Department and similar supervisory agencies in each of the other jurisdictions in which it is licensed.

The extent of state insurance regulation and supervision varies by jurisdiction, but New York and most other jurisdictions have laws and regulations prescribing permitted investments and governing the payment of dividends, transactions with affiliates, mergers, consolidations, acquisitions or sales of assets and incurrence of liabilities for borrowings.

THE FINANCIAL GUARANTY INSURANCE POLICIES ISSUED BY THE BOND INSURER, INCLUDING THE INSURANCE POLICY, ARE NOT COVERED BY THE PROPERTY/CASUALTY INSURANCE SECURITY FUND SPECIFIED IN ARTICLE 76 OF THE NEW YORK INSURANCE LAW.

The principal executive offices of the Bond Insurer are located at 1221 Avenue of the Americas, New York, New York 10020 and its telephone number at this address is (212) 478-3400.

## THE COMMUNITY FACILITIES DISTRICT

### General

**Description and Location.** The Community Facilities District is located in the southern portion of the City, on a portion of the former Hamilton Army Air Force Field (“**Hamilton**”) that was previously used for Navy housing and related services and was previously known as Rafael Village. The Community Facilities District is surrounded by primarily existing residential uses and wooded hillsides and a golf course, and comprises an elongated development area along Ignacio Boulevard. The Community Facilities District contains approximately 103 gross acres with 342 single-family detached residential units developed on approximately 46.7 net acres.

Primary access to the property within the Community Facilities District is provided by US Highway 101 which serves as the main transportation corridor in Northern California. Highway 101 divides the City into an east-west orientation with commercial development focused along the highway corridor, residential and open space uses flanking the corridor adjacent to the Bay shoreline to the east, and within the foothills of the hilly and mountainous terrain to the west. The Community Facilities District is on the west side of Highway 101. Other transportation routes include State Highway 37 which joins Highway 101 in Novato and links the North Bay to the East Bay. Twelve miles south in San Rafael alternate East Bay access is provided by Highway I-580.

**Gross and Net Taxable Acres.** As indicated above, the Community Facilities District includes 103 gross acres, of which approximately 46.7 net acres are Taxable Property. The difference between the gross acreage and the combined net acreage is attributable to property that has been separately parcelized, developed and conveyed to the City, County, public agencies or homeowner associations as public roads, parks and open space parcels. This property is exempt from the Special Taxes.

### Existing Development

The Taxable Property in the Community Facilities District consists of homes in a residential subdivision comprised of four neighborhoods. The neighborhoods are completely built-out and all of the homes have been sold by the merchant builders. See “SECURITY FOR THE 2007 BONDS – Rate and Method – Table 1” for a description of the number of homes in each square footage-based Tax Rate Category.

### Assessed Property Values

**No Appraisal of Property in the Community Facilities District.** The City has not commissioned an appraisal of the Taxable Property in the Community Facilities District in connection with the issuance of the 2007 Bonds. Therefore, the valuation of the Taxable Property in the Community Facilities District for purposes of this Official Statement will be based on the County Assessor’s values.

**Assessed Valuation.** The valuation of real property in the City is established by the County Assessor. Assessed valuations are reported at 100% of the full value of the property, as defined in Article XIII A of the California Constitution. Article XIII A of the California Constitution defines “full cash value” as the appraised value as of March 1, 1975, plus adjustments not to exceed 2% per year to reflect inflation, and requires assessment of “full cash value” upon change of ownership or new construction.

Accordingly, the gross assessed valuation presented in this Official Statement may not necessarily be representative of the actual market value of certain property in the Community Facilities District.

**General Information Regarding Value-to-Burden Ratios.** The value-to-burden ratio on the bonds secured by special taxes will generally vary over the life of those bonds as a result of changes in the value of the property which is security for the special taxes and the principal amount of the bonds.

In comparing the aggregate assessed value of the real property within the Community Facilities District and the principal amount of the 2007 Bonds, it should be noted that only real property upon which there are delinquent Special Taxes can be foreclosed, and the real property within the Community Facilities District cannot be foreclosed upon as a whole to pay delinquent Special Taxes unless all of the real property within the Community Facilities District is subject to delinquent Special Taxes.

In any event, individual parcels may be foreclosed upon to pay delinquent installments of the Special Taxes levied against such parcels. The principal amount of the 2007 Bonds is not allocated pro-rata among the parcels within the Community Facilities District; rather, the total Special Taxes has been allocated among the parcels within the Community Facilities District according to the Rate and Method.

Economic and other factors beyond the property owners' control, such as economic recession, deflation of land values, financial difficulty or bankruptcy by one or more property owners, or the complete or partial destruction of Taxable Property caused by, among other possibilities, earthquake, flood, fire or other natural disaster, could cause a reduction in the assessed value within the Community Facilities District. See "BOND OWNERS' RISKS – Property Values."

### **Value-to-Debt Burden and Debt Service Coverage**

The aggregate value-to-debt burden of all Taxable Property in the Community Facilities District (342 single-family residential parcels), based on Fiscal Year 2006-07 assessed values (\$312,227,533), and the lien of the 2007 Bonds (\$11,915,000) on the date of issuance of the 2007 Bonds equals 26.2:1.

The following table sets forth the distribution of value-to-debt burden ratios of Taxable Property as of Fiscal Year 2006-07.

**Table 3**  
**COMMUNITY FACILITIES DISTRICT NO. 2002-1 (Pointe Marin)**  
**Value-to-Debt Burden Ratios for Taxable Property**  
**(For Fiscal Year 2006-07)**

<u>Value-to-Debt Burden Category</u>	<u>Parcel Count</u>	<u>Assessed Value</u>	<u>% of Total Value</u>	<u>Pro Rata Debt Burden</u> <sup>(1)</sup>	<u>% of Debt Burden</u>
More than 15:1	329	\$305,203,944	97.8%	\$11,375,421	95.5%
10:1 - 14.99:1 <sup>(2)</sup>	11	6,443,841	2.1	475,178	4.0
5:1 - 9.99:1 <sup>(2)</sup>	2	579,748	0.2	64,401	0.5
Less than 5:1	<u>0</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>
<b>Total</b>	<b>342</b>	<b>\$312,227,533</b>	<b>100.0%</b>	<b>\$11,915,000</b>	<b>100.0%</b>

(1) Reflects a debt burden of \$11,915,000 allocated based upon the pro rata share of the Special Tax levied in the Community Facilities District in fiscal year 2006-07 to pay Facility Expenses (as defined in the Rate and Method).

(2) The parcels in these categories were sold in 2006 and the County Assessor's records do not reflect the 2006 sales prices.  
Source: *Economic & Planning Systems, Inc.*

### Major Land Owners

There are 342 single-family residential parcels in the Community Facilities District; the parcels are owned by 339 owners. Three entities own two parcels each; each of these entities is responsible for less than 0.75% of the total special tax levy for fiscal year 2006-07.

## Delinquencies

The following table is a summary of Special Tax levies, collections and delinquency rates on Taxable Property in the Community Facilities District for fiscal years 2005-06 and 2006-07 (first installment) based on amounts levied and outstanding delinquencies as of June 15, 2007. The Community Facilities District participates in the Teeter Plan, which means the amount of Special Taxes received by the City is equal to the amount levied rather than the amount collected by the County. The County is unable to provide delinquency amounts for previous fiscal years. See "SECURITY FOR THE 2007 BONDS – Alternative Method of Tax Apportionment (Teeter Plan)."

**Table 4**  
**COMMUNITY FACILITIES DISTRICT NO. 2002-1 (Pointe Marin)**  
**Special Tax Levies, Collections and Delinquency Rates**  
**Fiscal Years 2005-06 and 2006-07 (First Installment)**  
**(as of June 15, 2007)**

Fiscal Year	Total Special Tax Levied	Dollars Delinquent	Percent Delinquent
2005-06 <sup>(1)</sup>	\$967,596.31	\$1,120.02	0.12%
2006-07 <sup>(2)</sup>	969,932.32 <sup>(3)</sup>	1,307.81	0.13

<sup>(1)</sup> As of June 15, 2007, there was one parcel with a special tax delinquency for fiscal year 2005-06.

<sup>(2)</sup> As of June 15, 2007, the County reported only the first installment for fiscal year 2006-07 (due December 1, 2006). As of June 15, 2007, there was one parcel with a delinquent first installment.

<sup>(3)</sup> A property owner appealed the amount of Special Tax assigned to its property. The parcel had been assigned to Tax Category 11, but the building square foot of the home on the parcel was 3,450 square feet, and the parcel was reassigned to Tax Category 7 for fiscal year 2006-07.

Source: *Economic & Planning Systems, Inc.*

## Direct and Overlapping Governmental Obligations

Contained within the boundaries of the Community Facilities District are certain overlapping local agencies providing public services and assessing property taxes, assessments, special taxes and other charges on the property in the Community Facilities District. Many of these local agencies have outstanding debt.

The current and estimated direct and overlapping obligations affecting the property in the Community Facilities District are shown in the following table.

**Table 5**  
**CITY OF NOVATO**  
**COMMUNITY FACILITIES DISTRICT NO. 2002-1 (Pointe Marin)**  
**Direct and Overlapping Bonded Debt**

2006-07 Local Secured Assessed Valuation: \$312,227,533

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 6/1/07</u>
Marin Community College District	0.635%	\$ 436,880
Novato Unified School District	3.309	3,294,937
City of Novato	3.905	1,017,838
<b>City of Novato Community Facilities District No. 2002-1</b>	<b>100.</b>	<b><u>11,335,000</u></b> (1)
<b>TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$16,084,655</b>
<u>OVERLAPPING GENERAL FUND DEBT:</u>	<u>% Applicable (2)</u>	<u>Debt 6/1/07</u>
Marin County General Fund Obligations	0.680%	\$ 336,749
Marin County Pension Obligations	0.680	767,074
Marin County Transit District General Fund Obligations	0.680	1,790
Marin Community College District General Fund Obligations	0.682	20,500
Novato Unified School District Certificates of Participation	3.841	51,469
City of Novato General Fund and Pension Obligations	4.667	961,075
Novato Fire Protection District General Fund Obligations	3.838	<u>41,871</u>
<b>TOTAL OVERLAPPING GENERAL FUND OBLIGATION DEBT</b>		<b>\$2,180,528</b>
<b>COMBINED TOTAL DEBT</b>		<b>\$18,265,183</b> (3)

(1) Includes Prior Bonds; does not include the 2007 Bonds.

(2) Excludes adjustment for redevelopment.

(3) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.

### Ratios to 2006-07 Local Secured Assessed Valuation:

Direct Debt (\$11,335,000) .....	3.63%
Total Direct and Overlapping Tax and Assessment Debt .....	5.15%
Combined Total Debt .....	5.85%

STATE SCHOOL BUILDING AID REPAYABLE AS OF 6/30/06: \$0

Source: California Municipal Statistics, Inc.

## Estimated Tax Burden on Taxable Property

The following table sets forth the estimated total tax burden on a typical single-family home in the Community Facilities District, based on actual tax rates and average assessed values for Fiscal Year 2006-07. The specific single-family home was selected because its fiscal year 2006-07 assessed value was approximately equal to the median assessed value in the Community Facilities District for fiscal year 2006-07.

**Table 6**  
**Analysis of Taxes and Assessments**  
**As a Percent of Average Assessed Value for Typical Single-Family Home**  
**Fiscal Year 2006-07**

<u>Description</u>	<u>Amount</u>
Assessed Value for APN 160-872-46	\$877,808
Homeowners Exemption <sup>(1)</sup>	<u>0</u>
<b>Assessed Value for FY 2006-2007</b>	<b>\$877,808</b>
<b>Property Taxes</b>	
Proposition 13 Property Tax	1.0000% \$8,778
Marin Community College Bonds	0.0168% 147
Novato Bonds 93-A	0.0067% 59
Novato Bonds 1997-A	0.0184% 162
Novato Bonds 2004	0.0058% 51
Novato School Bonds 2005	0.0238% 209
Novato School Bonds 2002	0.0212% 186
Novato Unified School Bonds 2006	0.0100% 88
Novato Bonds 2000-A	0.0061% <u>54</u>
<b>Total Property Taxes</b>	<b>\$9,733</b>
<b>Direct Charges</b>	
CFD No. 2002-1	\$2,631
#6 Novato Sanitary	344
Flood Control Zone #1 Novato	8
Library Zone #2	36
MS Mosquito #1	11
Novato Fire	<u>183</u>
<b>Total Direct Charges</b>	<b><u>\$3,213</u></b>
<b>Total Property Taxes and Direct Charges</b>	<b>\$12,946</b>
<b>Total Tax Burden (Taxes and Charges to AV)</b>	<b>1.47%</b>

(1) Property owner did not claim a \$7,000 homeowners tax exemption for fiscal year 2006-07.  
Source: Marin County Tax Collector.

## **BOND OWNERS' RISKS**

*The purchase of the 2007 Bonds described in this Official Statement involves a degree of risk that may not be appropriate for some investors. The following includes a discussion of some of the risks which should be considered before making an investment decision.*

### **Limited Obligation of the City to Pay Debt Service**

The City has no obligation to pay principal of and interest on the 2007 Bonds if Special Tax collections are delinquent, other than from amounts, if any, on deposit in the Reserve Fund or funds derived from the tax sale or foreclosure and sale of parcels for Special Tax delinquencies. The City is not obligated to advance funds to pay debt service on the 2007 Bonds.

### **Levy and Collection of the Special Tax**

The principal source of payment of principal of and interest on the 2007 Bonds is the proceeds of the annual levy and collection of the Special Tax against property within the Community Facilities District. The annual levy of the Special Tax is subject to the Maximum Annual Special Tax rate authorized in the Rate and Method. The levy cannot be made at a higher rate even if the failure to do so means that the estimated proceeds of the levy and collection of the Special Tax, together with other available funds, will not be sufficient to pay debt service on the 2007 Bonds.

Because the Special Tax formula set forth in the Rate and Method is not based on property value, the levy of the Special Tax will rarely, if ever, result in a uniform relationship between the value of particular parcels of Taxable Property and the amount of the levy of the Special Tax against those parcels. Thus, there will rarely, if ever, be a uniform relationship between the value of the parcels of Taxable Property and their proportionate share of debt service on the 2007 Bonds, and certainly not a direct relationship.

The following are some of the factors that might cause the levy of the Special Tax on any particular parcel of Taxable Property to vary from the Special Tax that might otherwise be expected:

- Reduction in the number of parcels of Taxable Property for such reasons as acquisition of Taxable Property by a governmental entity and failure of the government to pay the Special Tax based upon a claim of exemption or, in the case of the federal government or an agency thereof, immunity from taxation, thereby resulting in an increased tax burden on the remaining taxed parcels.
- Failure of the owners of Taxable Property to pay the Special Tax and delays in the collection of or inability to collect the Special Tax by tax sale or foreclosure and sale of the delinquent parcels, thereby resulting in an increased tax burden on the remaining parcels.

Except as set forth above under "SECURITY FOR THE 2007 BONDS – Collection of Special Taxes" and " – Rate and Method," the Fiscal Agent Agreement provides that the Special Tax is to be collected in the same manner as ordinary ad valorem property taxes are collected and, except as provided in the special covenant for foreclosure described in "SECURITY FOR THE 2007 BONDS – Covenant to Foreclose" and in the Act, is subject to the same penalties

and the same procedure, sale and lien priority in case of delinquency as is provided for ordinary ad valorem property taxes. Under these procedures, if taxes are unpaid for a period of five years or more, the property is deeded to the State and then is subject to sale by the County.

If sales or foreclosures of property are necessary, there could be a delay in payments to owners of the 2007 Bonds pending such sales or the prosecution of foreclosure proceedings and receipt by the City of the proceeds of sale if the Reserve Fund is depleted. See "SECURITY FOR THE 2007 BONDS – Covenant to Foreclose."

### **Payment of Special Tax is not a Personal Obligation of the Property Owner**

An owner of Taxable Property is not personally obligated to pay the Special Tax. Rather, the Special Tax is an obligation only against the parcels of Taxable Property. If, after a default in the payment of the Special Tax and a foreclosure sale by the City, the resulting proceeds are insufficient, taking into account other obligations also constituting a lien against the parcels of Taxable Property, the City has no recourse against the owner.

### **Assessed Values**

The estimated values of the Taxable Property in the Community Facilities District set forth in this Official Statement are based on the values assigned by the County Assessor for purposes of ad valorem property taxation. No assurance can be given that any of the Taxable Property in the Community Facilities District could be sold for the estimated market value represented by the assessed value if that property should become delinquent in the payment of Special Taxes and be foreclosed upon.

### **Property Values**

The value of Taxable Property within the Community Facilities District is a critical factor in determining the investment quality of the 2007 Bonds. If a property owner defaults in the payment of the Special Tax, the City's only remedy is to foreclose on the delinquent property in an attempt to obtain funds with which to pay the delinquent Special Tax. Land values could be adversely affected by economic and other factors beyond the City's control, such as a general economic downturn, relocation of employers out of the area, shortages of water, electricity, natural gas or other utilities, destruction of property caused by earthquake, flood or other natural disasters, environmental pollution or contamination.

**Natural Disasters.** The value of the Taxable Property in the future can be adversely affected by a variety of natural occurrences, particularly those that may affect infrastructure and other public improvements and private improvements on the Taxable Property and the continued habitability and enjoyment of such private improvements.

The City and the Community Facilities District are located in one of the most seismically active areas of the nation. The only "active" fault in the County is the San Andreas Fault, which is located 12-14 miles west of the City. An inactive fault, the Burdell Mountain Fault, crosses the northeastern portion of the City. The Hayward Fault (located approximately eight miles east of the eastern edge of the Novato Sphere of Influence) and the Healdsburg-Rodgers Creek Fault located northeast of the City are both active faults. The most severe earthquake effects in the City would be from the Hayward Fault.

Other natural disasters could include, without limitation, landslides, floods, droughts or tornadoes. One or more natural disasters could occur and could result in damage to improvements of varying seriousness. The damage may entail significant repair or replacement costs and that repair or replacement may never occur either because of the cost, or because repair or replacement will not facilitate habitability or other use, or because other considerations preclude such repair or replacement. Under any of these circumstances there could be significant delinquencies in the payment of Special Taxes, and the value of the Taxable Property may well depreciate or disappear.

**Legal Requirements.** Other events that may affect the value of Taxable Property include changes in the law or application of the law. Such changes may include, without limitation, local growth control initiatives, local utility connection moratoriums and local application of statewide tax and governmental spending limitation measures.

**Hazardous Substances.** One of the most serious risks in terms of the potential reduction in the value of Taxable Property is a claim with regard to a hazardous substance. In general, the owners and operators of Taxable Property may be required by law to remedy conditions of the parcel relating to releases or threatened releases of hazardous substances. The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as "CERCLA" or the "Superfund Act," is the most well-known and widely applicable of these laws, but California laws with regard to hazardous substances are also stringent and similar. Under many of these laws, the owner or operator is obligated to remedy a hazardous substance condition of property whether or not the owner or operator has anything to do with creating or handling the hazardous substance. The effect, therefore, should any of the Taxable Property be affected by a hazardous substance, is to reduce the marketability and value of the parcel by the costs of remedying the condition, because the purchaser, upon becoming owner, will become obligated to remedy the condition just as is the seller.

The assessed values set forth in this Official Statement do not take into account the possible reduction in marketability and value of any of the Taxable Property by reason of the possible liability of the owner or operator for the remedy of a hazardous substance condition of the parcel. Although the City is not aware that the owner or operator of any of the Taxable Property has such a current liability with respect to any of the Taxable Property, it is possible that such liabilities do currently exist and that the City is not aware of them.

Further, it is possible that liabilities may arise in the future with respect to any of the Taxable Property resulting from the existence, currently, on the parcel of a substance presently classified as hazardous but that has not been released or the release of which is not presently threatened, or may arise in the future resulting from the existence, currently on the parcel of a substance not presently classified as hazardous but that may in the future be so classified. Further, such liabilities may arise not simply from the existence of a hazardous substance but from the method of handling it. All of these possibilities could significantly affect the value of Taxable Property that is realizable upon a delinquency.

### **Other Possible Claims Upon the Value of Taxable Property**

While the Special Taxes are secured by the Taxable Property, the security only extends to the value of such Taxable Property that is not subject to priority and parity liens and similar claims.

The table in the section entitled “THE COMMUNITY FACILITIES DISTRICT – Direct and Overlapping Governmental Obligations” shows the presently outstanding amount of governmental obligations (with stated exclusions), the tax or assessment for which is or may become an obligation of one or more of the parcels of Taxable Property. The table also states the additional amount of general obligation bonds the tax for which, if and when issued, may become an obligation of one or more of the parcels of Taxable Property. The table does not specifically identify which of the governmental obligations are secured by liens on one or more of the parcels of Taxable Property.

In addition, other governmental obligations may be authorized and undertaken or issued in the future, the tax, assessment or charge for which may become an obligation of one or more of the parcels of Taxable Property and may be secured by a lien on a parity with the lien of the Special Tax securing the 2007 Bonds.

In general, the Special Tax and all other taxes, assessments and charges also collected on the tax roll are on a parity, that is, are of equal priority. Questions of priority become significant when collection of one or more of the taxes, assessments or charges is sought by some other procedure, such as foreclosure and sale. In the event of proceedings to foreclose for delinquency of Special Taxes securing the 2007 Bonds, the Special Tax will be subordinate only to existing prior governmental liens, if any. Otherwise, in the event of such foreclosure proceedings, the Special Taxes will generally be on a parity with the other taxes, assessments and charges, and will share the proceeds of such foreclosure proceedings on a pro-rata basis. Although the Special Taxes will generally have priority over non-governmental liens on a parcel of Taxable Property, regardless of whether the non-governmental liens were in existence at the time of the levy of the Special Tax or not, this result may not apply in the case of bankruptcy. See “– Bankruptcy and Foreclosure Delays” below.

### **Exempt Properties**

Certain properties are exempt from the Special Tax in accordance with the Rate and Method and the Act, which provides that properties or entities of the state, federal or local government are exempt from the Special Tax; provided, however, that property within the Community Facilities District acquired by a public entity through a negotiated transaction or by gift or devise, which is not otherwise exempt from the Special Tax, will continue to be subject to the Special Tax. See “SECURITY FOR THE 2007 BONDS – Rate and Method.” In addition, although the Act provides that if property subject to the Special Tax is acquired by a public entity through eminent domain proceedings, the obligation to pay the Special Tax with respect to that property is to be treated as if it were a special assessment, the constitutionality and operation of these provisions of the Act have not been tested, meaning that such property could become exempt from the Special Tax.

The Act further provides that no other properties or entities are exempt from the Special Tax unless the properties or entities are expressly exempted in a resolution of consideration to levy a new special tax or to alter the rate or method of apportionment of an existing special tax.

### **Depletion of Reserve Fund**

The Reserve Fund is to be maintained at an amount equal to the Reserve Requirement. See “SECURITY FOR THE 2007 BONDS – Reserve Fund.” Funds in the Reserve Fund may be used to pay principal of and interest on the 2007 Bonds if insufficient funds are available from the proceeds of the levy and collection of the Special Tax against property within the

Community Facilities District. If funds in the Reserve Fund for the 2007 Bonds are depleted, the funds can be replenished from the proceeds of the levy and collection of the Special Tax that are in excess of the amount required to pay all amounts to be paid to the Bond holders pursuant to the Fiscal Agent Agreement. However, no replenishment from the proceeds of a Special Tax levy can occur as long as the proceeds that are collected from the levy of the Special Tax against property within the Community Facilities District at the maximum Special Tax rates, together with other available funds, remains insufficient to pay all such amounts. Thus it is possible that the Reserve Fund will be depleted and not be replenished by the levy of the Special Tax.

### **Bankruptcy and Foreclosure Delays**

***Bankruptcy.*** The payment of the Special Tax and the ability of the City to foreclose the lien of a delinquent unpaid tax, as discussed in "SECURITY FOR THE 2007 BONDS," may be limited by bankruptcy, insolvency or other laws generally affecting creditors' rights or by the laws of the State of California relating to judicial foreclosure. The various legal opinions to be delivered concurrently with the delivery of the 2007 Bonds (including Bond Counsel's approving legal opinion) will be qualified as to the enforceability of the various legal instruments by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, by the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

Although bankruptcy proceedings would not cause the Special Taxes to become extinguished, bankruptcy of a property owner or any other person claiming an interest in the property could result in a delay in superior court foreclosure proceedings and could result in the possibility of Special Tax installments not being paid in part or in full. Such a delay would increase the likelihood of a delay or default in payment of the principal of and interest on the 2007 Bonds. To the extent that property in the Community Facilities District continues to be owned by a limited number of property owners, the chances are increased that the Reserve Fund established for the 2007 Bonds could be fully depleted during any such delay in obtaining payment of delinquent Special Taxes. As a result, sufficient moneys would not be available in the Reserve Fund for transfer to the Bond Fund to make up shortfalls resulting from delinquent payments of the Special Tax and thereby to pay principal of and interest on the 2007 Bonds on a timely basis.

***Property Owned by FDIC.*** In addition, the ability of the City to foreclose upon the lien on property for delinquent Special Taxes may be limited for properties in which the Federal Deposit Insurance Corporation (the "FDIC") has an interest. On November 26, 1996, the FDIC adopted a Statement of Policy Regarding the Payment of State and Local Property Taxes (the "Policy Statement") (which superseded a prior statement issued by the FDIC and the Resolution Trust Corporation in 1991). The Policy Statement applies to the FDIC when it is liquidating assets in its corporate and receivership capacities. The Policy Statement provides, in part, that real property of the FDIC is subject to state and local real property taxes if those taxes are assessed according to the property's value, and that the FDIC is immune from ad valorem real property taxes assessed on other bases. The Policy Statement also provides that the FDIC will pay its proper tax obligations when they become due and will pay claims for delinquencies as promptly as is consistent with sound business practice and the orderly administration of the institution's affairs, unless abandonment of the FDIC interest in the property is appropriate. It further provides that the FDIC will pay claims for interest on delinquent property taxes owned at the rate provided under state law, but only to the extent the interest payment obligation is secured by a valid lien. The FDIC will not pay for any fines or penalties and will not pay nor

recognize liens for such amounts. The Policy Statement also provides that if any property taxes (including interest) on FDIC-owned property are secured by a valid lien (in effect before the property became owned by the FDIC), the FDIC will pay those claims. No property of the FDIC is subject to levy, attachment, garnishment, foreclosure or sale without the FDIC's consent. In addition, a lien for taxes and interest may attach, but the FDIC will not permit a lien or security interest held by the FDIC to be eliminated by foreclosure without the FDIC's consent.

With respect to challenges to assessments, the Policy Statement provides: "The (FDIC) is only liable for state and local taxes which are based on the value of the property during the period for which the tax is imposed, notwithstanding the failure of any person, including prior record owners, to challenge an assessment under the procedures available under state law. In the exercise of its business judgment, the (FDIC) may challenge assessments which do not conform with the statutory provisions, and during the challenge may pay tax claims based on the assessment level deemed appropriate, provided such payment will not prejudice the challenge. The (FDIC) will generally limit challenges to the current and immediately preceding taxable year and to the pursuit of previously filed tax protests. However, the (FDIC) may, in the exercise of its business judgment, challenge any prior taxes and assessments provided that (1) the (FDIC's) records (including appraisals, offers or bids received for the purchase of the property, etc.) indicate that the assessed value is clearly excessive, (2) a successful challenge will result in a substantial savings to the (FDIC), (3) the challenge will not unduly delay the sale of the property, and (4) there is a reasonable likelihood of a successful challenge."

The Policy Statement states that the FDIC generally will not pay non-ad valorem taxes, including special assessments, on property in which it has a fee simple interest unless the amount of tax is fixed at the time the FDIC acquires its fee simple interest in the property, nor will the FDIC recognize the validity of any lien to the extent it purports to secure the payment of any such amounts. Because the Special Taxes are neither ad valorem taxes nor special assessments, and because they are levied under a special tax formula under which the amount of the Special Tax is determined each year, the Special Taxes appear to fall within the category of taxes the FDIC generally will not pay under the Policy Statement.

Following the County of Orange bankruptcy proceedings filed in December 1994, the FDIC filed claims against the County of Orange in the U.S. Bankruptcy Court and the Federal District Court which challenged special taxes that Orange County had levied on FDIC-owned property (and which the FDIC had paid) under the Act. The FDIC took a position similar to that outlined in the Policy Statement, to the effect that the FDIC, as a governmental entity, is exempt from special taxes under the Act. The Bankruptcy Court agreed, finding that the FDIC was not liable for post-receivership Mello-Roos taxes, and the Bankruptcy Appellate Panel affirmed. On appeal, the U.S. Court of Appeals for the Ninth Circuit, while not specifically asked to decide on the issue, stated in its decision filed on August 28, 2001, that "the FDIC, as a federal agency, is exempt from the Mello-Roos tax," and quoted Section 53340(c) of the Act in stating that "properties or entities' of the federal government are exempt from the tax."

The City is unable to predict what effect the application of the Policy Statement, or the ultimate outcome of the County of Orange case, would have in case of a Special Tax delinquency on a parcel in which the FDIC has an interest. However, prohibiting the judicial foreclosure sale of a FDIC-owned parcel would likely reduce the number of or eliminate the persons willing to purchase a parcel at a foreclosure sale. Owners of the 2007 Bonds should assume that the City will be unable to foreclose on parcels of land in the Community Facilities District owned by the FDIC. Such an outcome would cause a draw on the Reserve Fund and perhaps, ultimately, a default in payment of the 2007 Bonds.

## **Disclosure to Future Purchasers**

The City has recorded a Notice of the Special Tax Lien in the Office of the County Recorder. While title companies normally refer to such notices in title reports, there can be no guarantee that such reference will be made or, if made, that a prospective purchaser or lender will consider such special tax obligation in the purchase of a parcel of land or a home in the Community Facilities District or the lending of money secured by property in the Community Facilities District. The Act and the Goals and Policies require the subdivider of a subdivision (or its agent or representative) to notify a prospective purchaser or long-term lessor of any lot, parcel, or unit subject to a Mello-Roos special tax of the existence and maximum amount of such special tax using a statutorily prescribed form. California Civil Code Section 1102.6b requires that in the case of transfers other than those covered by the above requirement, the seller must at least make a good faith effort to notify the prospective purchaser of the special tax lien in a format prescribed by statute. Failure by an owner of the property to comply with these requirements, or failure by a purchaser or lessor to consider or understand the nature and existence of the Special Tax, could adversely affect the willingness and ability of the purchaser or lessor to pay the Special Tax when due.

## **No Acceleration Provisions**

The 2007 Bonds do not contain a provision allowing for the acceleration of the 2007 Bonds in the event of a payment default or other default under the terms of the 2007 Bonds or the Fiscal Agent Agreement. Under the Fiscal Agent Agreement, a Bondowner is given the right for the equal benefit and protection of all Bondowners similarly situated to pursue certain remedies. See "APPENDIX C – Summary of the Fiscal Agent Agreement." So long as the 2007 Bonds are in book-entry form, DTC will be the sole Bondowner and will be entitled to exercise all rights and remedies of Bondowners.

## **Loss of Tax Exemption**

As discussed under the caption "LEGAL MATTERS – Tax Matters," interest on the 2007 Bonds might become includable in gross income for purposes of federal income taxation retroactive to the date the 2007 Bonds were issued as a result of future acts or omissions of the City in violation of its covenants in the Fiscal Agent Agreement. The Fiscal Agent Agreement does not contain a special redemption feature triggered by the occurrence of an event of taxability. As a result, if interest on the 2007 Bonds were to be includable in gross income for purposes of federal income taxation, the 2007 Bonds would continue to remain outstanding until maturity unless earlier redeemed pursuant to optional or mandatory redemption or redemption upon prepayment of the Special Tax. See "THE 2007 BONDS – Redemption."

## **Voter Initiatives**

Under the California Constitution, the power of initiative is reserved to the voters for the purpose of enacting statutes and constitutional amendments. Since 1978, the voters have exercised this power through the adoption of Proposition 13 and similar measures, including Proposition 218, which was approved in the general election held on November 5, 1996.

Any such initiative may affect the collection of fees, taxes and other types of revenue by local agencies such as the Community Facilities District. Subject to overriding federal constitutional principles, such collection may be materially and adversely affected by voter-

approved initiatives, possibly to the extent of creating cash-flow problems in the payment of outstanding obligations such as the 2007 Bonds.

Proposition 218—Voter Approval for Local Government Taxes—Limitation on Fees, Assessments, and Charges—Initiative Constitutional Amendment, added Articles XIII C and XIII D to the California Constitution, imposing certain vote requirements and other limitations on the imposition of new or increased taxes, assessments and property-related fees and charges.

The Special Taxes and the 2007 Bonds were authorized by not less than a two-thirds vote of the landowners within the Community Facilities District who constituted the qualified electors at the time of such voted authorization. The City believes, therefore, that issuance of the 2007 Bonds does not require the conduct of further proceedings under the Act or Proposition 218.

Like its antecedents, Proposition 218 has undergone and is likely to undergo both judicial and legislative scrutiny before its impact on the Community Facilities District and its obligations can be determined. Certain provisions of Proposition 218 may be examined by the courts for their constitutionality under both State and federal constitutional law, the outcome of which cannot be predicted.

## LEGAL MATTERS

### Legal Opinions

The legal opinion of Jones Hall, A Professional Law Corporation LLP, San Francisco, California, Bond Counsel, approving the validity of the 2007 Bonds will be made available to purchasers at the time of original delivery and is attached as APPENDIX F. A copy of the legal opinion will be attached to each 2007 Bond. Bond Counsel undertakes no responsibility for the accuracy, completeness, or fairness of this Official Statement.

Jones Hall is also acting as Disclosure Counsel.

### Tax Matters

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the 2007 Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986 (the “**Code**”) that must be satisfied subsequent to the issuance of the 2007 Bonds in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the 2007 Bonds.

If the initial offering price to the public (excluding Bond houses and brokers) at which a 2007 Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes “original issue discount” for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which each 2007 Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes “original issue premium” for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount is disregarded.

Under the Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the 2007 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straightline interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such 2007 Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such 2007 Bond. The Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the 2007 Bonds who purchase the 2007 Bonds after the initial offering of a substantial amount of such maturity. Owners of such 2007 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2007 Bonds with original

issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such 2007 Bonds under federal individual and corporate alternative minimum taxes.

Under the Code, original issue premium is amortized on an annual basis over the term of the 2007 Bond (said term being the shorter of the 2007 Bond's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the 2007 Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a 2007 Bond is amortized each year over the term to maturity of the 2007 Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straightline interpolations between compounding dates). Amortized 2007 Bond premium is not deductible for federal income tax purposes. Owners of Premium 2007 Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such 2007 Bonds.

In the further opinion of Bond Counsel, interest on the 2007 Bonds is exempt from California personal income taxes.

Owners of the 2007 Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the 2007 Bonds may have federal or state tax consequences other than as described above. Bond Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the 2007 Bonds other than as expressly described above.

## **Litigation**

At the time of delivery of the 2007 Bonds, the City will certify that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending with respect to which the City has been served with process or threatened, that:

- questions in any way the powers of the City Council or the Community Facilities District, or
- questions in any way the validity of any proceeding taken by the City Council in connection with the issuance of the 2007 Bonds, or
- could materially adversely affect the transactions contemplated by the Bond Purchase Contract were an unfavorable decision, ruling or finding rendered, or
- could in any way adversely affect the validity or enforceability of the Resolutions, the 2007 Bonds, the Fiscal Agent Agreement, the Issuer Continuing Disclosure Certificate or the Bond Purchase Contract, or
- questions in any way (to the knowledge of the City) the exclusion from gross income of the recipients thereof of the interest on the 2007 Bonds for federal income tax purposes, or
- questions in any other way the status of the 2007 Bonds under State tax laws or regulations.

## FINANCIAL ADVISOR

E. Wagner & Associates, Inc., Pleasanton, California, has served as Financial Advisor to the City with respect to the sale of the 2007 Bonds. The Financial Advisor has assisted in various matters relating to the planning, structuring and issuance of the 2007 Bonds. The Financial Advisor has not independently verified any of the data contained in this Official Statement or conducted a detailed investigation of the affairs of the City to determine the accuracy or completeness of this Official Statement. The Financial Advisor assumes no responsibility for the accuracy or completeness of any of the information contained in this Official Statement. The Financial Advisor's fee is contingent upon the issuance and delivery of the 2007 Bonds.

## VERIFICATION OF MATHEMATICAL ACCURACY

Causey Demgen & Moore Inc., Denver, Colorado, independent accountants, upon delivery of the 2007 Bonds, will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to them which were prepared by the Financial Advisor, relating to the sufficiency of moneys and securities deposited into the Escrow Fund to pay, when due, the principal, whether at maturity or upon prior prepayment, interest and prepayment premium requirements of the Prior Bonds.

The report of Causey Demgen & Moore Inc. will include the statement that the scope of its engagement is limited to verifying the mathematical accuracy of the computations contained in such schedules provided to it, and that it has no obligation to update its report because of events occurring, or data or information coming to its attention, subsequent to the date of its report.

## CONCLUDING INFORMATION

### Continuing Disclosure

The City will covenant in a continuing disclosure certificate, the form of which is set forth in "APPENDIX E – Form of Issuer Continuing Disclosure Certificate" (the "**Issuer Continuing Disclosure Certificate**"), for the benefit of holders and beneficial owners of the 2007 Bonds, to provide certain financial information and operating data relating to the Community Facilities District and the 2007 Bonds by not later than February 1 each year, beginning on February 1, 2008. The Issuer Continuing Disclosure Certificate also requires the City to provide notices of the occurrence of certain enumerated events, if material.

The initial Dissemination Agent under the Issuer Continuing Disclosure Certificate will be the Fiscal Agent.

The covenants of the City in the Issuer Continuing Disclosure Certificate will be made in order to assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the "**Rule**").

A default under the Issuer Continuing Disclosure Certificate will not, in itself, constitute an Event of Default under the Fiscal Agent Agreement, and the sole remedy under the Issuer Continuing Disclosure Certificate in the event of any failure of the City or the Dissemination Agent to comply will be an action to compel specific performance.

The City is not aware of any material failures in the past five years to comply with its prior continuing disclosure undertakings under the Rule.

## **Ratings**

The 2007 Bonds have received the ratings of “AAA” by Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies (“**S&P**”) and “AAA” by Fitch, Inc. (“**Fitch**”), with the understanding that upon execution and delivery of the 2007 Bonds the Financial Guaranty Insurance Policy insuring the payment when due of the principal and interest on the 2007 Bonds will be issued by the Bond Insurer.

There is no assurance that such ratings will be retained for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies if, in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal of any rating obtained may have an adverse effect on the market price of the 2007 Bonds.

## **Underwriting**

The 2007 Bonds were sold at a competitive sale on July 26, 2007 to Morgan Stanley & Co. Incorporated (the “**Underwriter**”) at a purchase price of \$11,766,957.20 (which represents the aggregate principal amount of the 2007 Bonds (\$11,915,000.00) less an original issue discount of \$28,892.80, and less an underwriter’s discount of \$119,150.00).

The Underwriter will purchase all of the 2007 Bonds, if any are purchased, the obligation to make such purchase being subject to certain terms and conditions.

The Underwriter may offer and sell 2007 Bonds to certain dealers and others at prices lower than the offering price stated on the cover page hereof. The offering prices may be changed from time to time by the Underwriter.

## Professional Fees

The following professionals are participating in this financing:

- U.S. Bank National Association, San Francisco, California, will serve as the Fiscal Agent and will perform the functions required of it under the Fiscal Agent Agreement.
- Jones Hall, A Professional Law Corporation, San Francisco, California, is acting as Bond Counsel and Disclosure Counsel to the City.
- E. Wagner & Associates, Inc., Pleasanton, California, is acting as financial advisor to the City.

In connection with the issuance of the 2007 Bonds, fees payable to Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel, to E. Wagner & Associates, Inc., as financial advisor, and to U.S. Bank National Association, as Fiscal Agent, are contingent upon the issuance and delivery of the 2007 Bonds.

## EXECUTION

The execution and delivery of the Official Statement has been duly authorized by the City of Novato on behalf of the Community Facilities District.

CITY OF NOVATO

By:           \s\ Mary Neilan            
Assistant City Manager

## **APPENDIX A**

### **GENERAL INFORMATION ABOUT THE CITY OF NOVATO AND THE COUNTY OF MARIN**

The following information regarding the City and the surrounding area is presented as general background data. The 2007 Bonds are payable solely from Special Tax Revenues as described elsewhere in this Official Statement. The taxing power of the City, the County of Marin, the State of California or any political subdivision thereof is not pledged to the payment of the Bonds.

#### **General**

The City of Novato is located in Marin County, approximately 29 miles north of San Francisco and 37 miles northwest of Oakland. The City limits encompass 28 square miles. The estimated population of the City is 52,426 as of January 1, 2007.

The primary access road to the City is U.S. Highway 101, the main north-south corridor in the West Bay Area. Novato is twelve miles north of Interstate Highway 580, a major east-west corridor serving the Bay Area. State Highway 37 joins U.S. 101 at Novato, making the City a hub of North Bay travel. State Highway 116 is ten miles north of Novato. Along with Highway 37, it is an access route to the Sonoma-Napa Wine Country.

The climate of the City is moderate. The mean annual temperature is 67 degrees, with an average minimum of 46 degrees and an average maximum of 71 degrees. Rainfall averages approximately 27.5 inches per year. Topography is characterized by rolling hills.

The City was incorporated on January 20, 1960 as a general law city. The City Council is made up of five members, elected at large, serving four-year terms. The Mayor is selected for a one-year term from among the members of the City Council. The City operates under a council-manager form of government. The City Council appoints the City Manager, City Attorney and City Clerk.

The City delivers municipal services through six departments: Central Administration (City Manager, City Clerk, City Attorney, Redevelopment, Housing Services), Administrative Services (Finance, Human Resources, Information Technology), Community Development (Planning and Building), Police, Public Works (Engineering, Street and Park Maintenance), and Parks, Recreation and Community Services. Fire services are provided in Novato by the Novato Fire Protection District; refuse and recycling services are provided by Novato Disposal under a franchise agreement with the Novato Sanitary District. Waste water services are provided by the Novato Sanitary District; water services by the North Marin Water District; public transit services by the Golden Gate Bridge, Highway and Transportation District, animal control services by the Marin Humane Society; and library services by the Marin County Free Library. Gas and electric services are provided in Novato by Pacific Gas and Electric. Telephone service in Novato is provided by Verizon in the northern and central sections of Novato and by Pacific Bell in the southern section. Cable television service is provided by AT&T Cable throughout Novato and by Horizon Cable TV Inc. in properties associated with Hamilton Field.

## Population

Between 1980 and 2000, the County's population increased by 11.1%, where the City's population increased by 8.5% during that time. The table below shows population estimates for the City, the County and the State of California (the "State") for 1980, 1990, 2000 and 2003-2007.

**POPULATION ESTIMATES**  
**City of Novato, County of Marin and State of California**  
**1980, 1990 and 2000; 2003 to 2007**

<u>Year</u>	<u>City of Novato</u>	<u>County of Marin</u>	<u>State of California</u>
1980	43,916	222,568	23,667,902
1990	47,585	230,096	29,760,021
2000	47,630	247,289	33,871,648
2003	48,732	250,823	35,691,472
2004	49,585	251,190	36,245,016
2005	50,448	251,820	36,728,196
2006	51,219	253,818	37,195,240
2007	52,426	255,982	37,662,518

*Note: 2003-2007 population statistics are as of January 1.*

*For 1980, 1990 and 2000, statistics are as of April 1.*

*Source: State Department of Finance, Demographic Research Unit, for 2002-2006; U.S. Department of Commerce, Bureau of the Census, for 1980, 1990 and 2000.*

## Employment

The County is included in the San Francisco-San Mateo-Redwood City Metropolitan Division (MD). The following table summarizes the civilian labor force, employment and unemployment in the County for the calendar years 2002 through 2006. These figures are county-wide statistics and may not necessarily accurately reflect employment trends in the City. The unemployment rate in the San Francisco-San Mateo-Redwood City MD was 3.8 percent in April 2007, up from 3.7 percent in March 2007, and the same as the year-ago estimate of 3.8 percent. This compares with an unadjusted unemployment rate of 5.0 percent for California and 4.3 percent for the nation during the same period. The unemployment rate was 3.3 percent in Marin County, 4.1 percent in San Francisco County, and 3.6 percent in San Mateo County.

**SAN FRANCISCO METROPOLITAN STATISTICAL AREA**  
**Civilian Labor Force, Employment and Unemployment, Unemployment by Industry**  
**(Annual Averages)**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Civilian Labor Force <sup>(1)</sup>	965,600	934,600	917,700	913,600	921,900
Employment	906,100	877,400	869,700	872,100	885,800
Unemployment	59,500	57,200	48,000	41,500	36,100
Unemployment Rate	6.2%	6.1%	5.2%	4.5%	3.9%
<u>Wage and Salary Employment:</u> <sup>(2)</sup>					
Agriculture	3,400	3,500	3,100	2,700	2,800
Natural Resources and Mining	200	200	200	200	200
Construction	45,400	43,600	42,200	41,300	42,800
Manufacturing	49,700	45,200	44,100	42,600	43,500
Wholesale Trade	29,100	27,400	26,500	26,100	26,600
Retail Trade	97,400	94,700	93,300	93,800	93,700
Transportation, Warehousing and Utilities	48,700	46,000	44,900	43,500	42,800
Information	50,800	46,300	43,500	40,800	38,800
Finance and Insurance	73,500	68,500	66,600	66,900	67,800
Real Estate and Rental and Leasing	22,100	21,500	20,800	20,900	21,200
Professional and Business Services	186,700	176,300	176,000	183,000	191,500
Educational and Health Services	97,500	99,000	100,100	100,800	103,700
Leisure and Hospitality	113,900	112,500	114,000	116,100	120,100
Other Services	39,100	37,800	36,900	36,900	37,400
Federal Government	22,500	22,500	21,400	20,400	19,800
State Government	29,900	30,500	31,100	32,800	34,100
Local Government	<u>80,700</u>	<u>78,200</u>	<u>75,600</u>	<u>76,200</u>	<u>77,100</u>
Total, All Industries <sup>(3)</sup>	990,500	953,600	940,300	944,900	963,900

(1) Labor force data is by place of residence; includes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

The largest employers in the County are as follows:

**LARGEST EMPLOYERS  
Marin County  
as of May 2007**

<b><u>Employer Name</u></b>	<b><u>Location</u></b>	<b><u>Industry</u></b>
American Legion	San Anselmo	Veterans' & Military Organizations
Autodesk Inc	San Rafael	Telecommunications Services
Bio Marin Pharmaceutical Inc	Novato	Laboratories-Research & Development
College Of Marin	Kentfield	Schools-Universities & Colleges Academic
Dutra Construction	San Rafael	Construction Companies
Fireman's Fund Insurance Co	Novato	Insurance
Greenpoint Mortgage Funding	Novato	Real Estate Loans
Just Water Heaters Inc	San Rafael	Water Heaters-Dealers
Kaiser Foundation Hospital	San Rafael	Hospitals
Kaiser Permanente Medical Ctr	San Rafael	Hospitals
Kentfield Rehabilitation Hosp	Kentfield	Physical Therapists
Kitchen Works & Home Works	San Rafael	Kitchen Cabinets & Equipment-Household
Leon's Bar B Q Inc	Mill Valley	Food Products (Wholesale)
Macy's	Corte Madera	Department Stores
Managed Health Network Inc	San Rafael	Health Plans
Marin County Sheriff's Dept	San Rafael	Sheriff
Marin Emergency Physicians	Novato	Hospitals
Marin General Hospital	Greenbrae	Hospitals
Marin Group Intl	Sausalito	Product Development & Marketing
Marin Independent Journal	Novato	Newspapers (Publishers/Mfrs)
Nordstrom	Corte Madera	Department Stores
San Rafael Human Resources	San Rafael	Government Offices-City, Village & Twp
Township Building Svc Co	Novato	Janitor Service
Westamerica Bank	San Rafael	Banks
YMCA	San Rafael	Social Service & Welfare Organizations

*Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database.*

## Construction Activity

The following table shows a five-year history of construction activity in the City.

### CITY OF NOVATO Total Building Permit Valuations (valuations in thousands)

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
<u>Permit Valuation</u>					
New Single-family	\$39,338.6	\$105,080.7	\$107,834.3	\$60,919.2	\$14,826.7
New Multi-family	17,496.3	3,916.9	24,185.8	1,636.1	0.0
Res. Alterations/Additions	<u>26,936.6</u>	<u>37,228.6</u>	<u>33,153.9</u>	<u>21,081.8</u>	<u>12,389.5</u>
Total Residential	83,771.6	146,226.2	165,174.0	83,637.1	27,216.2
New Commercial	5,902.9	7,498.7	18,259.8	8,263.4	750.0
New Industrial	0.0	0.0	0.0	0.0	4,973.0
New Other	486.0	307.7	368.5	2,210.9	3,298.5
Com. Alterations/Additions	<u>16,628.3</u>	<u>9,972.7</u>	<u>12,669.3</u>	<u>6,919.1</u>	<u>12,119.6</u>
Total Nonresidential	23,017.1	17,779.1	31,297.5	17,393.5	21,141.1
<u>New Dwelling Units</u>					
Single Family	133	457	366	155	38
Multiple Family	<u>150</u>	<u>29</u>	<u>237</u>	<u>11</u>	<u>0</u>
TOTAL	283	486	603	166	38

Source: Construction Industry Research Board, *Building Permit Summary*

The following table shows a five-year history of construction activity in the County.

### COUNTY OF MARIN Total Building Permit Valuations (valuations in thousands)

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
<u>Permit Valuation</u>					
New Single-family	\$112,513.7	\$173,461.5	\$199,082.9	\$142,303.4	\$81,284.7
New Multi-family	17,696.3	8,113.5	51,040.0	24,779.5	3,801.1
Res. Alterations/Additions	<u>129,407.3</u>	<u>160,484.5</u>	<u>170,556.1</u>	<u>163,126.5</u>	<u>157,020.9</u>
Total Residential	259,617.2	342,059.5	420,679.0	330,209.4	242,106.6
New Commercial	6,552.9	13,590.4	27,920.1	18,804.0	12,675.0
New Industrial	0.0	0.0	0.0	0.0	4,973.0
New Other	13,136.8	23,862.4	19,557.6	23,517.8	37,266.4
Com. Alterations/Additions	<u>57,463.2</u>	<u>48,476.3</u>	<u>46,184.8</u>	<u>33,799.9</u>	<u>40,347.6</u>
Total Nonresidential	77,152.9	85,929.0	93,662.5	76,121.7	95,262.0
<u>New Dwelling Units</u>					
Single Family	288	652	585	334	155
Multiple Family	<u>152</u>	<u>60</u>	<u>442</u>	<u>150</u>	<u>51</u>
TOTAL	440	712	1,027	484	206

Source: Construction Industry Research Board, *Building Permit Summary*

## Income

“Effective Buying Income” is defined as personal income less personal tax and non-tax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), non-tax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the total effective buying income for the City, the County, the State and the United States for the period 2001 through 2005.

### Effective Buying Income As of January 1, 2001 through 2005

<u>Year</u>	<u>Area</u>	<u>Total Effective Buying Income (000's Omitted)</u>	<u>Median Household Effective Buying Income</u>
2001	City of Novato	\$ 1,342,493	\$58,591
	Marin County	9,399,646	65,688
	California	650,521,407	43,532
	United States	5,303,481,498	38,365
2002	City of Novato	\$ 1,282,628	\$54,320
	Marin County	9,210,825	60,063
	California	647,879,427	42,484
	United States	5,340,682,818	38,035
2003	City of Novato	\$ 1,350,850	\$56,362
	Marin County	9,280,058	60,162
	California	674,721,020	42,924
	United States	5,466,880,008	38,201
2004	City of Novato	\$ 1,418,588	\$57,179
	Marin County	9,888,678	61,606
	California	705,108,410	43,915
	United States	5,692,909,567	39,324
2005	City of Novato	\$ 1,439,030	\$57,128
	Marin County	9,505,592,500	61,624
	California	720,798,106	44,681
	United States	5,894,663,364	40,529

Source: Sales & Marketing Management Survey of Buying Power for 2001 through 2004; Claritas Demographics for 2005.

## Taxable Sales

During the first quarter of 2006, total taxable transactions in the City were reported to be \$155,041,000, or 3.42% greater than total taxable transactions of \$149,904,000 that were reported in the City during the first quarter of 2005. Total taxable sales in the City for the years 2001 through 2005 are shown in the following table. Annual figures are not yet available for calendar year 2006.

**VALUATION OF TAXABLE TRANSACTIONS**  
**City of Novato**  
**(in thousands of dollars)**  
**Taxable Sales (000)**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Retail Stores:					
Apparel Stores	\$ 22,369	\$ 21,030	\$ 21,245	\$ 22,216	\$ 21,692
General Merchandise Stores	164,769	164,562	161,577	166,456	171,426
Food Stores	31,965	31,643	30,308	29,464	30,099
Eating and Drinking Places	56,253	58,392	58,404	60,551	62,912
Home Furnishings & Appliances	11,205	11,599	11,356	11,446	12,396
Building Materials/Farm Implements	23,345	23,148	23,013	26,757	26,652
Auto Dealers & Auto Supplies	81,704	86,525	82,379	102,539	103,780
Service Stations	25,407	26,700	31,701	39,181	47,728
Other Retail Stores	<u>87,934</u>	<u>66,960</u>	<u>69,690</u>	<u>79,415</u>	<u>87,506</u>
Total Retail Stores	504,951	490,559	489,673	538,025	564,191
All Other Outlets	<u>134,382</u>	<u>122,716</u>	<u>107,826</u>	<u>106,254</u>	<u>104,066</u>
<b>TOTAL ALL OUTLETS</b>	<b>\$639,333</b>	<b>\$613,275</b>	<b>\$597,499</b>	<b>\$644,279</b>	<b>\$668,257</b>

*Source: California Board of Equalization.*

Taxable sales in the County are shown below. During the first quarter of 2006, total taxable transactions in the County were reported to be \$951,754,000, or 2.35% greater than total taxable transactions of \$929,811,000 that were reported in the County during the first quarter of 2005. Total taxable sales in the County for the years 2001 through 2005 are shown in the following table. Annual figures are not yet available for calendar year 2006.

**VALUATION OF TAXABLE TRANSACTIONS**  
**Marin County**  
**(in thousands)**  
**Taxable Sales (000)**

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Retail Stores:					
Apparel stores group	\$134,738	\$135,139	\$141,747	\$147,996	\$155,305
General Merchandise group	459,403	445,690	434,130	443,059	446,920
Specialty stores group	471,183	424,046	424,248	458,035	479,661
Food stores group	191,635	191,862	189,380	188,711	195,817
Eating and drinking group	364,040	363,979	363,610	382,842	395,421
Household group	185,142	186,661	187,580	199,625	209,690
Building materials group	291,703	290,668	295,622	336,812	337,508
Automotive group	738,138	757,178	791,649	841,368	864,068
All other retail stores group	<u>68,438</u>	<u>68,906</u>	<u>72,788</u>	<u>75,895</u>	<u>81,353</u>
Retail Store Totals	2,904,420	2,864,129	2,900,754	3,074,343	3,165,743
Business and Personal Services	218,473	206,980	194,952	186,793	191,287
All Other Outlets	<u>827,259</u>	<u>777,335</u>	<u>795,594</u>	<u>792,379</u>	<u>814,414</u>
<b>TOTAL ALL OUTLETS</b>	<b>\$3,950,152</b>	<b>\$3,848,444</b>	<b>\$3,891,300</b>	<b>\$4,053,515</b>	<b>\$4,171,444</b>

Source: California Board of Equalization.

**APPENDIX B**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

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**CITY OF NOVATO**  
**Community Facilities District No. 2002-2**  
**(Pointe Marin)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

**Section 1. Definitions**

The defined terms below shall apply wherever such terms are used in this Rate and Method of Apportionment.

“Act” means the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, Part 1, Division 2, Title 5 of the California Government Code), as amended from time to time.

“Administrative Expenses” means the actual or estimated costs incurred by the City to determine, levy and collect the Special Taxes, including salaries of City employees and the fees of accountants, engineers, consultants, financial advisors, and attorneys incurred in connection with administration of the CFD; the costs of collecting installments of the Special Taxes; preparation and maintenance of required records and reports; preparation of financial audits; and any other costs required to administer the CFD.

“Annual Costs” means, for each Fiscal Year, the total of 1) an amount sufficient to pay Debt Service in a timely manner, 2) Maintenance Expenses, 3) Administrative Expenses, and 4) any amounts needed to replenish bond reserve funds and to make up for any deficit caused by actual or estimated delinquencies in Special Taxes for the previous or current Fiscal Year; provided, however, that any provision for delinquencies shall not exceed the Coverage Factor.

“Annual Tax Revenues” means the amount of Special Taxes collected each Fiscal Year to pay the Annual Costs.

“Approved Dwelling Units” means the number of residential dwelling units that can be developed on a Taxable Parcel pursuant to a tentative map or final map approved by the City with respect to such Parcel.

“Approved Dwelling Unit Size” means the for each dwelling unit, the square footage for residential construction approved by the City, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure or similar area, as identified on a tentative map or final map approved by the City.

“Base Year” means the first year in which Special Taxes are levied, the Fiscal Year ending June 30, 2003.

“Auditor” means the Auditor for the County or his or her designee.

“CFD” means the City of Novato, Community Facilities District No. 2002-2 (Pointe Marin).

“Cash Payment Amount” means the amount calculated pursuant to Section 7.1 herein.

“City” means the City of Novato, California.

“City Council” means the elected legislative body of the City.

“City Manager” means the Manager of the City.

“Classification Date” means each June 1.

“Commercial Parcel” means a Parcel which is designated for commercial use pursuant to the land use approved for such Parcel by the City. In the event the City has no official land use designation for a Parcel, the land use code on the secured tax rolls of the County may be used to classify such Parcel.

“County” means County of Marin, California.

“Coverage Factor” means a percentage rate not greater than ten (10) percent.

“Debt Service” means the total amount of principal and interest due on outstanding bonds of the CFD or on bonds to be issued by the CFD that must be collected by the County in any Fiscal Year in order to make timely payments of principal and interest on such bonds.

“Developed Dwelling Unit” means a dwelling unit for which a building permit has been issued by the City.

“Dwelling Unit” means a residential dwelling unit approved by the City pursuant to a tentative map or final map or for which a building permit has been issued by the City.

“Dwelling Unit Size” means all of the permitted square footage for residential construction, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure or similar area, identified on a building permit for new residential construction issued by the City.

“Facility Expenses” means for any Fiscal Year, that portion of Annual Costs: 1) budgeted to pay Debt Service in a timely manner, 2) budgeted for bond trustee, paying agent and registrar fees and expenses, and 3) needed to replenish bond reserve funds and to make up for any deficit caused by actual or estimated delinquencies in Special Taxes for the previous or current Fiscal Year; provided, however, that any provision for delinquencies shall not exceed the Coverage Factor.

“Facilities Factor” means, for each Fiscal Year, the ratio of Facility Expenses to be collected from Special Tax revenues to the total Special Tax Revenues to be levied in such Fiscal Year.

“Fiscal Year” means the period beginning July 1 and ending the following June 30.

“Fully Taxable Parcel” means any Residential Parcel that is not a Prepaid Taxable Parcel.

“Maintenance Expenses” means annual expenses for the maintenance of parks, parkways and open space.

“Maximum Annual Special Tax Rate” means the maximum amount of Special Taxes that may be levied against a Taxable Parcel in any given Fiscal Year, excluding any Cash Payment Amount or Optional Prepayment Amount.

“Optional Prepayment Amount” means the amount an owner of a Fully Taxable Parcel may prepay to discharge future Special Tax Obligation related to outstanding and authorized but unissued bonds as calculated pursuant to Section 7.3.1 herein.

“Parcel” means any Parcel within the boundaries of the CFD that is identified by an Assessor’s parcel number on the secured tax rolls of the County as of the January 1 lien date (or such other lien date as may be established by the Assessor) of each Fiscal Year.

“Parcel Classification” means the placement of each Parcel into its respective classification as such parcel exists each Classification Date.

“Prepaid Taxable Parcel” means any Parcel that has prepaid pursuant to this Rate and Method of Apportionment the Special Taxes to be levied against such Parcel in satisfaction of its pro rata share of Facility Expenses with respect to any outstanding or authorized but unissued bonds of the CFD.

“Principal Prepayment Amount” means the amount of unpaid outstanding bond principal and authorized but unissued bond principal allocable to each Taxable Parcel as of the date of such calculation.

“Public Parcel” means any Parcel that is, or is intended to be, publicly owned and which is normally exempt from ad valorem taxes under California law, including but not limited to public streets, schools, school district administrative offices, police and fire facilities, parks, and public drainage ways, rights-of-way, landscaping, greenbelts and open space.

“Residential Parcel” means any Parcel zoned for single or multi-family residential use.

“Service Expenses” means, for any Fiscal Year, the sum of Maintenance Expenses and Administrative Expenses to be finance from Special Taxes in such Fiscal Year.

“Services Factor” means, for any Fiscal Year, one minus the Facilities Factor applicable in such Fiscal Year.

“Special Tax” or “Special Taxes” means any tax levy with respect to the CFD under the Act on Taxable Parcels.

“Special Tax Report” means the report prepared annually pursuant to Section 3 hereof.

“Tax Collection Schedule” means the document prepared by, or caused to be prepared by, the City Manager for use by the Auditor in collecting the Special Taxes each Fiscal Year pursuant to Section 6 hereof.

“Taxable Parcel” means any Residential Parcel.

“Tax-Exempt Parcel” means any Parcel that is a Public Parcel. However, Taxable Parcels that are acquired by a public entity shall remain subject to the applicable Special Tax pursuant to Section 53317.4 of the Act.

## **Section 2. Basis of Special Tax Levy**

2.1 Basis of Levy. A Special Tax under the Act applicable to each Taxable Parcel shall be levied and collected according to the tax liability determined by the City through the application of the procedures described below, commencing in the Fiscal Year 2002-2003.

## **Section 3. Determination and Classification of Parcels Subject to Special Tax**

3.1 Special Tax Report. Prior to the first issuance of bonds, and thereafter prior to July 1 of each Fiscal Year, the City Manager shall cause to be prepared a Special Tax Report setting forth: 1) the classification as of the Classification Date applicable for such Fiscal Year of each Parcel within the boundaries of the CFD, 2) a budget as specified pursuant to Section 3 hereof showing a projected sources and uses of funds for the CFD in such Fiscal Year and demonstrating that projected Annual Tax Revenues will be sufficient to pay projected Annual Costs, 3) the Special Tax rate necessary to satisfy Annual Costs applicable to each Dwelling Unit for such Fiscal Year, 4) the amount of Special Taxes to be levied on each Taxable Parcel for such Fiscal Year, 5) the annual Principal Prepayment Amount allocable to each Fully Taxable Parcel, and 6) a Tax Collection Schedule.

3.2 Classification of Parcels. Parcels shall be classified as of their status applicable in the next Fiscal Year on each Classification Date. The secured property tax roll, land use codes and plot map books maintained by the County Assessor, in combination with official records maintained by the City regarding development agreements, recorded final maps, building permits issued, Dwelling Unit Sizes and other changes in parcel development status, will be the basis for classifying the Parcels in the CFD. If the land

use code on the secured property tax roll is incorrect, the City may assign the appropriate code based on its review of the status of the property.

3.2.1 Commercial Parcels shall be classified as Inactive Parcels. Public Parcels shall be classified as Tax-Exempt Parcels. Residential Parcels shall be classified as Taxable Parcels. Taxable Parcels shall be further classified as either Fully Taxable Parcels or Prepaid Taxable Parcels. Prepaid Taxable Parcels shall be subject to the levy of Special Taxes to pay for their pro rata share of annual Maintenance Expenses and Administrative Expenses. Special Taxes may not be levied on Prepaid Taxable Parcels for the payment of Facility Expenses.

3.2.2 A Residential Parcel classified as a Fully Taxable Parcel may not be removed from such classification unless the Special Taxes associated with Debt Service on outstanding and authorized but unissued bonds allocable to such Parcel have been prepaid pursuant to Section 7 hereof, in which case such Parcel shall be reclassified as a Prepaid Taxable Parcel. Prepaid Taxable Parcels shall remain subject to the payment of Special Taxes as provided for herein.

3.3 Levy of Special Tax. The Special Tax shall be levied for Facility Expenses only on Fully Taxable Parcels. The Special Tax shall be levied on Prepaid Taxable Parcels only for their pro rata share of Annual Costs related to annual Service Expenses. The amount of the Special Tax for each Taxable Parcel shall be determined in accordance with the provisions of Section 6 hereof. For any Taxable Parcel, Special Taxes may be levied only for Service Expenses beginning in the Fiscal Year 2042-2043. Each Taxable Parcel's Special Tax for the next Fiscal Year shall be levied against such Parcel's assessor's parcel number as it was shown on the County Assessor's records of Parcels in the CFD as of the prior January 1 lien date, or such other lien date established by the County Assessor.

#### **Section 4. Termination of the Special Tax**

4.1 Facility Expenses. When all of the CFD's Debt Service obligations are satisfied and no bonds authorized for issuance by the CFD remain either unissued or outstanding, the City Council shall determine that the Special Tax shall cease to be levied for Facility Expenses. Notwithstanding the foregoing, in no event shall the Special Tax be levied for Facility Expenses after the Fiscal Year ending June 30, 2043.

4.2 Service Expenses. The City may levy the Special Tax for Service Expenses in perpetuity as provided for herein.

#### **Section 5. Maximum Annual Special Tax Rates**

5.1 Maximum Annual Special Tax Rates. A Maximum Annual Special Tax Rate shall be established for each Taxable Parcel according to the number of Dwelling Units approved for construction thereon pursuant to 1) an approved tentative map, 2) an approved final map, 3) building permits issued by the City and, 4) the approved Dwelling

Unit Size for each such approved Dwelling Unit, in each case in accordance with the schedule shown in the following Table 1. The Maximum Annual Special Tax Rate shall increase at a rate of three tenths of one percent (.3%) per year, compounded, until the Fiscal Year ending June 30, 2042 after which time the Maximum Annual Special Tax Rate shall be reduced as shown in the following Table 1 and shall thereafter increase at a rate of two percent (2%) per year.

**Table 1**  
**Maximum Annual Special Tax Rates**

Dwelling Unit Size In Square Feet	Base Year MASTR* <u>FY 2002-2003</u>	Compound Rate of Increase Until <u>FY 2041-2042</u>	MASTR* <u>FY 2042-2043</u>	Compound Rate of Increase in Perpetuity
1,900 - and Under	\$2,180.00	0.31%	\$528.72	2%
1,901 - 2,100	2,220.00	0.31%	538.42	2%
2,101 - 2,900	2,460.00	0.31%	596.62	2%
2,901 - 3,100	2,600.00	0.31%	630.58	2%
3,101 - 3,300	2,960.00	0.31%	717.89	2%
3,301 - 3,500	3,060.00	0.31%	742.14	2%
3,501 - 4,000	3,140.00	0.31%	761.54	2%
4,101 - 3,700	3,440.00	0.31%	834.30	2%
3,701 - 4,100	3,640.00	0.31%	882.81	2%
4,101 - and Up	3,700.00	0.31%	897.36	2%

\*Maximum Annual Special Tax Rates

5.1.1 Inactive Parcels, Commercial Parcels and Tax-Exempt Parcels shall not be subject to the levy of Special Taxes.

**Section 6. Apportionment, Levy and Calculation of Special Tax Rates**

6.1 Allocation of Annual Costs to Taxable Parcels. For each Fiscal Year, a Special Tax rate shall be established for each Fully Taxable Parcel and for each Prepaid Taxable Parcel. Annual Facility Expenses shall be allocated only to Fully Taxable Parcels. Annual Service Expenses shall be allocated to all Taxable Parcels.

6.2 Preparation of Annual Budgets. Prior to July 1 of each Fiscal Year for which Annual Costs are payable, the City shall establish a budget for the separate components of Facility Expenses, Maintenance Expenses and Administrative Expenses to be collected from Special Tax revenues in such Fiscal Year. The annual budget shall clearly identify each such component of the budget. Amounts held by the fiscal agent under the fiscal agent agreement specifying the terms of outstanding bonds and pledged to Debt Service on such bonds representing interest earnings and delinquency coverage collections not necessary for the payment of Facility Expenses from the prior Fiscal Year's Special Tax revenues, to the extent permitted by the fiscal agent agreement, shall be allocated solely to such Fiscal Year's budget for Facility Expenses and credited against Special Tax revenues necessary to finance Facility Expenses for such Fiscal Year. Amounts held by the fiscal agent for payment of Debt Service prior to January 1 of such Fiscal Year shall

not be treated as surplus fund balances available for such credit. Surplus fund balances held by the City for Administrative Expenses shall be allocated solely to such Fiscal Year's budget for Administrative Expenses and credited against Special Tax revenues necessary to finance Administrative Expenses for such Fiscal Year. Surplus fund balances held by the City for Maintenance Expenses may be retained by the City for expenditure in future fiscal years without any offsetting credit to the amount necessary to finance Maintenance Expenses for such Fiscal Year.

6.3 Calculation of Annual Special Tax Rate. Prior to July 1 of each Fiscal Year for which Annual Costs are payable, the Special Tax rate applicable to each Taxable Parcel in the CFD shall be established annually by the City as follows:

- (i) The maximum special tax revenue applicable to each Dwelling Unit for the payment of Facility Expenses shall be calculated by multiplying the Maximum Annual Special Tax Rate applicable to each Dwelling Unit on each Fully Taxable Parcel by the applicable Facilities Factor for such Fiscal Year. If a Fully Taxable Parcel has more than one Dwelling Unit attributable to it, the sum of all such products shall be calculated to arrive at the total maximum special tax revenue attributable to such Fully Taxable Parcel for the payment of Facility Expenses.
- (ii) The maximum special tax revenues available for Facility Expenses shall be calculated by summing the maximum special tax revenues attributable to each Fully Taxable Parcel as calculated in paragraph 6.3 (i).
- (iii) If the maximum special tax revenues available for Facility Expenses calculated in paragraph 6.3 (ii) above is greater than the amount determined as necessary to be collected from Special Tax revenues in order to satisfy Facility Expenses for such Fiscal Year, the Maximum Annual Special Tax Rate (or rates) applicable to each Fully Taxable Parcel shall be reduced in equal proportions until the total Special Tax revenues to be collected from all Fully Taxable Parcels equals the amount of Special Tax revenues necessary to finance Facility Expenses for such Fiscal Year.
- (iv) The Special Tax rate applicable to each Dwelling Unit for the payment of Service Expenses shall be calculated by multiplying the Maximum Annual Special Tax Rate applicable to each Dwelling Unit on each Taxable Parcel by the applicable Service Factor for such Fiscal Year. If a Taxable Parcel has more than one Dwelling Unit attributable to it, the sum of all such products shall be calculated to arrive at the total maximum special tax revenue attributable to such Taxable Parcel for the payment of Service Expenses.
- (v) If the maximum special tax revenues available for Service Expenses calculated in paragraph 6.3 (iv) above is greater than the amount

determined as necessary to be collected from Special Tax revenues in order to satisfy Service Expenses for such Fiscal Year, the Maximum Annual Special Tax Rate (or rates) applicable to each Fully Taxable Parcel shall be reduced in equal proportions until the total Special Tax revenues to be collected from all Fully Taxable Parcels equals the amount of Special Tax revenues necessary to finance Service Expenses for such Fiscal Year.

- (vi) An annual Special Tax shall be determined for each Taxable Parcel by 1) multiplying the Special Tax rate or rates calculated in paragraph 6.3 (iii) above by the number of Dwelling Units to be taxed at each such Special Tax rate, 2) multiplying the Special Tax rate or rates calculated in paragraph 6.3 (v) above by the number of Dwelling Units to be taxed at each such Special Tax rate, and 3) summing the total of all such products.
- (vii) Notwithstanding the foregoing, if for any Taxable Parcel, the Special Tax rate applicable to a Dwelling Unit on such Taxable Parcel exceeds the Maximum Annual Special Tax Rate applicable to such Dwelling Unit, the Special Tax rate attributable to such Dwelling Unit shall be reduced to the Maximum Annual Special Tax Rate applicable to such Dwelling Unit.

6.4 Approval of Annual Special Tax Levy. After a Special Tax Report for such Fiscal Year has been approved by resolution of the City Council in July of each Fiscal Year, the City Manager shall forward a Tax Collection Schedule showing the annual Special Tax liability for each Taxable Parcel to the County Auditor, requesting that the Tax Collection Schedule be placed on the secured property tax roll for the applicable Fiscal Year. The Tax Collection Schedule shall be sent not later than August 10 or such other date required by the County Auditor for such placement.

6.5 Correction of Errors. The City shall make every effort to correctly assign the Special Tax rates and calculate the annual Special Tax liability for each Taxable Parcel, and the annual Principal Prepayment Amount, the Cash Prepayment Amount and the Optional Prepayment Amount for each Fully Taxable Parcel. It shall be the burden of the taxpayer to correct any errors in the determination and classification of the Parcels subject to the Special Tax and their respective Special Tax and Principal Prepayment Amount liabilities.

## **Section 7. Prepayment of Special Taxes**

7.1. Prepayment Prior to the Initial Sale of Bonds. Prior to the sale of bonds secured by the Special Taxes, the owner of each Taxable Parcel shall have the option to prepay future Special Taxes to be levied against such Taxable Parcel in connection with such bonds with a single cash payment. The optional Cash Payment Amount shall be determined as follows:

- (i) The maximum approved bonded indebtedness of the CFD shall be determined. From such amount shall be deducted the following bond financing costs: the projected cost of financing bond debt service reserve funds, interest projected to be capitalized from the proceeds of bonds, and any projected underwriter's discount and bond insurance premiums. All other budgeted costs of creating the CFD and issuing bonds approved by the City Council shall be included as project costs.
- (ii) For each Dwelling Unit applicable to a Fully Taxable Parcel, the net amount determined in paragraph 7.1 (i) shall be multiplied by the product of the applicable Maximum Annual Special Tax Rate for such Dwelling Unit times the Facilities Factor for such Fiscal Year divided by the product equal to the sum total of all Maximum Annual Special Taxes on Fully Taxable Parcels times the Facilities Factor for such Fiscal Year.
- (iii) The amount calculated in paragraph 7.1 (ii) shall be summed up for each Dwelling Unit on each Fully Taxable Parcel to arrive at the optional Cash Payment Amount allocable to each such Fully Taxable Parcel.

7.2 Notice of Optional Cash Payment. Notice as provided by the Act shall be given to each owner of a Fully Taxable Parcel within the CFD of a time period prior to the initial sale of bonds during which cash payments may be made. Only cash payments in whole may be accepted in lieu of the payment of annual Special Taxes for Facility Expenses. Fully Taxable Parcels for which the prepayment of Special Taxes in whole for Facility Expenses has been made shall be reclassified as Prepaid Taxable Parcels. Prepaid Taxable Parcels shall remain subject to the levy of Special Taxes for Maintenance Expenses and Administrative Expenses.

7.3 Prepayment Subsequent to the Initial Sale of Bonds. The owner of any Taxable Parcel may prepay the Special Taxes to be levied for Facility Expenses against such Parcel through the term to maturity of outstanding bonds and authorized but unissued bonds. Special Taxes for Facility Expenses may not be prepaid in part. The Principal Prepayment Amount for each Fully Taxable Parcel subsequent to the sale of bonds shall be determined annually for each Fiscal Year at the same time annual Special Taxes are determined as follows.

- (i) The total amount of unpaid bond principal outstanding at the beginning of each Fiscal Year plus authorized and unissued bond principal shall be determined, from which amount shall be subtracted the sum of any principal coming due in such Fiscal Year, the payment of which was provided for in the collection of the prior Fiscal Year's Annual Tax Revenues, plus the principal coming due in the next ensuing Fiscal Year, the pro rata payment of which is provided for in the Special Taxes to be levied in the Fiscal Year for which the Special Tax levy is being calculated.

- (ii) For each Dwelling Unit applicable to a Fully Taxable Parcel, the net amount determined in paragraph 7.3 (i) shall be multiplied by the product of the applicable Maximum Annual Special Tax Rate for such Dwelling Unit times the Facilities Factor for such Fiscal Year divided by the product equal to the sum total of all Special Taxes levied at the applicable Maximum Annual Special Tax Rates on Fully Taxable Parcels times the Facilities Factor for such Fiscal Year.
- (iii) The amount calculated in paragraph 7.3 (ii) shall be summed up for each Dwelling Unit on each Fully Taxable Parcel to arrive at the Principal Prepayment Amount allocable to each such Fully Taxable Parcel.

7.3.1 Optional Prepayment Amount. In each Fiscal Year, the owner of a Fully Taxable Parcel may prepay that portion of the future Special Tax obligations of such Fully Taxable Parcel related to outstanding and authorized but unissued bonds by paying in cash the sum of i) the amount of any delinquent and unpaid installments of Special Taxes levied against such Parcel, together with any penalties, interest and costs due thereon, ii) the Special Taxes levied against such Parcel in such Fiscal Year, iii) the Principal Prepayment Amount allocable to such Taxable Parcel in such Fiscal Year, iv) a prepayment premium in an amount equal to the prepayment premium required under the fiscal agent agreement to be paid on outstanding bonds to be called on the next permissible call date times such Parcel's applicable Principal Prepayment Amount, provided that authorized but unissued bonds shall have no prepayment premium associated with them, v) a reasonable fee, fixed by the City, for the cost of administering the prepayment and the advance redemption of outstanding bonds, and vi) if authorized pursuant to the fiscal agent agreement, a credit for such Taxable Parcel's pro rata share of the reserve fund balance (if any) established under such fiscal agent agreement. The sum of all such amounts in the foregoing sentence shall be the Optional Prepayment Amount. The Optional Prepayment Amount shall be calculated by the City at the request of a property owner. The City may charge a reasonable fee to recover its cost of making such calculation.

## **Section 8. Application of Surplus Special Tax Revenues**

8.1 Surplus Special Tax Revenues. Any Special Tax revenues collected in excess of annual Facility Expenses shall be applied as stipulated pursuant to Section 6 hereof and as stipulated pursuant to the fiscal agent agreement specifying the terms of any outstanding bonds of the CFD. Any Special Tax revenues collected in excess of annual Maintenance Expenses and Administrative Expenses shall be applied as stipulated pursuant to Section 6 hereof.

## **Section 9. Administrative Changes**

9.1 City Manager Authority. The City Manager has the authority to make necessary administrative adjustments to this Rate and Method of Apportionment in order to remedy

any portions of this Rate and Method of Apportionment that require clarification, provided that no such adjustment shall result in a tax levy on any Taxable Parcel in excess of the applicable Maximum Annual Special Tax Rate for such Taxable Parcel.

9.2 Appeals. Any taxpayer that believes that the amount or formula of the Special Tax is in error may file a written notice with the City Manager appealing the Special Tax. Any such notice of appeal must be filed by January 1 of the Fiscal Year for which the Special Tax in question has been levied. The City Manager or his designee will then promptly review all such timely-filed appeals, and at the City Manager's discretion, meet with the appellant. If the findings of the City Manager verify that the Special Tax should be modified, a recommendation at that time will be made to the City and, as appropriate, the Special Tax shall be corrected and, if applicable, a refund for Facility Expenses shall be granted from such fund or account established under the fiscal agent agreement specifying the terms of the outstanding bonds of the CFD for which the payment of such refunds is authorized and a refund for Administrative Expenses and Maintenance Expenses shall be made from such fund or funds maintained by the City for such expenses. The City Manager, in his sole discretion, may review appeals filed after the January 1 deadline, regardless of the merit of any such appeals. Under no circumstances will the City be obligated to grant refunds for a Fiscal Year extending beyond the Fiscal Year immediately preceding the Fiscal Year in which an appeal was filed.

9.3 Interpretation of Rate and Method of Apportionment. Interpretations may be made by resolution of the City for purposes of clarifying any vagueness or ambiguity as it relates to the Special Tax or the Maximum Annual Special Tax Rate, the method of apportionment, the classification of properties, or any definition applicable to the CFD.

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## APPENDIX C

### SUMMARY OF THE FISCAL AGENT AGREEMENT

The following is a brief summary of the provisions of the Fiscal Agent Agreement. This summary is not intended to be definitive. Reference is made to the actual document (a copy of which is available from the City) for the complete terms thereof.

#### DEFINED TERMS

The following terms have the following meanings, notwithstanding that any such terms may be elsewhere defined in this Official Statement. Any terms not expressly defined in this Summary but previously defined in this Official Statement have the respective meanings previously given.

**“Act”** means the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 *et seq.* of the California Government Code.

**“Administrative Expenses”** means costs directly related to the administration of the CFD consisting of: the actual costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by a City employee or consultant or both) and the actual costs of collecting the Special Taxes (whether by the County or otherwise); the actual costs of remitting the Special Taxes to the Fiscal Agent; actual costs of the Fiscal Agent (including its legal counsel) in the discharge of its duties under the Agreement; the actual costs of the City or its designee of complying with the disclosure provisions of the Act and the Agreement, including those related to public inquiries regarding the Special Tax and disclosures to Owners of the Bonds and the Original Purchaser; the actual costs of the City or its designee related to an appeal of the Special Tax; any amounts required to be rebated to the federal government; an allocable share of the salaries of the City staff directly related to the foregoing and a proportionate amount of City general administrative overhead related thereto. Administrative Expenses shall also include amounts advanced by the City for any administrative purpose of the CFD, including costs related to prepayments of Special Taxes, recordings related to such prepayments and satisfaction of Special Taxes, amounts advanced to ensure maintenance of tax exemption, and the costs of prosecuting foreclosure of delinquent Special Taxes, which amounts advanced are subject to reimbursement from other sources, including proceeds of foreclosure.

**“Agreement”** means the Fiscal Agent Agreement dated as of July 1, 2007 by and between the City and the Fiscal Agent, as it may be amended or supplemented.

**“Annual Debt Service”** means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled, and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including any mandatory sinking payment due in such Bond Year).

**“Authorized Officer”** means the City Manager, the Director of Finance, the City Clerk, or any other officer or employee authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in the Agreement as required to be undertaken by an Authorized Officer.

**“Bond Counsel”** means Jones Hall, A Professional Law Corporation or any other attorney or firm of attorneys acceptable to the City and nationally recognized for expertise in

rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

**“Bond or Bonds”** means the City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Refunding Bonds, Series 2007, at any time Outstanding under the Agreement.

**“Bond Fund”** means the fund designated the “City of Novato, Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Refunding Bonds, Series 2007 Bond Fund” established and administered under the Fiscal Agent Agreement.

**“Bond Insurer”** means XL Capital Assurance Inc., its successors and assigns, as issuer of the Insurance Policy.

**“Bond Year”** means the one-year period beginning on September 1st in each year and ending on August 31 in the following year, except that the first Bond Year shall begin on the Closing Date and shall end on August 31, 2007.

**“Business Day”** means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its principal corporate trust office are authorized or obligated by law or executive order to be closed.

**“CFD”** means the "City of Community Facilities District No. 2002-1 (Pointe Marin) formed under the Resolution of Formation.

**“City”** means the City of Novato, and any successor thereto.

**“City Attorney”** means any attorney or firm of attorneys employed by the City in the capacity of city attorney.

**“Closing Date”** means the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the original purchaser of the Bonds.

**“Costs of Issuance”** means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale, delivery and issuance of the Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, appraisal costs, filing and recording fees, fees and expenses of counsel to the City, fees and expenses of the Escrow Agent (including its legal fees and charges), initial fees and charges of the Fiscal Agent including its first annual administration fees and its legal fees and charges, including the allocated costs of in-house attorneys, expenses incurred by the City in connection with the issuance of the Bonds, Bond (underwriter's) discount, legal fees and charges, including bond counsel, and counsel to any financial consultant, financial consultant's fees, charges for execution, authentication, transportation and safekeeping of the Bonds, fees of rating agencies, fees of municipal bond insurance companies insuring the Bonds, and other costs, charges and fees in connection with the foregoing.

**“Costs of Issuance Fund”** means the fund designated the “City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Refunding Bonds, Series 2007 Costs of Issuance Fund” established and administered under the Agreement.

**“Council”** means the City Council of the City as the legislative body.

**“County”** means the County of Marin, California.

**“Director of Finance”** means the official of the City, or such official's designee, who acts in the capacity as the chief financial officer of the City, including the Assistant City Manager or other financial officer.

**“Fair Market Value”** means with respect to the Bonds 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 Tax 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 Tax 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 Tax 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 City and related parties do not own more than a ten percent (10%) beneficial interest if the return paid by such fund is without regard to the source of the investment.

**“Federal Securities”** means (a) any direct 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), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

**“Fiscal Agent”** means U.S. Bank National Association, the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place.

**“Fiscal Year”** means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

**“Independent Financial Consultant”** means any consultant or firm of such consultants appointed by the City or the Treasurer, and who, or each of whom: (i) is judged by the Treasurer to have experience in matters relating to the issuance and/or administration of bonds under the Act; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the CFD, or any real property in the CFD; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

**“Insurance Policy”** means the policy of municipal bond insurance issued by the Bond Insurer which insures the payment when due of principal of and interest on the Bonds, as provided therein.

**“Interest Payment Date”** means each September 1 and March 1 of every calendar year, commencing with March 1, 2008.

**“Maximum Annual Debt Service”** means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

**“Officer’s Certificate”** means a written certificate of the City signed by an Authorized Officer of the City.

**“Ordinance”** means any ordinance of the City Council of the City levying the Special Taxes, including but not limited to such ordinance introduced by the Council on May 28, 2002, and adopted by the Council on June 11, 2002.

**“Outstanding,”** when used as of any particular time with reference to Bonds, means all Bonds except (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of the Agreement; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under the Agreement or any Supplemental Agreement.

**“Owner”** or **“Bondowner”** means any person who shall be the registered owner of any Outstanding Bond.

**“Permitted Investments”** means the following, but only to the extent that the same are acquired at Fair Market Value:

- (a) Federal Securities.
- (b) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including: Export-Import Bank, Farmers Home Administration, General Services Administration, U.S. Maritime Administration, Small Business Administration, Government National Mortgage Association, U.S. Department of Housing & Urban Development, and Federal Housing Administration;
- (c) bonds, notes or other evidences of indebtedness rated AAA by S&P and Aaa by Moody’s issued by Fannie Mae or Freddie Mac with remaining maturities not exceeding three years;
- (d) U.S. dollar denominated deposit accounts (including those with the Fiscal Agent or with any affiliate of the Fiscal Agent), federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of A-1+ by S&P and P-1 by Moody’s, and maturing no more than 360 days after the date of purchase;
- (e) commercial paper which is rated at the time of purchase in the single highest classification, A-1+ by S&P and P-1 by Moody’s and which matures not more than 270 days after the date of purchase;

- (f) investments in a money market fund rated AAAM or AAAM-G or better by S&P, which may include funds for which the Fiscal Agent or its affiliates provide investment advisory or other management services;
- (g) any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, based on the escrow, in the highest rating category of S&P and Moody's or (ii)(A) which are fully secured as to principal and interest and redemption premium (if any) by a fund consisting only of cash or Federal Securities, which fund may be applied only to the payment of such principal of and interest and redemption premium (if any) in such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates under such irrevocable instructions, as appropriate, and (B) which fund is sufficient, as verified by an independent accountant, to pay principal of and interest and redemption premium (if any) on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;
- (h) investment agreements approved in writing by the Bond Insurer;
- (i) 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 Fiscal Agent, the Fiscal Agent is entitled to make investments and withdrawals in its own name as Fiscal Agent; and
- (j) any other investments permitted in writing by the Bond Insurer.

**"Principal Office"** means, with respect to the Fiscal Agent, the office of the Fiscal Agent in San Francisco, California, or additional offices as may be specified in writing to the City, and the City by the Fiscal Agent, provided that for transfer, registration, exchange, payment and surrender of the Bonds means the corporate trust office of U.S. Bank National Association in St. Paul, Minnesota, or such other office designated by the Fiscal Agent.

**"Prior Bonds"** means the \$11,900,000 initial aggregate principal amount of City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Bonds, Series 2002.

**"Prior Bonds Fiscal Agent"** means U.S. Bank National Association.

**"Prior Bonds Fiscal Agent Agreement"** means the Fiscal Agent Agreement dated as of June 1, 2002 between the City and the Prior Fiscal Agent.

**"Project"** means those items described as the "Facilities" in the Resolution of Formation.

**"Record Date"** means the fifteenth day of the calendar month next preceding the applicable Interest Payment Date, whether or not such day is a Business Day.

**“Refunding Bonds”** means bonds issued by the City for the CFD, the net proceeds of which are used to refund all or a portion of the then-Outstanding Bonds; provided that the net interest cost to maturity of the Refunding Bonds is less than the net interest cost to maturity of the Bonds being refunded and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

**“Reserve Requirement”** means, as of any date of calculation, an amount equal to the least of (i) Maximum Annual Debt Service on the Outstanding Bonds, (ii) 125% of average Annual Debt Service on the Outstanding Bonds and (iii) 10% of the original principal amount of the Bonds.

**“Resolution of Formation”** means Resolution No. 70-02, adopted by the Council on May 28, 2002, forming the CFD.

**“Services”** shall have the meaning assigned to such term in the Resolution of Formation.

**“Services Fund”** means the fund designated the “City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Services Fund” established and administered under the Agreement.

**“Special Tax Fund”** means the special fund designated “City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Refunding Bonds, Series 2007 Special Tax Fund” established and administered under the Agreement.

**“Special Tax Prepayments”** means the proceeds of any Special Tax prepayments received by the City, as calculated pursuant to the Rate and Method of Apportionment of the Special Taxes for the CFD, less any administrative fees or penalties collected as part of any such prepayment.

**“Special Tax Prepayments Account”** means the account by that name established within the Bond Fund under the Agreement.

**“Special Tax Revenues”** means the proceeds of the Special Taxes received by the City, including any scheduled payments thereof, interest and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said interest, but shall not include any interest in excess of the interest due on the Bonds or any penalties collected in connection with any such foreclosure.

**“Special Taxes”** means the special taxes levied by the City Council within the CFD under the Act, the Ordinance and the Agreement.

**“Supplemental Agreement”** means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to the Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

**“Tax Code”** means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable

temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“**Tax Consultant**” means an independent financial or tax consultant retained by the City for the purpose of computing the Special Taxes.

## **FUNDS AND ACCOUNTS**

The following funds and accounts are established pursuant to the Agreement:

**Costs of Issuance Fund.** A Costs of Issuance Fund is established as a separate fund to be held by the Fiscal Agent. Moneys in the Costs of Issuance Fund will be disbursed to pay Costs of Issuance. Moneys on deposit in the Costs of Issuance Fund will be invested in Permitted Investments in accordance with the Agreement. The Fiscal Agent will maintain the Costs of Issuance Fund for a period of ninety (90) days from the Closing Date and thereafter any excess amounts remaining therein will be transferred to the City for deposit in the Improvement Fund.

**Reserve Fund.** The Reserve Fund is established as a separate fund to be held by the Fiscal Agent. On the Closing Date, proceeds of the Bonds in an initial deposit equal to or in excess of the Reserve Requirement will be deposited in the Reserve Fund. Moneys in the Reserve Fund will be held in trust by the Fiscal Agent for the benefit of the Owners of the Bonds as a reserve for the payment of the principal of, and interest and any premium on, the Bonds and is be subject to a lien in favor of the Owners of the Bonds. All amounts deposited in the Reserve Fund will be used solely to make transfers to the Bond Fund in the event of any deficiency in the amount then required for payment of debt service on the Bonds or, in accordance with the provisions of the Agreement, for the purpose of redeeming Outstanding Bonds.

Whenever, on or before any Interest Payment Date, or on any other date at the request of the Director of Finance, the amount in the Reserve Fund exceeds the Reserve Requirement, the Fiscal Agent shall provide written notice to the Director of Finance of the amount of the excess and shall transfer an amount equal to the excess from the Reserve Fund to the Bond Fund, to be used to pay interest on the Bonds on the next Interest Payment Date. Whenever a transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Fiscal Agent shall provide written notice thereof to the Treasurer, specifying the amount withdrawn.

Whenever the balance in the Reserve Fund exceeds the amount required to redeem or pay the Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall, upon the written request of the Director of Finance, transfer any cash or Permitted Investments in the Reserve Fund to the Bond Fund to be applied, on the redemption date to the payment and redemption, in accordance with the Agreement, of all of the Outstanding Bonds. In the event that the amount so transferred from the Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding Bonds, the balance in the Reserve Fund shall be transferred to the Director of Finance to be used by the City for any lawful purpose.

Whenever Special Taxes are prepaid and Bonds are to be redeemed with the proceeds of a Special Tax Prepayment, a proportionate amount in the Reserve Fund (determined on the basis of the principal of Bonds to be redeemed and the original principal of the Bonds, but in any

event not in excess of the amount that will leave the balance in the Reserve Fund following the proposed redemption equal to the Reserve Requirement) shall be transferred on the Business Day prior to the redemption date by the Fiscal Agent to the Bond Fund to be applied to the redemption of the Bonds. The Director of Finance shall deliver to the Fiscal Agent an Officer's Certificate specifying any amount to be so transferred, and the Fiscal Agent may rely on any such Officer's Certificate.

**Bond Fund.** The Bond Fund is established as a separate fund to be held by the Fiscal Agent. Moneys in the Bond Fund will be held by the Fiscal Agent and will be disbursed for the payment of the principal of, and interest and any premium on, the Bonds. On each Interest Payment Date, the Fiscal Agent will withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and premium, if any, due and payable on such Interest Payment Date on the Bonds. If amounts in the Bond Fund are insufficient to pay debt service due with respect to any Interest Payment Date, the Fiscal Agent must withdraw from the Reserve Fund, in accordance with the provisions of the Agreement, to the extent of any funds or Permitted Investments therein, amounts to cover the amount of such insufficiency. If, after the foregoing transfer, there are insufficient funds in the Bond Fund to make the payments provided for in the preceding sentence, the Fiscal Agent will apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, if any, and then to payment of principal due on the bonds by reason of sinking payments. Moneys in the Bond Fund will be invested in Permitted Investments in accordance with the Agreement.

Within the Bond Fund there is established the Special Tax Prepayment Account, which shall be used exclusively for the administration of any prepayments of Special Taxes to assure the timely redemption of Bonds.

**Special Tax Fund.** The Special Tax Fund is established as a separate fund to be held by the Director of Finance to the credit of which shall be deposited all Special Tax Revenues received by the City. Moneys in the Special Tax Account will be held by the Director of Finance for the benefit of the City and the Owners of the Bonds and are subject to a lien in favor of the Owners of the Bonds.

No later than four (4) Business Days prior to each Interest Payment Date, the Director of Finance shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority: (i) to the Fiscal Agent for deposit in the Bond Fund, (a) an amount necessary to pay any principal or interest on the Bonds not paid when due, together with additional interest at rate of the Bonds to the expected date of payment from the date such payment was due, plus (b) an amount, taking into account any amounts then on deposit in the Bond Fund, such that the amount in the Bond Fund equals the debt service due on the next such Interest Payment Date (including any mandatory sinking fund installment), premium, if any, and interest due on the Bonds; and (ii) to the Fiscal Agent for deposit in the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, so that the amount in the Reserve Fund equals the Reserve Requirement. Additionally, after the deposits described above have been made with respect to each September 1 Interest Payment Date, the Director of Finance shall transfer, first, (iv) to the Administrative Expense Fund an amount equal to the Administrative Expenses and Costs of Issuance due and owing or required to be paid on or before the next succeeding September 1, and, second, (v) to the Services Fund any amount remaining on deposit in the Special Tax Fund after making all of the foregoing transfers and deposits to be used to pay for Services. As soon as practicable after the receipt by the City of any prepayments of Special Taxes, but no later than ten (10) Business Days after such receipt,

the Director of Finance shall transfer such prepayments to the Fiscal Agent for deposit into the Special Tax Prepayment Account of the Bond Fund to be used for the redemption of Bonds.

**Administrative Expense Fund.** The Administrative Expense Fund is established as a separate fund to be held by the Director of Finance. Moneys in the Administrative Expense Fund will be withdrawn, as needed, by the Director of Finance to pay Administrative Expenses and Costs of Issuance. Annually, the Director of Finance will withdraw from the Administrative Expense Fund and transfer to the Special Tax Fund any amount in excess of that which is need to pay any Administrative Expenses incurred but not yet paid. Moneys in the Administrative Expense Fund may be invested as determined by the Director of Finance in any lawful investment the City may make.

**Services Fund.** The Services Fund is established as a separate fund to be held by the Director of Finance to pay for Services, as defined in the Resolution of Formation, and pending such use may be invested as determined by the Director of Finance in any lawful investment the City may make.

### **COVENANTS OF THE CITY**

Collection of Special Tax Revenues. The City will comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

Covenant to Foreclose. The City covenants that it will order, and cause to be commenced and thereafter diligently prosecute to judgment (unless such delinquency is brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the Agreement.

Punctual Payment. The City will punctually pay the principal of, and interest and any premium on, the Bonds when and as due in strict conformity with the terms of the Agreement.

Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City will not extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and will not be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest are extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded will not be entitled, in case of default, to the benefits of the Agreement, except subject to the prior payment in full of the principal and premium, if any, of all of the Bonds then Outstanding and of all claims for interest which shall not have so extended or funded.

Against Encumbrances. The City will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien created for the benefit of the Bonds, except as permitted by the Agreement.

Books and Accounts. The City will keep proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries will be made of all transactions relating to the expenditure of amounts disbursed from the Administrative Expense Account and the Special Tax Fund and relating to the Special Tax Revenues.

Protection of Security and Rights of Owners. The City will preserve and protect the security for the Bonds and the rights of the Owners , and will warrant and defend their rights to such security against all claims and demands of all persons.

Further Assurances. The City 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 the Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in the Agreement.

Tax Covenants. The City will not take, nor permit nor suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of any of the Bonds which would cause any of the Bonds to be “arbitrage bonds” or “private activity bonds” within the meaning of the Tax Code. The City agrees to comply with all applicable provisions of the Tax Code relating to the rebate of excess investment earnings on the proceeds of the Bonds to the United States of America.

## **INVESTMENTS**

Moneys in any fund or account created or established by the Agreement and held by the Fiscal Agent will be invested in Permitted Investments at the direction of the City. In the absence of such direction, the Fiscal Agent will invest such moneys in Permitted Investments described in Section (f) of the definition thereof. Moneys in any fund or account created or established by the Agreement and held by the Director of Finance shall be invested in Permitted Investments or any lawful investments that the City may make, which by their terms mature prior to the date on which such moneys are required to be paid out under the Agreement. Obligations purchased as an investment of moneys in any fund will be deemed to be part of such fund or account, subject, however, to the requirements of the Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts.

## **LIABILITY OF THE CITY**

The City will not incur any responsibility in respect of the Bonds or the Agreement other than in connection with the duties or obligations explicitly set forth in the Agreement or in the Bonds assigned to or imposed upon it. The City will not be liable in connection with the performance of its duties under the Agreement, except for its own negligence or willful default. The City will not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements of the Fiscal Agent or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

No provision of the Agreement requires the City to expend or risk its own general funds or otherwise incur any financial liability (other than with respect to the Special Tax Revenues) in the performance of any of its obligations under the Agreement, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

## **MODIFICATION OR AMENDMENT OF AGREEMENT**

The Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement (I) pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in the Agreement; however, no such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Ordinance, the laws of the State of California or the Agreement), or reduce the percentage of Bonds required for the amendment thereof; or (II) without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes

(A) to add to the covenants and agreements of the City, other covenants and agreements thereafter to be observed; or to limit or surrender any right or power reserved to or conferred upon the City;

(B) to make modifications not adversely affecting any Outstanding Bonds of the City in any material respect;

(C) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in the Agreement, or in regard to questions arising under the Agreement, as the City and the Fiscal Agent may deem necessary or desirable and not inconsistent with the Agreement, and which shall not adversely affect the rights of the Owners of the Bonds; and

(D) to make such additions, deletions or modifications as may be necessary or desirable to assure exclusion from gross income for federal income tax purposes of interest on the Bonds.

## **DISCHARGE OF AGREEMENT**

The City may pay and discharge the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

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

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in the Bond Fund and the Reserve Fund is fully sufficient to pay all Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and/or Federal Securities in such amount as the City shall determine, as confirmed by Bond Counsel or an independent certified public accountant, will,

together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in the Bond Fund and the Reserve Fund (to the extent invested in Federal Securities), be fully sufficient to pay and discharge the indebtedness on all Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in the Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in the Agreement and all other obligations of the City under the Agreement with respect to all Bonds Outstanding shall cease and terminate, except only certain obligations of the City under the Agreement and of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, and the obligation of the City to pay all amounts owing to the Fiscal Agent.

## **BOND INSURER PROVISIONS**

### **Payments Under Insurance Policy**

As long as the Insurance Policy shall be in full force and effect, the City and the Fiscal Agent shall comply with the following provisions:

(a) 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 Fiscal Agent under the Agreement, after making all transfers and deposits required under the Agreement, moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Fiscal Agent shall give notice to the Bond Insurer and to its designated agent (if any) (the "Bond Insurer's Trustee"), 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 Fiscal Agent moneys sufficient to pay the principal of, and interest on, the Bonds due on such Payment Date, the Fiscal Agent shall make a claim under the Insurance Policy and give notice to the Bond Insurer and the Bond Insurer's Trustee (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 Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the related Bond Insurer and the Bond Insurer's Trustee by 10:00 a.m., New York City time, on such Business Day, by delivering the Notice of Nonpayment and Certificate.

(b) 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 Fiscal Agent to the Bond 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 City to have provided sufficient funds to the Fiscal Agent for payment in full of all principal of, and interest on, the Bonds that are Due for Payment. "Due for Payment", when referring to the principal of 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 Bond Insurer shall elect, in its sole discretion, to pay such principal due upon such acceleration; and, when referring to interest on the Bonds, means when the stated date for payment of interest has been reached. "Certificate" means a certificate in form and substance satisfactory to the Bond Insurer as to the Fiscal Agent's right to receive payment under the Insurance Policy.

(c) The Fiscal Agent shall designate any portion of payment of principal on the Bonds paid by the Bond Insurer at maturity on its books as a reduction in the principal amount of the Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Bond Insurer, registered in the name of the Bond 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 Fiscal Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by City on any Bond or the subrogation rights of the Bond Insurer.

(d) The Fiscal Agent shall keep a complete and accurate record of all funds deposited by the Bond 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 Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Fiscal Agent.

(e) Upon payment of a claim under the Insurance Policy, the Fiscal Agent shall establish a separate special purpose trust account for the benefit of holders of the Bonds referred to herein as the "Policy Payments Account" and over which the Fiscal Agent shall have exclusive control and sole right of withdrawal. The Fiscal Agent shall receive any amount paid under the Insurance Policy in trust on behalf of holders of the 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 Fiscal Agent to holders of the Bonds in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections of the Agreement regarding payment of the 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.

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

(g) Any funds remaining in the Policy Payments Account following a Payment Date shall promptly be remitted to the Bond Insurer.

(h) Notwithstanding anything in the Agreement to the contrary, in the event that the principal or interest due with respect to the Bonds is paid by the Bond Insurer pursuant to the Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and the assignment and pledge of the Revenues and other assets hereunder and all covenants, agreements and other obligations of the City to the Bond Owners so paid shall continue

to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Bond Owners.

### **Consent of the Bond Insurer**

The Bond Insurer shall be deemed to be the sole Owner of all Bonds insured under the Insurance Policy for the following purposes and provided that the Bond Insurer is not in default under the terms of the Insurance Policy, during the following times hereunder: (a) at all times for the purpose of the execution and delivery of a Supplemental Agreement relating to any amendment, change or modification of the Agreement; and (b) at all times with respect to the initiation by the Bond Owners of any action to be taken hereunder by the Fiscal Agent at the request of such Bond Owners, which under the Agreement requires the written approval or consent of or permits initiation by the Owners of a specified principal amount of Bonds then Outstanding.

### **Bond Insurer as Third-Party Beneficiary**

The Bond Insurer is hereby explicitly recognized as being a third-party beneficiary under the Agreement and has the right to enforce the covenants of the City as well as any other duty, obligation, right, remedy or claim created, conferred, given or granted under the Agreement. Any provision of the Agreement expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without prior written consent of the Bond Insurer.

## APPENDIX D

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

*The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the 2007 Bonds, payment of principal, interest and other payments on the 2007 Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the 2007 Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.*

*Neither the issuer of the 2007 Bonds (the “Issuer”) nor the trustee, fiscal agent or paying agent appointed with respect to the 2007 Bonds (the “Agent”) take any responsibility for the information contained in this Appendix.*

*No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the 2007 Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the 2007 Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the 2007 Bonds, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.*

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “2007 Bonds”). The 2007 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered 2007 Bond certificate will be issued for the 2007 Bonds, in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instrument from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust

companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

3. Purchases of 2007 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2007 Bonds on DTC’s records. The ownership interest of each actual purchaser of each 2007 Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2007 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in 2007 Bonds, except in the event that use of the book-entry system for the 2007 Bonds is discontinued.

4. To facilitate subsequent transfers, all 2007 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of 2007 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2007 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such 2007 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2007 Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the 2007 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, Beneficial Owners of 2007 Bonds may wish to ascertain that the nominee holding the 2007 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners, in the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the 2007 Bonds within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the 2007 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2007 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and interest payments on the 2007 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from Issuer or Agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as securities depository with respect to the 2007 Bonds at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor securities depository is not obtained, 2007 Bond certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, 2007 Bond certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

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## APPENDIX E

### FORM OF ISSUER CONTINUING DISCLOSURE CERTIFICATE

#### CITY OF NOVATO COMMUNITY FACILITIES DISTRICT NO. 2002-1 (POINTE MARIN) SPECIAL TAX REFUNDING BONDS, SERIES 2007

This Continuing Disclosure Certificate (this “**Disclosure Certificate**”) is executed and delivered by the City of Novato (the “**City**”), for and on behalf of the City of Novato Community Facilities District No. 2002-1 (Pointe Marin) (the “**District**”) in connection with the issuance of the bonds captioned above (the “**Bonds**”). The Bonds are being issued pursuant to a Fiscal Agent Agreement dated as of July 1, 2007 (the “**Fiscal Agent Agreement**”), by and between the City, for and on behalf of the District, and U.S. Bank National Association, as fiscal agent (the “**Fiscal Agent**”). The City hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth above and in the Fiscal Agent Agreement, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*Annual Report Date*” means the date that is nine months after the end of the City's fiscal year (currently March 31 based on the City's fiscal year end of June 30).

“*CPO*” means the Internet-based filing system currently located at [www.DisclosureUSA.org](http://www.DisclosureUSA.org), or such other similar filing system approved by the Securities and Exchange Commission.

“*Dissemination Agent*” means U.S. Bank National Association or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*National Repository*” means any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. Information on the National Repositories as of a particular date is available on the Securities and Exchange Commission's Internet site at [www.sec.gov](http://www.sec.gov).

“*Official Statement*” means the final official statement executed by the City in connection with the issuance of the Bonds.

“*Participating Underwriter*” means the original Underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“*Repository*” means each National Repository and each State Repository, if any.

“*Rule*” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“*State Repository*” means any public or private repository or entity designated by the State of California as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Certificate, there is no State Repository.

### Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing March 31, 2008 with the report for fiscal year 2006-07, provide to each Repository an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the date required above for the filing of the Annual Report if not available by that date. The audited financial statements of the City may be included within or constitute a portion of the audited financial statements. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c).

(b) If the City does not provide, or cause the Dissemination Agent to provide, an Annual Report to the Repositories by the Annual Report Date as required in subsection (a) above, the Dissemination Agent shall send a notice to (i) either the National Repositories or the Municipal Securities Rulemaking Board and (ii) the appropriate State Repository, if any, in substantially the form attached hereto as Exhibit A, with a copy to the Fiscal Agent (if different than the Dissemination Agent). In lieu of filing the notice with each Repository, the City or the Dissemination Agent may file such notice with the CPO.

(c) With respect to the Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the name and address of each National Repository and each State Repository, if any; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided and listing all the Repositories to which it was provided.

(d) In lieu of filing the Annual Report with each Repository in accordance with the preceding paragraph (c), the City or the Dissemination Agent may file such Annual Report solely with the CPO.

Section 4. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following documents and information:

(a) The City's audited financial statements for the most recently completed fiscal year, together with the following statement:

THE CITY'S ANNUAL FINANCIAL STATEMENT IS PROVIDED SOLELY TO COMPLY WITH THE SECURITIES EXCHANGE COMMISSION STAFF'S INTERPRETATION OF RULE 15C2-12. NO FUNDS OR ASSETS OF THE CITY ARE REQUIRED TO BE USED TO PAY DEBT SERVICE ON THE BONDS, AND THE CITY IS NOT OBLIGATED TO ADVANCE AVAILABLE FUNDS TO COVER ANY DELINQUENCIES. INVESTORS SHOULD NOT RELY ON THE FINANCIAL CONDITION OF THE CITY IN EVALUATING WHETHER TO BUY, HOLD OR SELL THE BONDS.

(b) With respect to the District as a whole, total assessed value (per the Marin County Assessor's records) of all parcels currently subject to the Special Tax within the District.

(c) The total dollar amount of delinquencies in the District as of August 1 of any year and, in the event that the total delinquencies within the District as of August 1 in any year exceed 5% of the Special Tax for the previous year, delinquency information for each parcel, including the amounts of delinquencies, length of delinquency and status of any foreclosure of each such parcel.

(d) The amount of prepayments of the Special Tax with respect to the District for the prior Fiscal Year.

(e) The principal amount of the Bonds outstanding and the balance in the Reserve Fund (along with a statement of the Reserve Requirement) as of the September 30 next preceding the Annual Report Date.

(f) Any changes to the Rate and Method of Apportionment for the District set forth in Appendix B to the Official Statement.

(g) A copy of the annual information required to be filed by the City with the California Debt and Investment Advisory Commission pursuant to the Act and relating generally to outstanding District bond amounts, fund balances, assessed values, special tax delinquencies and foreclosure information.

(h) In addition to any of the information expressly required to be provided under paragraphs (a) through (g) of this Section, the City shall provide such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions or events affecting the tax-exempt status of the security.
- (7) Modifications to rights of security holders.
- (8) Contingent or unscheduled bond calls.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities.
- (11) Rating changes.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, the City shall as soon as possible determine if such event would be material under applicable Federal securities law.

(c) If the City determines that knowledge of the occurrence of a Listed Event would be material under applicable Federal securities law, the City shall, or shall cause the Dissemination Agent to, promptly file a notice of such occurrence with (i) each National Repository or the Municipal Securities Rulemaking Board and (ii) the appropriate State Repository, if any, with a copy to the Fiscal Agent (if different than the Dissemination Agent). Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Bonds pursuant to the Fiscal Agent Agreement.

In lieu of filing the notice of Listed Event with each Repository in accordance with the preceding paragraph, the City or the Dissemination Agent may file such notice of a Listed Event with the CPO.

Section 6. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 7. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent will be U.S. Bank National Association.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Bonds, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Bonds in the manner provided in the Fiscal Agent Agreement for amendments to the Fiscal Agent Agreement with the consent of holders, or (ii) does not, in the opinion of the Fiscal Agent or nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be sent to the Repositories in the same manner as for a Listed Event under Section 5(c).

Section 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation

under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 10. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Fiscal Agent Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Property Owner, the Fiscal Agent, the Bond owners or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Section 12. Notices. Any notice or communications to be among any of the parties to this Disclosure Certificate may be given as follows:

To the Issuer: City of Novato  
75 Rowland Way, #200  
Novato, CA 94945  
Fax: (415) 899-8213

To the Dissemination Agent: U.S. Bank National Association  
One California Street, Suite 2100  
San Francisco, CA 94111  
Fax: (415) 273-4590

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Fiscal Agent, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: August 7, 2007

CITY OF NOVATO, for and on behalf of City of  
Novato Community Facilities District No. 2002-1  
(Pointe Marin)

By: \_\_\_\_\_  
Authorized Representative

AGREED AND ACCEPTED:  
U.S. Bank National Association,  
as Dissemination Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**NOTICE OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: City of Novato for and on behalf of City of Novato Community Facilities District No. 2002-1 (Pointe Marin) (the “**City**”)

Name of Bond Issue: City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Refunding Bonds, Series 2007

Date of Issuance: August 7, 2007

NOTICE IS HEREBY GIVEN to [(i) each National Repository or the Municipal Securities Rulemaking Board and (ii) each appropriate State Repository] [the CPO and the Municipal Securities Rulemaking Board] that the City has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate dated August 7, 2007 executed by the City and countersigned by U.S. Bank National Association, as dissemination agent. The City anticipates that the Annual Report will be filed by \_\_\_\_\_.

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

DISSEMINATION AGENT:

U.S. Bank National Association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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**APPENDIX F**  
**FORM OF OPINION OF BOND COUNSEL**

August \_\_, 2007

City Council  
City of Novato  
75 Rowland Way, Room 200  
Novato, California 94945

**OPINION:**     \$11,915,000 City of Novato Community Facilities District No. 2002-1  
                  (Pointe Marin) Special Tax Refunding Bonds, Series 2007

Members of the City Council:

We have acted as bond counsel in connection with the issuance by the City of Novato (the "City") of its \$11,915,000 City of Novato Community Facilities District No. 2002-1 (Pointe Marin) Special Tax Refunding Bonds, Series 2007 (the "Bonds") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, being sections 53311 *et seq.* of the California Government Code (the "Act"), a resolution of the City adopted July 10, 2007 (the "Resolution") and a Fiscal Agent Agreement, dated as of July 1, 2007 by and between the City and U. S. Bank National Association, as fiscal agent (the "Fiscal Agent Agreement"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the City contained in the Resolution, the Fiscal Agent Agreement and in the certified proceedings and certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1.     The City is duly created and validly existing as a municipal corporation and general law city with the power to adopt the Resolution, to enter into the Fiscal Agent Agreement, and to perform the agreements on its part contained therein and issue the Bonds.

2. The Fiscal Agent Agreement has been duly approved by the City pursuant to the Resolution and constitutes a valid and binding obligation of the City enforceable upon the City in accordance with its terms.

3. Pursuant to the Act, the Fiscal Agent Agreement creates a valid lien on the funds pledged by the Fiscal Agent Agreement for the security of the Bonds.

4. The Bonds have been duly authorized, executed and delivered by the City and are valid and binding limited obligations of the City, payable solely from the sources provided therefor in the Fiscal Agent Agreement.

5. The interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings. The opinion set forth in the preceding sentence is subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986 that must be satisfied subsequent to the issuance of the Bonds in order that such interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

6. The interest on the Bonds is exempt from personal income taxation imposed by the State of California.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Resolution and the Fiscal Agent Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and also may be subject to the exercise of judicial discretion in appropriate cases.

Respectfully submitted,

A Professional Law Corporation

**APPENDIX G**  
**SPECIMEN INSURANCE POLICY**

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## **MUNICIPAL BOND INSURANCE POLICY**

**ISSUER:** [            ]

**Policy No:** [            ]

**BONDS:** [            ]

**Effective Date:** [            ]

**XL Capital Assurance Inc. (XLCA)**, a New York stock insurance company, in consideration of the payment of the premium and subject to the terms of this Policy (which includes each endorsement attached hereto), hereby agrees unconditionally and irrevocably to pay to the trustee (the "Trustee") or the paying agent (the "Paying Agent") (as set forth in the documentation providing for the issuance of and securing the Bonds) for the benefit of the Owners of the Bonds or, at the election of XLCA, to each Owner, that portion of the principal and interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment.

XLCA will pay such amounts to or for the benefit of the Owners on the later of the day on which such principal and interest becomes Due for Payment or one (1) Business Day following the Business Day on which XLCA shall have received Notice of Nonpayment (provided that Notice will be deemed received on a given Business Day if it is received prior to 10:00 a.m. Pacific time on such Business Day; otherwise it will be deemed received on the next Business Day), but only upon receipt by XLCA, in a form reasonably satisfactory to it, of (a) evidence of the Owner's right to receive payment of the principal or interest then Due for Payment and (b) evidence, including any appropriate instruments of assignment, that all of the Owner's rights with respect to payment of such principal or interest that is Due for Payment shall thereupon vest in XLCA. Upon such disbursement, XLCA shall become the owner of the Bond, any appurtenant coupon to the Bond or the right to receipt of payment of principal and interest on the Bond and shall be fully subrogated to the rights of the Owner, including the Owner's right to receive payments under the Bond, to the extent of any payment by XLCA hereunder. Payment by XLCA to the Trustee or Paying Agent for the benefit of the Owners shall, to the extent thereof, discharge the obligation of XLCA under this Policy.

In the event the Trustee or Paying Agent has notice that any payment of principal or interest on a Bond which has become Due for Payment and which is made to an Owner by or on behalf of the Issuer of the Bonds has been recovered from the Owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Owner within the meaning of any applicable bankruptcy law, such Owner will be entitled to payment from XLCA to the extent of such recovery if sufficient funds are not otherwise available.

The following terms shall have the meanings specified for all purposes of this Policy, except to the extent such terms are expressly modified by an endorsement to this Policy. "Business Day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State of California, the State of New York or the Insurer's Fiscal Agent are authorized or required by law or executive order to remain closed. "Due for Payment", when referring to the principal of Bonds, is when the stated maturity date or a 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 XLCA shall elect, in its sole discretion, to pay such principal due upon such acceleration; and, when referring to interest on the Bonds, is when the stated date for payment of interest has been reached. "Nonpayment" means the failure of the Issuer to have provided sufficient funds to the Trustee or Paying Agent for payment in full of all principal and interest on the Bonds which are Due for Payment. "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from an Owner, the Trustee or the Paying Agent to XLCA which notice shall specify (a) the person or entity making the claim, (b) the Policy Number, (c) the claimed amount and (d) the date such claimed amount became Due for Payment. "Owner" means, in respect of a Bond, the person or entity who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof, except that "Owner" shall not include the Issuer or any person or entity whose direct or indirect obligation constitutes the underlying security for the Bonds.

XLCA may, by giving written notice to the Trustee and the Paying Agent, appoint a fiscal agent (the "Insurer's Fiscal Agent") for purposes of this Policy. From and after the date of receipt by the Trustee and the Paying Agent of such notice, which shall specify the name and notice address of the Insurer's Fiscal Agent, (a) copies of all notices required to be delivered to XLCA pursuant to this Policy shall be simultaneously delivered to the Insurer's Fiscal Agent and to XLCA and shall not be deemed received until received by both and (b) all payments required to be made by XLCA under this Policy may be made directly by XLCA or by the Insurer's Fiscal Agent on behalf of XLCA. The Insurer's Fiscal Agent is the agent of XLCA only and the Insurer's Fiscal Agent shall in no event be liable to any Owner for any act of the Insurer's Fiscal Agent or any failure of XLCA to deposit or cause to be deposited sufficient funds to make payments due hereunder.

Except to the extent expressly modified by an endorsement hereto, (a) this Policy is non-cancelable by XLCA, and (b) the Premium on this Policy is not refundable for any reason. This Policy does not insure against loss of any prepayment or other acceleration payment which at any time may become due in respect of any Bond, other than at the sole option of XLCA, nor against any risk other than Nonpayment. This Policy sets forth the full undertaking of XLCA and shall not be modified, altered or affected by any other agreement or instrument, including any modification or amendment thereto.

**IN THE EVENT THAT XLCA WERE TO BECOME INSOLVENT, ANY CLAIMS ARISING UNDER THIS POLICY ARE NOT COVERED BY THE CALIFORNIA GUARANTY INSURANCE FUND SPECIFIED IN ARTICLE 12119(b) OF THE CALIFORNIA INSURANCE CODE.**

In witness whereof, XLCA has caused this Policy to be executed on its behalf by its duly authorized officers.

**SPECIMEN**

Name:  
Title:

**SPECIMEN**

Name:  
Title:





FOR ADDITIONAL BOOKS: [ELABRA.COM](http://ELABRA.COM) OR (888) 935-2272