

Marin Valley Senior Community Corporation, Inc. (MVSC)

MVSC is an existing nonprofit corporation created by the residents of Marin Valley Mobile Country Club (MVMCC). It is structured to enable all residents, including at least 80 households of very low to moderate income residents, to own their own homes and live in this beautiful park.

MVSC is governed by a board of directors composed of four residents, elected by the residents of this community, and three outside directors, required by the bylaws, who are not residents of MVMCC.

MVSC is structured to assume the responsibilities of the Novato Financing Authority (NFA) in the oversight of our community.

Upon transfer of the title from NFA to MVSC, the residents will become responsible through MVSC for the operation, control, and maintenance of the park and the obligation to pay the debt service on any remaining bonds.

To minimize the costs of title transfer, MVSC is prepared to:

- **Retain the current delegation agreement with the Park Acquisition Corporation (PAC)**
- **Retain the current management agreement between PAC and Al Frei Real Estate Services**
- **Maintain the agreements with Financial Security Assurance, Inc. (FSA) and U.S. Bank**
- **As a condition of transfer of title, accept the property "as is."**

The goals of MVSC remain the same as when the residents created MVSC:

- **Take those actions necessary to maintain and improve the quality of life the residents have the right to enjoy**
- **Complete the title transfer process started in 1996 with the transfer of title from the Sades to PAC, and then from PAC to NFA, and finally returned to resident control by NFA transferring the title to MVSC**

- **Provide oversight of the Project as NFA currently does but with greater transparency**
- **Take those actions necessary to enable management to stabilize rents and, in time, effectively reduce the costs of living in MVMCC**
- **Secure the title from possible transfer or sale in the future without approval of the residents by a two-thirds majority vote of those eligible to vote, in accordance with California State law.**

CARMAN & MAZINA

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January 12, 2015

To: Board of Directors

Marin Valley Senior Community

100 Marin Valley Drive

Novato, CA 94949

The following is my legal opinion on the rights of 315 mobile home owners in Marin Valley Mobile Country Club (the "Park") and/or the Marin Valley Senior Community (MVSC), a nonprofit 501(c)(3) public benefit corporation, to own or be transferred ownership of the Park.

PART ONE

I have reviewed many documents, but refer in this memorandum to only a few, chief of which are:

- the March 1, 1997 prospectus of the Novato Financing Authority (NFA), a joint powers public entity which was formed by the City of Novato (City) and the Novato Redevelopment Agency, for issuance of \$15.5 million senior revenue bonds for the purchase of the Park, -- (the "Prospectus") -- which stated that the NFA:

". . . anticipates transferring all of its interest in the (Park) to a yet-to-be-incorporated 501(c)(3) corporation (the "Corporation"), at which time all the duties and the interest and obligations of [NFA] with respect to the [Park] and the bonds will be assigned to the Corporation. . . . [T]he duties and obligations of [NFA] relating to the Bonds and the [Park] will be delegated to the Park Acquisition Corporation of Mobile Country Club, (the "PAC") pursuant to a Delegation Agreement dated as of March 1, 1997 (the "Delegation Agreement") between the PAC and [NFA], . . . The PAC is a California nonprofit public benefit corporation created and controlled by the residents of the [Park]."

- the William Crozier statement (11/15/12) which states that in order to enable

the bond payments to be met, that "we residents agreed to raise our rent for 7 years, which was the maximum allowed by the City rent law." – which was done, presumably, by and through the PAC which is operated by the mobile home owners of the Park.

- the statement of Mayor Pat Eklund to the Novato Advance (March 18, 2008) that:

"At the time the purchase agreement was signed, it was the intent of the city council that the residents would one day own the park . . ."

- the May 29, 2008 letter of Mary Neilan, Assistant City Manager, of the City of Novato, which reported that NFA refused an offer by MVSC to *purchase* the Park on the stated grounds that (1) the proposed purchase price (namely, assumption of the then-existing senior debt balance of \$11 million) was "significantly less than the appraised value" (i.e. a gap of \$20 million); (2) the governance structure of MVSC did not guarantee Park residents sufficient transparency and accessibility;" and (3) the MVSC proposal "burdens the Park with \$3M in additional debt."

- the May 23, 2006 Memorandum of Assistant City Manager Neilan to NFA, which stated. among other things, (1) that the Park would have to be first offered to other public entities who had priority to MVSC; and (2) that although the City's transfer of the Park to MVCS for low and moderate income housing would be a public purpose – (thereby conceding that a transfer of the Park to be used for such public purpose could meet the proscription against gifts of public property), – nevertheless, "that purpose is already being served" and that "an *additional* public purpose will need to be identified." (Emphasis supplied).

Conclusion

~~My opinion and legal advice is that, based on the wording of NFA in the Prospectus, that NFA thereby, in purview of California law of trusts, self-imposed a voluntary express trust upon itself, to hold the Park in trust (1) for the interim period before organization of the 501(c) organization mentioned in the Prospectus; and (2) upon the creation of such organization, to transfer the Park to the 501(c)(3) organization, subject to the remainder of the revenue bonds to be paid off by the PAC; and (3) in the interim, delegate to the PAC, – which was "created and controlled by the residents" – all "duties and obligations of [NFA] relating to the bonds and the [Park] Project."~~

PART TWO

Subsequently NFA transferred the Park (the trust *corpus*) to the City, due to the threat which the State carried out, of abolishing redevelopment agencies; all, subject to the lien of the then-reduced \$11 million balance of the revenue bonds.

(After which the City replaced the bonds with a loan at lower interest, which is still in course of being paid down by unit owners.)

The City, by accepting the transfer to itself of the trust *corpus*, with knowledge of all the facts, thereby, in purview of law, implicitly accepted the Park property subject to the same express trust for the same trust purposes, and subject to the same trust duties, which NFA had self-imposed upon itself by the wording of its Prospectus.

Even if *arguendo* the express trust and its obligations did not automatically devolve upon the City, as a matter of law, when the City took title to the Park, nevertheless a court in equity would, upon the facts, declare and impose the same duties upon the City, because not to do so would unjustly enrich the City at the expense of MVCS (the 501(c)(3) organization) and the owners of the mobile home units in the Park, which operate the MVCS.

The unjust enrichment which would occur if a trust is not declared and imposed by a court, is that the City in fact received the deed to the Park – whose FMV was in excess of \$15.5 million – subject to only \$11 million in then-outstanding unpaid bonds, -- a windfall gift to the City of more than \$4.5 million, net.

To boot, neither NFA or the City has never been personally liable to pay a penny upon the bonds, (due to the facts that (1) the issuer of revenue bonds is not personally liable to repay them,; and (2) it is the owners of the mobile home units in the Park (not NFA or the City) who, ultimately, paid down and are paying off all obligations of the bonds (and who are, currently, paying down the successor loan to the City, which replaced the revenue bonds).

NFA and the City are equitably estopped from revoking their respective voluntary trusts which each imposed upon itself, – (i.e., the trust to first, issue the \$15.5 million senior revenue bonds and the \$1.5 million junior revenue bonds to acquire the Park, and second, to transfer all of NFA's

interest in the Park to a 501(c)(3) corporation which was to be formed) – due to the fact that in reliance on this written representation and promise of NFA, the mobile home owners – *through their PAC, raised their own rents for 7 years to enable the senior and junior revenue bonds to be timely paid.* But, see, Section 90 of Restatement of Contracts:

"A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance *is-binding; if injustice can be avoided only by enforcement of the promise.*" (Emphasis supplied); which rule has long prevailed in California. (*Drennan v Star Paving Co.* (1958) 51 Cal.2d 409, 413: see also 5 Stan. L. Rev. 783.

Conclusion

Preliminary

The City, as the successor trustee of an express trust (as set forth above), has a present and continuing duty to immediately, at once, transfer the trust corpus (the Park) to the MVSC, as per the express terms of the trust instrument, namely, the Prospectus of March 1, 1997 mentioned above.

All, without any conditions or any further negotiations or agreements being required, other than the simple acceptance by MVSC of a deed to an unconditional, full fee title to the Park realty, (subject to whatever the remaining unpaid balance may be, of the loan which the City voluntarily entered into in order to pay off the outstanding \$11 million balance of the revenue bonds issued on March 1, 1997).

Thereafter, negotiations if any concerning taxation of the Park realty by the City; or concerning payment if any for the City to furnish police, fire, and other public services to the Park area, can be resumed, and be either agreed or not agreed to between MVCC and the City. However, such negotiations are completely separate from the issue of whether or not the City has a trust or other continuing duty to transfer the Park to the MVSC, as per the terms of the voluntary trust set forth in the March 1, 1997 Prospectus.

I.e., the duty of the City to convey the Park to the MVSC was unconditionally created by the voluntary trust which was self-created by NFA in and by the Prospectus, so that whether or not the City furnishes police or services to the Park, for example, and what payments the MVSC should make for such public

5

services (if any), are issues which are irrelevant and separate from the fixed trust duty of the City to immediately, without further delay, deed the Park realty, unconditionally, to MVSC.

Discussion

The teaching of creation of an express trust is not taught in any detail in law schools. Courses in trusts largely confine themselves to how to draft various written trust instruments which expressly state that described property is transferred from A, beneficiary, to B, trustee, in trust, for stated trust purposes.

It is my observation that, consequently, most lawyers who do not engage in trust litigation, – and certainly most of the public, – have the mistaken idea that in order to create an express trust, that the parties to a trust must understand and agree they are entering into a trust, and that there must be a trust instrument which self-describes itself as being a "trust," – such as a document with a heading that says something like:

LIVING TRUST OF JOHN JAMES

and that there must be wording in the instrument that says that:

John James, Trustor, hereby grants to Jane Doe, Trustee, property described as [describing it], in trust for the following trust purposes: [setting out the trust purposes of the trust].

But this is far from reality. Trusts are created every day by persons delivering property to another person, with instructions to be carried out by the person receiving the property: all without any mention that, – if the recipient accepts the property subject to the instructions, -- that an express trust is thereby created: all without use of the words, "in trust," at all (or, for that matter, without the parties actually understanding that they have entered into an express trust relationship which the California courts will enforce).

See, *Ennis-Brown Co. v. Richdale Land Co.* (1920) 47 Cal.App. 508, 510-511: plaintiff sent \$4,500 to defendant, a grain broker, with a note:

" . . . we hereby enclose \$4,500 to apply on purchase price of Egyptian Corn bought from W.B. Linn & Son."

Held: that "it is proper to say that a trust was created by express agreement, and it imposed upon the defendant the obligation" to apply the funds to the purposes stated in the instructions. "This direction, of course, excluded the

application of the money to any other purpose. This is according to a familiar rule of logic." The recipient of the funds, under these instructions, "therefore, had authority to use it for no other purpose."

See, *McGee v. Bank of America* (1976) 60 Cal.App.3d 442, 446, 448. -- a case in which the appeal court adopted my amicus brief on this subject almost verbatim:

" 'An express trust may arise even though the parties in their own minds did not intend to create a trust. As in the case of the making of a contract, so in the case of a trust, an objective rather than a subjective test is applied. It is the manifestation of intention which controls and not the actual intention where that differs from the manifestation of intention.' (1 Scott on Trusts (3d ed. 1967) Sec. 2.8, p. 44; see, e.g., *Neel v. Barnard* (1944) 24 Cal.2d 408, 411-412)."²

The above example is of course one in which A transfers to B certain property, under instructions; so that B's acceptance of the property, under the instructions, creates and imposes an express trust upon the property in question.

Self-declaration of trust

~~Thus in California, as in all states, an express voluntary trust, for the benefit of another, can be created by a self-declaration by a person, oral or written, that the person is holding specified property for a specified purpose which, thereby, self-creates an express trust in and by which the person becomes a voluntary trustee of the described property, for the benefit of the third person.~~

Although a self-created voluntary trust may ordinarily, in California, be revoked during the lifetime of the trustor, nevertheless, in this Park case, promissory estoppel applies to prevent the City from now revoking its self-imposed voluntary trust of the Park, for the benefit of MVCS and, ultimately, for the benefit of the mobile home unit owners in the Park. See, *Drennan v. Star Paving Co.* (1958) 51 Cal.2d 409, 413, which adopted the rule of Section 90 of the Restatement of Contracts, which states:

"A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

Estoppel hence applies in this case because Park resident William Crozier reports that – on the basis of the promise or representation of NFA in the **March 1, 1997 Prospectus**, that NFA anticipated that it would transfer the Park to the 501(c)(3) organization (MVCS) which was to be incorporated, – that the mobile home owners in the Park agreed to **increase their rent for 7 years**, to enable NFA to transfer the Park to MVCS.

Thus, having suffered this detriment of 7 years of voluntarily increased rent, in order to enable NFA to pay down the NFA revenue bonds, it follows as night must follow day, that both ~~NFA and its successor trustee (the City)~~, are **estopped from now revoking the self-declared trust which NFA declared in the Prospectus**, (namely, that NFA would transfer the Park to the 501(c)(3) organization (i.e., MVSC) when it became incorporated).

II

The same principles which compel the conclusion in Section I, that the March 1, 1997 Prospectus self-created a trust, to convey the Park to the 501(c)(3) organization of the mobile home owners, also compel the same conclusion, under principles of contract law.

III

~~NFA and the City are also guilty, many times over, of violation of the self-imposed voluntary trust in this matter, in that:~~

1. ~~NFA and the City utterly failed to immediately transfer the Park realty to the 501(c)(3) organization (namely, MVSC), when it became formed and certified by IRS, in violation of the trust which NFA self-imposed upon itself (and upon the City), by the provisions of the March 1, 1997 Prospectus mentioned in this memorandum.~~

2. ~~The City has, as I understand it, misappropriated (i.e., converted) trust funds under the Prospectus trust mentioned, in order to acquire marsh land adjacent to the Park, for the City.~~

(Under basic trust law, the City is obliged to transfer the marsh property to the MVSC, (or restore the funds, so expended, in the MVSC account held by the City, at the option of MVSC), because funds which the City received in trust, for the benefit of the MVSC pursuant to the terms of the March 1, 1997

Prospectus, were misappropriated to purchase the marsh land for the City, rather than being expended to directly acquire the marsh land for the beneficiary, MVSC.)

3. The City is also guilty of extreme bad faith, i.e., in violation of the covenant of fair dealing, with the MVSC and its agent, the PAC. Examples are:

First: NFA initially approved, in the March 1, 1997 Prospectus, the use of a 501(c)(3) organization to take title to the Park realty. Yet, the City Clerk's letter dated May 29, 2008, in bad faith, now asserts that the City will not convey to the 501(c)(3) organization in question (MVSC), because a 501(c)(3) is not "opaque" enough.

i.e., in 1997 the 501(c)(3) organization was opaque enough for NFA to state it would transfer the Park to the 501(c)(3), – thus inducing the unit owners to *increase their rents for 7 years.*

But, after collecting these increased rents for 7 years, the 501(c)(3) organization, now, has suddenly, arbitrarily, become no longer opaque enough for the City to transfer title to the Park. This is an arbitrary, capricious, and unconscionable change of position for the City to take.

2. Despite promising in the Prospectus to transfer the Park to the 501(c)(3) organization, now, in the May 23, 2006 Memorandum., the Assistant City Clerk, speaking for the City, says that the City must, instead, give "priority" to (unnamed) public entities.

3. A public purpose is irrelevant, if the MVSC is entitled by the trust created by the Prospectus, to be transferred fee title to the Park realty. (In such a trust situation, the trust property is beneficially owned by the beneficiaries – here, MVSC or the unit owners – hence such beneficial property interest is not public property of the City at all: so that the "no gift of public property" rule does not apply at all to the trust *res*, namely, the Park realty).

4. If a public purpose for transferring the Park to the MVSC were required, nevertheless, the City refuses to transfer the Park because, says its Clerk in the May 29, 2008 letter, such public purpose is already being served by the City retaining possession of the Park realty. This is arbitrary and illogical, to say the least.

SUMMARY

The above are just my preliminary views of the slew of violations of trust law, and of the covenant of fair dealing, which in my view, NFA and the City are in ongoing violation, in this case.

The firm of Carman & Mazina would, upon being retained by either or both the MVSC and/or the PAC, be willing to represent or advise the MVSC and/or the PAC, in their further dealings with the City in respect to transfer of the Park to the MVSC, as required by the March 1, 1997 Prospectus.

Yours very truly,

Lynn S. Carman
Law Offices of Carman & Mazina

P.S. We are mindful of the claim that a trust requires a *res*, a trustor, and a beneficiary; and that the City may claim that the trust mentioned in my memo fails, for lack of a beneficiary being in existence at the time of the purported creation of the trust.

The answer to this objection is that, -- assuming *arguendo* that this be a valid objection, -- that in such situation, equity, to prevent unjust enrichment NFA and/or the City, will impose a *resultant trust* upon NFA and/or the City, as of the time that MVSC first became both organized and certified as a 501(c)(3) organization.

And alternatively, that upon a promissory estoppel basis, (as prior mentioned), that the City may nevertheless be ordered, in equity, to transfer the Park to the MCSV, as represented and promised by NFA in and by the terms of the March 1, 1997 Prospectus, *irrespective of whether a trust was self-created by NFA by the Prospectus.*

In the opinion of Kutak Rock, Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described herein, interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal alternative minimum tax imposed on individuals and corporations, although Bond Counsel observes that it is included in adjusted current earnings in calculating corporate alternative minimum taxes. See "TAX MATTERS" herein.

\$15,485,000

SENIOR REVENUE BONDS, SERIES 1997A**(MARIN VALLEY MOBILE COUNTRY CLUB PARK ACQUISITION PROJECT)**

Issued for the Benefit of

NOVATO FINANCING AUTHORITY (CALIFORNIA)

Facilitated by the

California Local Government Finance Authority

Dated: March 1, 1997

Due: October 1, as shown on the inside cover

The Bonds will be delivered in fully registered form and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York. Individual purchases will be made in principal amounts of \$5,000 and integral multiples thereof and will be in book-entry form only. Purchasers of Bonds will not receive certificates representing their beneficial ownership in the Bonds but will receive credit balances on the books of their respective nominees. The Bonds will not be transferable or exchangeable except for transfer to another nominee of The Depository Trust Company or as otherwise described herein. Interest on the Bonds is payable semiannually on April 1 and October 1 of each year, commencing October 1, 1997; and such interest and the principal payments are payable by First Trust of California, National Association, as trustee (the "Trustee") to Cede & Co. to be disbursed to the beneficial owners of the Bonds through their nominees.

The Bonds are being issued for the purpose of loaning to the Novato Financing Authority (the "Owner") the proceeds of the Bonds, together with the proceeds of the Subordinate Revenue Bonds, Series 1997B (Marin Valley Mobile Country Club Park Acquisition Project), being issued concurrently with the Bonds in the aggregate principal amount of \$1,585,000 (the "Subordinate Bonds"), to enable the Owner to permanently finance the acquisition of certain real property constituting the Marin Valley Mobile Country Club Park (the "Project"), a 315-space mobile home park located in the City of Novato, California and any structures, site improvements, facilities and fixtures on the Project (exclusive of any owner-occupied mobile homes thereon) (the "Improvements"). Proceeds from the Bonds will also be used to (a) fund a deposit into the Replacement Reserve Fund, (b) fund the Senior Debt Service Reserve Fund and (c) pay certain costs of issuance. The Owner anticipates transferring all of its right, title and interest in the Project to a yet-to-be-incorporated 501(c)(3) corporation (the "Corporation"), at which time all of the duties and obligations of the Owner with respect to the Project and the Bonds will be assigned to the Corporation. Prior to such transfer of the Project to the Corporation, certain of the duties and obligations of the Owner relating to the Bonds and the Project will be delegated to the Park Acquisition Corporation of Marin Valley Mobile Country Club Park (the "PAC") pursuant to a Delegation Agreement dated as of March 1, 1997 (the "Delegation Agreement") by and between the PAC and the Owner, including the retention of a property manager at all times for the Project. The PAC is a California nonprofit mutual benefit corporation created and controlled by the residents of the Project.

The Bonds are subject to optional, mandatory and extraordinary redemption prior to their respective maturity dates as described herein. See "THE BONDS" herein.

The Bonds are being issued pursuant to a Trust Indenture dated as of March 1, 1997 (the "Indenture") between the California Local Government Finance Authority ("CLGFA") and the Trustee. The Bonds are special obligations of CLGFA, payable solely from and secured as to the payment of the interest on and the principal of and the redemption premiums, if any, on the Bonds in accordance with their terms and the terms of the Indenture from the revenues, assets and moneys pledged therefor under the Indenture. Except as specifically provided in the Indenture, the Bonds are superior to and have priority over the Subordinate Bonds, and the Subordinate Bonds are junior and subordinate to the Bonds. See "SECURITY FOR THE BONDS" herein.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF, NOR THE FAITH AND CREDIT OF CLGFA, THE OWNER, THE REDEVELOPMENT AGENCY OF THE CITY OF NOVATO (THE "AGENCY"), THE CITY OF NOVATO (THE "CITY"), OR THE MEMBERS OF CLGFA, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. NONE OF THE STATE OF CALIFORNIA, ANY POLITICAL SUBDIVISION THEREOF, THE OWNER, THE AGENCY, THE CITY, AND THE MEMBERS OF CLGFA (EXCEPT CLGFA, TO THE LIMITED EXTENT OF THE ASSIGNMENT OF SUBSTANTIALLY ALL OF ITS RIGHT, TITLE AND INTEREST IN THE LOAN AGREEMENT AS SET FORTH IN THE INDENTURE) SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF CLGFA, AND NONE OF THE BONDS OR ANY OF CLGFA'S AGREEMENTS OR OBLIGATIONS SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. THE BONDS ARE SPECIAL OBLIGATIONS OF CLGFA AND DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE OWNER, THE AGENCY, THE CITY, THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE OWNER, THE CITY, THE AGENCY, THE STATE NOR ANY OF ITS POLITICAL SUBDIVISIONS IS LIABLE THEREON NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THE REVENUES, ASSETS AND MONEYS PLEDGED UNDER THE INDENTURE. THE OWNER AND CLGFA HAVE NO TAXING POWER.

The scheduled payment of the principal of and interest on the Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the Bonds by FINANCIAL SECURITY ASSURANCE INC. See "BOND INSURANCE" herein.



**FINANCIAL
SECURITY
ASSURANCE.**

This cover page contains certain information for general reference only. It is not intended as a summary of this transaction. Investors are advised to read the entire Offering Statement to obtain information essential to making an informed investment decision.

The Bonds are being offered, if issued by CLGFA and accepted by the Underwriters, subject to the approval of legality by Kutak Rock, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for CLGFA by Kutak Rock; for the Owner by Nossaman, Guthner, Knox & Elliott, LLP, San Francisco, California; and for the PAC by David Kenyon, Esq. Kutak Rock is also serving as Special Counsel in connection with the preparation of the Offering Statement. In addition, the City of Novato is being represented by its counsel, Walter & Pistole, Sonoma, California, and the Redevelopment Agency of the City of Novato is being represented by its counsel, McDonough, Holland and Allen, Sacramento, California. P.A. Hoon & Company, Inc., is serving as the Financial Advisor and Project Manager to the PAC; E. Wagner & Associates, Inc., is serving as the Financial Advisor to the City of Novato, the Redevelopment Agency of the City of Novato and the Owner; and American Government Financial Services Company is serving as the Financial Advisor to CLGFA. It is expected that the Bonds in book-entry form will be available for delivery to The Depository Trust Company on or about March 13, 1997.

Sutro & Co. Incorporated

George K. Baum & Company

Dated: March 10, 1997.

**CITY OF NOVATO
NOTICE OF PUBLIC MEETING
NOTICE OF INTENT TO ADOPT A CEQA MITIGATED NEGATIVE DECLARATION,
TENTATIVE PARCEL MAP, APPROVAL OF A DEED OF RELEASE AND AMENDMENT,
DECLARATION OF RESTRICTIONS AND PROGRAM OF UTILIZATION
HAMILTON ARMY AIRFIELD FEDERAL LANDS TO PARKS EXCHANGE**

Notice is hereby given that the Novato City Council will conduct a public meeting on **Tuesday, March 15, 2016, at 6:30 PM** in the Novato City Hall at 901 Sherman Avenue, Novato, California, to consider approving a proposed land use covenant exchange between the City of Novato ("City") and the National Parks Service ("NPS"). The City and NPS have reached agreement regarding the release of restrictive land use covenants from three parcels in the Hamilton Army Airfield that were transferred to the City of Novato via the federal Lands to Parks program in 2001. These parcels consist of the Commissary Triangle (APN 157-970-03), the Hamilton Town Center (APN 157-690-47), and a portion of the Bachelor Officer's Quarters parcel (APN 157-690-53). The release of these restrictive land use covenants would, by allowing for investment, facilitate the influx of capital needed to redevelop the parcels and rehabilitate the historic structures thereon, and so revitalize the Hamilton neighborhood. Specific uses and development plans for these parcels will be developed through a separate, fully noticed, public process. In exchange for releasing the land use covenants from the parcels noted above, new restrictive land use covenants would be assigned to five city-owned parcels located in southern Novato (APNs 155-400-01, 155-400-02, 155-400-04, 155-400-06, and 155-400-07) near the Marin Valley Mobile Country Club. The assignment of use restrictions to these parcels would preserve them for recreation and open space use consistent with the federal Lands to Parks program. The actions being considered by the City Council associated with the Lands to Parks exchange include the adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, approval of a tentative map dividing the Bachelor Officer's Quarters parcel (APN 157-690-53), approval of a "Deed of Release and Amendment" and "Declaration of Restrictions" to effectuate the exchange of use restrictions described above, authorization of the execution of all necessary documents to effectuate the exchange of use restrictions, subdividing the Bachelor Officers Club parcel into two parcels and adoption a Program of Utilization applicable to the parcels in southern Novato that would receive the restrictive land use covenants.

Further notice is hereby given that the NPS and City prepared a joint environmental review document to satisfy the requirements of the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The NEPA Environmental Assessment and CEQA Initial Study identify several potentially significant environmental impacts resulting from the proposed actions noted above. The potentially significant impacts were noted in the following impact categories addressed by NEPA and CEQA: Biological Resources and Cultural Resources. All potentially significant impacts have been assigned mitigation measures which reduce these impacts to a less than significant level. Hardcopy versions of the joint environmental document are available for review at: Marin County Library – Novato Branch, 1720 Novato Boulevard, Novato, CA 94945; Marin County Library – South Novato Branch, 931 C Street, Novato, CA 94949; and, Novato Community Development Department, 922 Machin Avenue, Novato, CA 94945. The joint NEPA Environmental Assessment and CEQA Initial Study is available online at:

<http://www.novato.org/government/community-development/planning-division/planning-projects>

Comments received on or before the public hearing date will be considered by the City Council. If anyone wishes to challenge this project in court, they may be limited to raising only those issues they or anyone else raised at the public hearing described in this notice or in written correspondence delivered to the Community Development Department at, or prior to, the public hearing.

For information regarding the above noted project, please contact Scott Ward, Director of Hamilton Base Reuse, at (415) 899-8933 or via email at: sward@novato.org. It is recommended that an appointment be made with the staff member listed above prior to visiting the City offices to ensure his/her availability. The City of Novato Community Development Department is located at 922 Machin Avenue, Novato, CA 94945. The Department is open Monday through Friday (closed every other Friday, including March 11, 2016) 9:00 a.m. to 1:00 p.m. and 2:00 p.m. to 5:00 p.m.

Proposition 218: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding articles thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED ADDITION OF ARTICLE XIII C AND ARTICLE XIII D

RIGHT TO VOTE ON TAXES ACT

SECTION 1. TITLE. This act shall be known and may be cited as the "Right to Vote on Taxes Act."

SECTION 2. FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES.
Article XIII C is added to the California Constitution to read:

ARTICLE XIII C

SECTION 1. Definitions. As used in this article:

- (a) "General tax" means any tax imposed for general governmental purposes.
- (b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.
- (c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.
- (d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

SEC. 2. Definitions. As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in

Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

SEC. 6. Property Related Fees and Charges. (a) **Procedures for New or Increased Fees and Charges.** An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the

proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) **Requirements for Existing, New or Increased Fees and Charges.** A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

✓ (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulances or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) **Voter Approval for New or Increased Fees and Charges.** Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

SECTION 5. LIBERAL CONSTRUCTION. The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

SECTION 6. SEVERABILITY. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

END



MARIN MUNICIPAL WATER DISTRICT

220 Nellen Avenue Corte Madera CA 94925-1169
marinwater.org

Proposition 218: Understanding the Basics

The Marin Municipal Water District, like other local governments, must follow legal requirements established by Proposition 218 when proposing rate increases. Here is some background information on the proposition and the requirements.

Overview

On November 5, 1996, California voters approved Proposition 218, the "Right to Vote on Taxes Act." Proposition 218 amended the California Constitution by adding elements that affect the ability of special districts like MMWD and other local governments to levy and collect taxes, assessments, and property-related fees and charges.

With a few exceptions, "fee" or "charge" means any levy imposed by an agency upon a parcel, including a user fee or charge for a property-related service.

"Property-related service" means a public service having a direct relationship to property ownership. Any special district proposing to adopt a new, or increaseⁱ an existing, property-related fee or charge must comply with both the substantive and procedural requirements of Prop. 218.

Substantive Requirements of Prop. 218

According to Prop. 218, a property-related fee must meet the following substantive requirements:

- revenues derived from the fee must not exceed the funds required to provide the service;
- revenues derived from the fee must not be used for any purpose other than that for which the fee is imposed;
- the amount of a fee imposed must not exceed the proportional cost of the service attributable to the parcel;
- the fee may not be imposed for a service unless the service is actually used by, or immediately available to, the owner of the property subject to the fee; and
- no fee or charge may be imposed for general governmental services, such as police, fire, ambulance, or libraries, where the service is available to everyone in the community. ⁱⁱ

Procedural Requirements of Prop. 218

Prop. 218 requires that a public agency proposing a new or increased property-related fee or charge provide written notice by mailⁱⁱⁱ to the owner^{iv} of each parcel upon which the fee or charge will be imposed.

- The notice must contain the following information:
 - the proposed amount of the fees or charges;
 - the basis upon which the fees or charges were calculated;
 - an explanation of the need for the new or increased fees or charges; and

12/3/2015

- the date, time, and location of the public hearing at which the agency will consider the new or increased fees.^v
- Prop. 218 also requires that the public hearing be held at least 45 calendar days after the mailing of the notice; and
- provides that a property-related fee or charge may not be imposed or increased if a majority submit written protests.

These requirements also apply to tenants if they are responsible for paying the fee or charge (i.e., customers of record).

Public Hearing Requirements

The final step in the Prop. 218 process is the public hearing and the determination of whether there is a majority protest against the property-related fee or charge. The public hearing can't be held until at least 45 days after the notice is mailed.^{vi} At the public hearing, the agency will hear and consider all public comments.^{vii}

At the end of the public hearing, if written protests against the proposed new or increased fees or charges are *not* presented by a majority of affected property owners, the agency may proceed with imposing the fees or charges.^{viii}

California law simplifies the process for determining whether a majority protest exists by allowing one protest, filed by an owner or a tenant of an affected parcel, to be counted.

Endnotes

ⁱ California Government Code section 53750(h).

ⁱⁱ Cal. Const. art. XIII D, §§ 6(b)(1)-(5).

ⁱⁱⁱ California Government Code section 53750(i).

^{iv} Senate Bill 919, adopted as urgency legislation in July 1997 and referred to as the Proposition 218 Omnibus Implementation Act, purposes of Article XIII C and XIII D, the term "record owner" means "the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency." California Government Code section 53750(i) defines "notice by mail" to include providing notice via a utility bill for a fee or charge, which in some instances may be mailed to a utility customer rather than the record owner of the parcel where the service is provided.

^v Cal. Const. art. XIII D, § 6(a)(1).

^{vi} Cal. Const. art. XIII D, §6(a)(2).

^{vii} *Id.*

^{viii} *Id.*

1982

Tribune/TODAY Thursday, January 28, 1982

A-15

Bank ordered to pay back \$101 million

By Joan McKinney
Tribune Staff Writer

SAN FRANCISCO — The Bank of America has been ordered by a Superior Court judge to pay \$101 million in damages to people who paid the bank prorated payments for yearly property taxes and insurance in their monthly mortgage payments, but did not receive interest payments.

The damages were awarded to those obtaining home loans from the bank prior to 1972.

Judge John Dearman, who heard the class-action suit, also ordered that Bank of America, in handling all future impound accounts, either invest them for the benefit of the borrower or segregate them from its other funds.

Dearman said he would soon issue a similar order for all lending institutions.

Since 1976, state law has required banks to pay interest on tax and insurance impound accounts and to keep them in trust separate from other bank operations.

The suit was brought by San Francisco accountant Richard D. Wilson and Joseph and Frances Gullory of South San Francisco.

Lynn S. Carman, trial attorney in the case, and John Mallick, attorney for Wilson, said Wednesday it is the largest class-action judgment ever awarded, and only the second in which borrowers were awarded a judgment against a lending institution for misuse of impounds.

Eastern jurisdictions have uniformly ruled against borrowers, they said.

The decision came after 10 years of litigation.

In 1974, Superior Court Judge Ira

Brown dismissed the case as being too cumbersome to try. The California Court of Appeal reversed that decision in 1976 and the case finally came to trial last fall.

Carman said that before 1972, all banks and savings and loans required borrowers to pay a twelfth of their annual tax and insurance payments with their monthly mortgage payments. The impounded money was held by the banks until the insurance and property taxes were due. The lending institutions used the impounds for other loans, drawing interest, with none going to the mortgage payers, according to the suit.

"There is evidence that the Bank of America had an average of \$50 million a year in impounds," Carman said.

The suit contended that the bank should pay interest to borrowers on this money, which should be treated

as pledged trust funds.

At the trial, bank officials testified that impounds have always been commingled with other funds and used as the bank saw fit, without accounting to the borrower.

Bank of America spokesman Billy Brannigan said Wednesday that both the amount involved in the judgment and the decision itself were "unwarranted." He said the bank plans to appeal and is confident that it will get a reversal.

He said that prior to the passage of a state law requiring payment of 2 percent interest on impound accounts, Bank of America had been paying, and continues to pay, interest at or above the required rate.

If Dearman's decision stands, 176,471 Californians will share \$47 million in actual damages for interest not received and \$54 million in punitive damages.

Victimized investors are hungry, angry with bankruptcy plan

By Corrie M. Anders
Examiner staff writer
Patricia Maginnis is flat broke. In the few months since the Oakland woman lost her fortune, she has had to cook Pinto beans in almost any style imaginable. Recently, Maginnis walked into an Oakland welfare office and applied for emergency food stamps. Maginnis, 56, had invested all her money — \$25,000 — with San Rafael Woodson Co. Both the principal and the monthly interest payments she received have been tied up by the company's Aug. 31 filing under bankruptcy laws.

Maginnis is one of an estimated 2,000 persons throughout the Bay Area who invested more than \$85 million with the Woodson Co. Their securities are in the form of trust deeds on second-mortgage loans by the company.

"Most of them are darn mad," said attorney William Pascoe, who represents 200 investors with an estimated \$10 million in the company. "There are some who invested their life savings and are in very bad straits." Another attorney, Lynn Carman, said most of the 300-plus investors lie in bed in the bankruptcy proceedings are retirees. "There's a sea of tears when we have a meeting," Carman said.

Maginnis is one of Carman's clients. She has a monthly interest payment of \$150, which is her only source of income. "I'm in the worst situations I've ever been in," she said.

The interest payments she received for the use of her \$25,000 ranged from 10 percent to 17 percent. Her last payment was a \$250 check in August.

"I cut back on everything immediately. I cut back on food. I cut back on getting my car fixed. I'm trying to learn how to clean my spark plugs," said Maginnis, a frail, nervous woman.

Maginnis was a laboratory technician at Marin General Hospital until she was seriously injured in an automobile accident. In 1979, she received a large insurance settlement.

Unable to work as a lab tech, Maginnis said, she wanted a safe investment that would provide a monthly payment. She first purchased a badly rundown home in East Oakland for \$7,500 and invested with the Woodson Co. all that was left on the settlement.

"I was in need of a stable investment because I couldn't afford to gamble," she said. She had known of the Woodson Co. from the day when Michael Woodson's father headed the firm, and putting her money with the company "seemed like a reasonable thing to do."

A few weeks ago, worried about food and utility bills and unable to proceed with her still-unfinished home, the single woman took in a boarder who pays her \$150 a month.

Carman has asked the Bankruptcy Court to unfreeze at least 50 percent of the interest payments due investors.

But the bankruptcy proceedings have set off a tumultuous sideshow between investors who put up the \$85

a federal bankruptcy judge to oversee the case.

Trustee William Grover has taken the unpopular position that the investors' \$85 million loan portfolio is a part of the Woodson Co. bankruptcy and that proceeds should be distributed evenly among secured and unsecured creditors.

Attorneys for secured creditors have argued bitterly that their clients should not be lumped together with unsecured creditors. Their clients' investment loans to borrowers were protected by second deeds of trust, the attorneys have argued, while the unsecured claimants provided goods and services on credit.

Attorneys for secured investors said the Woodson Co. merely handled the loan portfolio and that the money did not belong to the Woodson Co.

The unsecured creditors have claims of \$8 million.

Carman charged in court that Grover's position was motivated "by his own profit" — to boost his own fee to \$524,000 for handling the bankruptcy proceedings.

Fees paid to bankruptcy trustees are based on the size of the estate. Grover and his attorney have vehemently denied the charge.

U.S. Bankruptcy Court Judge Conley Brown will hear arguments this month on whether Grover's position to lump all creditors together is correct. He will also take up Carman's efforts to unfreeze interest payments

Bankrupt Brokerage Firm

2/13/85

Investors Win Woodson Ruling

A federal bankruptcy judge yesterday ruled in favor of investors in Woodson Co., a failed San Rafael mortgage brokerage firm, but it wasn't clear how soon they will get their money back.

Lynn S. Carman, a San Francisco attorney, said the ruling is a major victory for investors.

Co attorney representing some of the company's 2,200 investors, said Eureka Federal Bankruptcy Court Judge Conley Brown's decision settled the issue of who owned about \$60 million of Woodson's \$85 million loan portfolio.

At a hearing in Santa Rosa, the judge decided that the properties in the loan portfolio did not belong to the company's bankruptcy estate but to the investors who had signed contracts and received deeds of trust to the property. In legal parlance, he decided that they were secured creditors of Woodson.

William Pascoe, a San Rafael attorney, said the ruling is a major victory for investors.

Woodson filed for reorganization under federal bankruptcy law in August.

William B. Grover, the court-appointed trustee for the company's estate, said late yesterday that he has not decided whether to appeal the judge's ruling to U.S. District Court in San Francisco. Grover had argued that the loan portfolio belonged to the Woodson estate and should be distributed evenly among secured and unsecured creditors.

Carman and Pascoe said they expected the trustee would appeal, perhaps stretching out the resolution.

**NEW YORK
STOCKS &
OTHER TABLES**

June 8, 2016

Report, Objections and Request to City Council Concerning MVMCC (“the Park”)

Dear Mayor Eklund, and Council Members:

We believe the City is engaging in a practice of using the Park’s revenues to fund the City’s general fund. In doing so, the City is violating California law regarding:

(1) the trust of the Park which devolved upon NFA and its successor (the City) by the wording of the NFA Offering Circular, and

(2) Proposition 218 which prohibits a municipality from charging rates (here, Park rents) for services (here, the service of making low-and-middle income housing available) which exceed the cost to furnish them, and requires a city to meet a burden of proof to reasonably justify any city claim, for costs incurred, against the Park enterprise fund.

At the very least these practices are contrary to the public purpose to make mobile home spaces available to the low-and-middle income public, which is the only justification for the City to have acquired the Park.

In addition, the City has, in the past few years, engaged in the practice of (1) listing claimed City costs in a few lines consisting of insufficient two-and-three word descriptions and a dollar amount, and (2) simply transferring the total listed to the City general fund. This insufficient justification or explanation of the takeaway amount not only violates transparency minimums, but also violates the trust and/or Prop. 218 by furnishing inadequate explanation or justification for the “City costs” takeaways.

Practices Complained of

The thread is that prior to the City refinancing the initial NFA loan, there was a neutral watchdog both for investors in the Park purchase bonds and for Park residents, namely, the insurance company protecting the bond investors.

While the bonding company was on the prowl,

- the Park was not charged for prior unreimbursed City costs, going years back, which had not previously been thought fit to be taken by the City, and
- no land was purchased for the City using the Park’s enterprise funds.

However, once the watchdog insurance company was eliminated when the NFA bonds were refinanced, the City has taken half a million dollars from the Park Enterprise Fund, and as a result, has raised rents upon the low-middle-income persons for whom the City acquired the Park to serve (which increases would not have been necessary had it not been for the half a million dollars in City takeaways), as follows:

\$82,557 - taken by the City in the refinancing transaction.

250,000 - taken to fund the City's purchase of property to turn into open space for the public, and by a zoning switch, to enable the City to sell/lease theretofore zoning compromised property in Hamilton at great profit to the City.*

165,000 - recently taken, or to be taken by the City by multi-year chargebacks.

\$497,557 Total takeaways from the Enterprise Fund.

We are asking the City Council to appoint a committee of Council Members, to confer with ~~a committee of the PAC~~, so an agreement can be made between the PAC and the City to (1) end these practices; (2) restore all or most of this \$497,557 to the Park Enterprise Fund, (3) credit the Enterprise Fund with half of the net profit from the sale/lease of the Hamilton property (which was enabled by the \$250,000 Enterprise Fund takeaway; (4) set time lines for meetings by which to agree for the City's transfer of the Park to the 501(c)(3) Marin Valley Senior Community, Inc., (either now or, if the Bank of Marin will not agree, at the time that the Bank of Marin loan is paid off); and (5) resolve related matters.

Comments

FIRST TOPIC

A

Takeaways from municipal enterprise funds render the enterprise fund insufficient to provide adequate services for which the enterprise fund was established. This causes increases in user charges (here, rents) to make up for the diversions; which defeats the public purpose, in the case of the Park Enterprise Fund, of making mobile home spaces available to the low-middle-income public.

There have been two rent increases to Park tenants since the takeaways commenced.

The City Council must realize that many low-income tenants have resided at the Park for 20 or more years, and subsist solely on small Social Security or pensions which barely cover, if they do, their monthly expenses. Unjustified rent increases, – caused by the City takeaways complained of, – directly injure these elderly long-time Park residents.

Further, the new rent increases do not increase the former net cash position of the Enterprise Fund, but instead only serve to restore the net cash position which the Enterprise Fund enjoyed before the unjustified rent increases went into effect. For example, we

* This \$250,000 takeaway was not budgeted or approved by any vote of the PAC board of directors as required by the Delegation Agreement.

Also, it was mis-described, in violation of generally accepted accounting practices (GAAP), as an “Administrative service charge” on the audited books of the City. (City of Novato, Notes to Basic Financial Statements, June 30, 2014.)

understand that the current rent increase, – made necessary by the City takeaways,– would take 5 years just to make up for the particular \$250,000 takeaway complained of, to enable the City to acquire land which it anticipates selling/leasing at a substantial profit to the City.

B

We contend that the service provided by the Enterprise Fund – namely, providing access to low-and-moderate income housing for seniors, – is a public “property-related service” within the meaning of Sec. 2(g),(h) of Prop. 218, so that the fees or charges (i.e., rents) of the Enterprise Fund may not, under Prop. 218, “exceed the funds required to provide the property-related service,” Sec. 6(b)(1); and “shall not be used for any purpose other than that for which the fee or charge was imposed” Sec. 6(b)(2).

By this rule, the \$250,000 transferred from the Enterprise Fund to the City general fund, to enable the City to purchase land adjacent to the Park, was manifestly either an Enterprise Fund surplus created by rents which exceeded the funds required to provide the low-moderate-income tenancies in the Park, – in violation of Sec. 6(b)(1) of Prop. 218, -- or else it was a use of revenue from Park rentals for a purpose other than that for which the rents were imposed on Park tenants (namely, to provide access of seniors to low-moderate-income housing), – and in any event was not a “cost” incurred to provide the relevant public service of making low-moderate-income housing available to the public: either or both of which were in violation of Sec. 6(b)(2) of Prop. 218.

Further, it may be true that the 300-plus Park tenants (who were charged \$250,000 for the City to acquire this adjacent park land), benefited from this transaction; but, so were all other members of the public of Novato including those in Hamilton who also reside adjacent to the acquired park land; yet the City did not charge them anything, or proportionally, as were charged Park tenants, to acquire this public park land.

Hence the City acquisition of this open space land, by \$250,000 derived from rents charged to Park tenants, also violated Sec. 6(b)(5) of Prop. 218, which prohibits any fee or charge to “property owners” (defined by Sec. 2(g) as including tenancies) for general governmental services such as acquiring park land for the public.

SECOND TOPIC

We believe that by the statements of the Novato Finance Authority (NFA) in the March 1, 1997 public offering statement of the purpose of issuance of the bonds, – namely, to enable NFA to acquire and transfer the Park to the yet-to-be-formed Marin Valley Senior Community Inc. (MVSC), – that under California law of trusts, NFA became a trustee to hold the Park, in trust, for that singular purpose. And, that the City, with knowledge of these provisions of the NFA public offering statement, thereby knew of the trust and took

title to the Park from NFA, subject to the trust, to transfer the Park to MVSC, without more.**

Notably, the City paid nothing to acquire the Park and did not pledge the full faith and credit of the City to pay off the loan, hence was not any so-called “bona fide purchaser for value.”

We also believe that by the residents forming both the PAC and the MVSC, and taking on and performing with impressive results, at their sole expense, (without any monetary risk by the City), the operation and maintenance of the Park, and (in effect) repaying the loan, that the City has become estopped, in California law, from rescinding the trust, namely, the trust to transfer the Park to MVSC.

We believe the City should confer with the MVSC (along with the advice and assistance of the PAC), on the subject of the transfer of the Park to MVSC, under these trust provisions of the NFA public offering, or upon any other reasonable basis consistent with that trust

**

To create an enforceable trust in California, it is not necessary that the words “trust” or “in trust” be used, or that the putative trustee even understand, believe, or intend that a trust be created by the words used. I.e., *McGhee v. Bank of America*, 60 Cal.App.3d 442 (1976) held:

[N]o particular language is necessary to manifest intent to create a trust. [Citations]. . . “[A]n express trust may arise even though the parties in their own minds did not intend to create a trust. As in the case of the making of a contract, so in the case of a trust, an objective rather than a subjective test is applied. It is the manifestation of intention which controls and not the actual intention where that differs from the manifestation of intention [Citations].” Where funds are . . . [received by] . . . a bank to be used for a specified purpose, rather than as a general deposit, the amount deposited “constitutes a fund which the bank is not authorized to use. for its purposes.” [Citations]; see also *Ennis-Brown Co. v. Richdale L. Co.* (1920) 47 Cal. App. 508, 510-511 [190 P. 1064]; [acceptance by a broker of instructions to use funds received “to purchase Egyptian corn” prevented the funds from becoming the property of the broker; and the funds could not be used for any other purpose; so that a trust was thereby created]. This question of fact concerning the intention of the parties to create a trust was recognized in our prior decision in *Abrams v. Crocker-Citizens Nat. Bank*, supra, 41 Cal. App.3d at pages 59-60[.]

purpose.

the term of the existing Bank of Marin loan, in a friendly, respectful, and beneficial fashion by which the City, on the one hand, is enabled to fulfill its state-mandated requirements for making housing available to low-moderate-income seniors, and residents of the Park have the security of well-supervised operation of the Park at the lowest rentals possible.

Such discussions are already on the discussions agenda of the PAC and the City.

These discussions should also include the subjects of what amounts and what basis if any the City may transfer funds from the Enterprise Fund to the general fund of the City, and, what functions the PAC should perform and what functions the City should perform, in operating the Park.

THIRD TOPIC

Back charges and line charges without any adequate explanation

We suggest that the line back charges complained of are simply a misuse of Park funds for City purposes. In any event, we believe all or most of them violate the express trust, and at the least, violate Prop. 218 (were it to be the case that the City did not acquire the Park, in trust, to convey to MVSC). These violations may be the subject of a separate memo to the City.

Conclusion

We respectfully request that the City Council give serious consideration to the topics of this letter, and to our requests to appoint a committee of Council Members to confer with a committee of the PAC and of the MVSC, so an agreement can be made between the PAC and the City to (1) end these practices; (2) restore all or most of this \$497,557 to the Park Enterprise Fund, (3) set time lines for meetings by which to agree for the City's transfer of the Park to the 501(c)(3) Marin Valley Senior Community, Inc., (either now or, if the Bank of Marin will not agree, at the time that the Bank of Marin loan is paid off), and (4) resolve related matters.

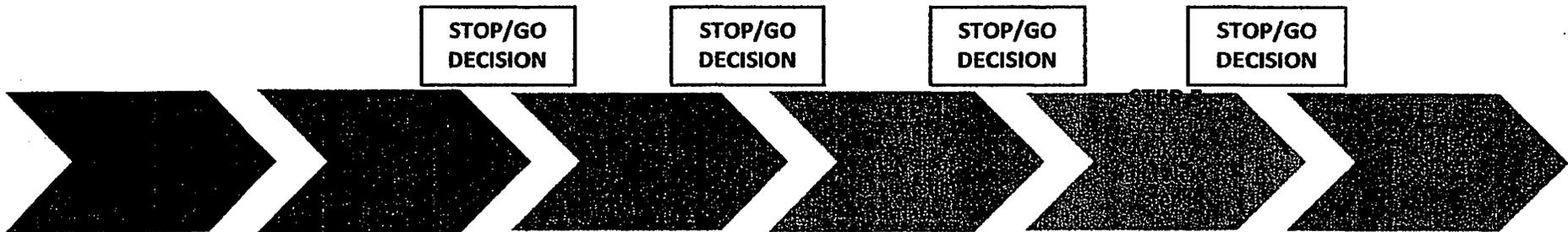
Respectfully,

John Shelfer, PAC President

AGENDA AND NOTICE
PARK ACQUISITION CORPORATION
Regular Meeting: 7PM Wednesday January 7, 2015
Fireside Room, 100 Marin Valley Drive, Novato

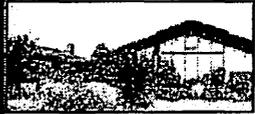
- A. Approval of FINAL AGENDA (Please submit items at least one week prior to the meeting)
- B. PUBLIC COMMENT (for issues not on the agenda: 2 minute time limit throughout the meeting)
- C. CONSENT CALENDAR
 - 1. Receive approved minutes of Nov 4, 2014 meeting
 - 2. Approve minutes of meeting December 3, 2014
- D. REPORTS (discussion only, no board action to be taken)
 - 1. PAC Treasurer's Report (Larry Cohen)
 - 2. MVMCC Administration and Finance (Desiree Storch)
 - 3. Maintenance and Capital Projects (Jay Shelfer)
 - 4. City of Novato (Jay Shelfer)
- E. OLD BUSINESS
 - 1. The City's report on Ownership issues is expected in April. We wish to discuss the sequential process whereby Park residents make any decision about ownership. Specifically, we want: (a) the City's report to include preliminary estimates of additional monthly cost to each resident, including cost of refinancing the mortgage and of any new property taxes, (b) a "town hall" meeting to explain the report and answer questions, (c) a poll of all residents on any ownership decisions, and (d) discuss a "cease and desist" point to prevent spending more money on the next phase of the study if residents choose to end the process. (Mike and Tom)
- F. NEW BUSINESS
 - 1. Determination of next meeting date: Regular Meeting: Wednesday Feb 4, 2015, 7:00 PM
- G. REPORTS FROM OTHER BOARDS
 - 1. HOL
 - 2. MAR VAL
 - 3. MVSC
- H. ADJOURNMENT

MVMCC Long Term Ownership Process – DRAFT 10/30/2012



STEP 1 October 30, 2012	STEP 2 ²⁰¹² Nov. 2012 – Feb. 2013	STEP 3 March 2013 – June 2013	STEP 4 July 2013 – July 2014	STEP 5 July 2014 – Dec 2014	STEP 6 Timeline - TBD
<p><u>Work Prior to Step 1:</u></p> <ul style="list-style-type: none"> -Summary of Council's interests from July 9th Council Meeting. -Staff prepares process and budget estimates for discussion and consideration. -Obtain cost estimate for appraisal for Step 2 actions. 	<p><u>Work Prior to Step 2:</u></p> <ul style="list-style-type: none"> -Obtain appraisal for Park. -Evaluation of legal issues arising from "Gift of Public Funds" parameters. -Preliminary analysis on rents, Park finances, and overall affordability. -Review of Council's interests based on analysis. 	<p><u>Work Prior to Step 3:</u></p> <ul style="list-style-type: none"> -Provide overview of options for ownership structures and alternatives. -Include pros/cons, and implications (financial, affordability, governance, etc.). -Integrate financial analysis from Step 2. 	<p><u>Work Prior to Step 4:</u></p> <ul style="list-style-type: none"> -Investigation and analysis of selected alternatives for detailed review. -Detailed analysis of rent impacts and Park finances. -Preparation of budget for each alternative and financing alternatives. -Identification of implications and choices from a resident perspective. -Education and outreach process. 	<p><u>Work Prior to Step 5:</u></p> <ul style="list-style-type: none"> -Provide summary of analysis -Outline steps for implementation 	<p><u>Work After Step 6:</u></p> <ul style="list-style-type: none"> -Dependent on decision -Any sale or transfer requires numerous actions, including environmental review, Planning Commission consistency determination, etc.
<p><u>Council Actions:</u></p> <ul style="list-style-type: none"> -Discussion and direction on process and budget estimates -Direction to obtain appraisal for MVMCC 	<p><u>Council Actions:</u></p> <ul style="list-style-type: none"> -Review and discuss appraisal and financial impacts. -Review "Gifts of Public Funds" legalities. -Direction on whether to proceed to Step 3. 	<p><u>Council Actions:</u></p> <ul style="list-style-type: none"> -Review and discuss options and costs. -Direction on whether to proceed to Step 4. -Identify options for detailed review. -Approve budget for costs for Step 4. 	<p><u>Council Actions:</u></p> <ul style="list-style-type: none"> -Review of refined analysis for selected organization structures of the Park. -Direct educational efforts based on analysis. -Direction on whether to proceed to Step 5 	<p><u>Council Actions:</u></p> <ul style="list-style-type: none"> -Direction on whether to proceed to Step 6 and with what alternative structure, if any. -Direction on whether to proceed to Step 6 	<p><u>Council Actions:</u></p> <ul style="list-style-type: none"> -Approve implementation measures as necessary
<p><u>Budget – \$5,000</u></p> <ul style="list-style-type: none"> -Staff time 	<p><u>Budget – \$25,000</u></p> <ul style="list-style-type: none"> -Staff time -Appraisal -Financial analysis on rents, park finances, etc. 	<p><u>Budget – \$20,000</u></p> <ul style="list-style-type: none"> -Staff time -Financial analysis -Legal analysis 	<p><u>Budget – Est \$200,000</u></p> <ul style="list-style-type: none"> -Project management -Financial consultant -Legal analysis 	<p><u>Budget – To Be Determined</u></p>	<p><u>Budget – To Be Determined</u></p>

Marin Valley Mobile Country Club



Marin Valley Senior Community (MVSC)

Marin Valley Senior Community is a 501c3 tax exempt corporation formed in 1997 to assume title to Marin Valley Mobile Country Club. There are four (4) resident elected Directors and three (3) appointed outside directors. It is the goal of MVSC to eventually assume the title to our community allowing for resident control of our community.

MVSC Officers

• Resident Directors

Bill Davis, President

John Hansen, Vice President

Connie Marelich, CFO

Secretary *K.C. CASEY*

• Outside Directors

- Phil Brown
- Mike Read
- Laura Levine

MVSC Documents

- Bylaws
- Communications
- Minutes/Agendas

*L.L. Senior Loan officer @ Unifund
 BJA, World Fargo, Broker for S&B
 Dominican 21 - finance*

*P.B. B' NFC, Business man, Retired Club,
 + Transfer*

**CERTIFICATE OF AMENDED & RESTATED
ARTICLES OF INCORPORATION
OF
MARIN VALLEY SENIOR COMMUNITY, INC.**

A California Nonprofit Public Benefit Corporation

The undersigned certify that:

1. They are the president and secretary, respectively, of Marin Valley Senior Community, Inc., a California nonprofit public benefit corporation (the "Corporation").
2. That the Articles of Incorporation of the Corporation are amended and restated to read in their entirety as follows:

I. NAME

The name of the Corporation is Marin Valley Senior Community, Inc.

II. PURPOSE

(a) The Corporation is a California nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for public and charitable purposes. The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California, provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this Corporation.

(b) The specific charitable and public purpose for which this Corporation is organized is solely to own and operate the Marin Valley Mobile Home Park, which ownership and operation will: (i) provide affordable, decent, safe, and sanitary housing for senior persons where no adequate housing exists for such groups; (ii) provide housing for senior persons that meets their specialized needs, including physical, social, and financial security needs; and (iii) lessen the burden of local government by carrying out its responsibilities under local, state, and federal law which requires the production, maintenance, and preservation of mobile home park and senior housing.

III. AGENT OF SERVICE

Agent for Service intentionally left blank pursuant to California Corporations Code Section 5819.

IV. DEDICATION AND DISPOSITION

(a) The property of this Corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, or member of this Corporation or to the benefit of any private individual.

(b) Upon the winding up and dissolution of this Corporation, and after paying or adequately providing for the debts and obligations of the Corporation, the remaining assets shall be distributed to a nonprofit fund, foundation, or corporation, other than one created for religious purposes, that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future Internal Revenue Law.

V. LIMITATION OF CORPORATE ACTIVITIES

(a) This Corporation is organized and operated exclusively for public and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by: (i) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States Internal Revenue Law; or (ii) by a corporation, contributions to which are deductible under Section 170 of the Internal Revenue Code or the corresponding provisions of any other United States Internal Revenue Law.

(b) No substantial part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code, and this Corporation shall not participate in or interfere in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

(c) So long as the municipal bond insurance policy No. 22031-N (the "Policy") issued by Financial Security Assurance Inc. ("FSA") insuring payments on bonds issued for the benefit of the Corporation is in effect, the Corporation shall not amend its Articles of Incorporation, as herein amended, in any way which would affect the purpose of the Corporation, the Corporation's ability to incur debt, or the limitations on the Corporation's powers pursuant to this Article V, and shall not amend certain provisions of its Bylaws, as noted therein, without the prior written consent of FSA, except to the effect that such amendment is required to maintain the Section 501(c)(3) status of the Corporation, as evidenced by an opinion of counsel in form and substance satisfactory to FSA.

VI. DIRECTORS

The number of directors and the manner in which directors shall be chosen and removed from office, their qualifications, powers, duties, term of office, the manner of filling vacancies on

the Board of Directors and the manner of calling and holding meetings of directors shall be as stated in the Bylaws.

VII. BANKRUPTCY/INSOLVENCY

So long as the Policy is in effect, it shall require a unanimous vote of the entire Board of Directors of the Corporation to: (a) institute any proceedings to adjudicate the Corporation bankrupt or insolvent, (b) consent to the institution of bankruptcy or insolvency proceedings against the Corporation, (c) file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy with respect to the Corporation, (d) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or a substantial part of its property, (e) make any assignment for the benefit of the Corporation's creditors, (f) cause the Corporation to admit in writing its inability to pay its debts generally as they become due, or (g) take any action, or cause the Corporation to take any action, in furtherance of any of the foregoing.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Board of Directors of the Corporation.
4. The Corporation has no members.
5. This Certificate may be executed in counterparts.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge and that this declaration was executed on _____, 2006, at Novato, California.

By: _____, President

By: _____, Secretary

**AMENDED AND RESTATED BYLAWS
OF
MARIN VALLEY SENIOR COMMUNITY, INC.
A California Nonprofit Public Benefit Corporation**

**ARTICLE 1.
NAME**

Section 1.1 Name. The name of this corporation is Marin Valley Senior Community, Inc. (the "Corporation").

**ARTICLE 2.
OFFICES**

Section 2.1 Office. The office for the affairs of the Corporation is located at 100 Marin Valley Drive, Novato, California 94949-9716.

**ARTICLE 3.
MEMBERS**

Section 3.1 No Members. The Corporation shall have no members as defined in Section 5056 of the California Corporations Code. The Corporation may, from time to time, refer to certain persons associated with the Corporation as "members" or allow certain classes of persons some rights with respect to the Corporation, but no such reference or allowance shall constitute any person as a member within the meaning of Section 5056 of the California Corporations Code. All corporate actions shall be approved by the Board of Directors (the "Board") in the manner provided in these Bylaws, except such actions as are authorized by these Bylaws without further Board approval.

**ARTICLE 4.
DIRECTORS**

Section 4.1 General Corporate Powers. Subject to the California Nonprofit Public Benefit Corporation Law and any other applicable laws, the Corporation's activities and affairs shall be managed by, and all corporate powers shall be exercised under the direction of, the Board.

Section 4.2 Specific Powers. Without prejudice to the general powers set forth in Section 4.1, but subject to the same limitations, the directors shall have the power to:

a. Appoint and remove, at the pleasure of the Board, all the Corporation's officers, agents, and employees; prescribe powers and duties for them that are consistent with applicable

law, the Corporation's articles of incorporation, and these Bylaws; and fix their compensation and require from them security for faithful performance of their duties.

b. Adopt or alter and use a corporate seal.

c. Borrow money and incur indebtedness on behalf of the Corporation, and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities, provided, however, that as long as the municipal bond insurance policy No. 22034-N (the "Policy") issued by Financial Security Assurance Inc. ("FSA") insuring payments on the Senior Revenue Bonds, Series 1997A (Marin Valley Mobile Country Club Park Acquisition Project) (the "Bonds") issued for the benefit of the Novato Financing Authority and as assigned to the Corporation is in effect, the Corporation shall not incur, assume, or guaranty any indebtedness, except in accordance with the documents evidencing the payment obligations on the Bonds (the "Bond Documents") without prior written consent from FSA.

d. Construct, operate, maintain, improve, buy, sell, convey, assign, mortgage, or lease any real estate and personal property necessary and incident to the provision of housing for seniors.

e. So long as the Policy is in effect:

(i) The Corporation shall not transfer to any person or entity any material assets of the Corporation except pursuant to the Bond Documents without prior written consent of FSA.

(ii) The Corporation shall not have any employees or engage in any business or activity other than in connection with or relating to the activities permitted herein.

(iii) The Corporation shall not consolidate (other than for federal income tax purposes or merge with or into any other entity or convey, transfer or lease its properties and assets substantially as an entirety to any entity through liquidation, dissolution or otherwise (other than as described herein) without prior written consent from FSA.

(iv) The Corporation shall not dissolve or liquidate, in whole or in part, if any obligation under the Bond Documents is outstanding without prior written consent from FSA.

(v) The funds and other assets of the Corporation shall not be commingled with those special purpose entity provisions of any other entity.

(vi) The Corporation shall not form, or cause to be formed, any subsidiaries nor shall the Corporation acquire any interest as a general or limited partner in any partnership or as a member in any limited liability company without prior written consent from FSA.

(vii) The Corporation shall act solely in its corporate name and through its duly authorized officers or agents in the conduct of its business, and shall conduct its business so as not to mislead others as to the identity of the entity with which they are concerned.

(viii) The Corporation shall maintain separate corporate records, financial reports and books of account and shall not commingle its corporate records, financial reports and books of account with the corporate records, financial reports and books of account of any other entity.

(ix) The Corporation shall at all times ensure that its capitalization is adequate in light of its business and purpose.

(x) The Corporation shall provide for its operating expenses and liabilities from its own funds, which may include funds contributed as capital to the Corporation, except that organizational expenses of the Corporation may be paid by unsecured loans and grants received by the Corporation.

(xi) The Corporation shall require each of its lenders to agree not to institute (or join anyone else in instituting) any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other similar proceeding against the Corporation until at least one (1) year and one (1) day after payment in full of all indebtedness issued under or supported by the Bond Documents.

Section 4.3 Authorized Number of Directors and Qualification of Directors. The Board of Directors shall consist of seven (7) Directors, who shall have the following qualifications, respectively:

a. Four (4) Directors shall be residents of Marin Valley Mobile Country Club who have been elected in accordance with Section 4.6 (the "Resident Directors"). No Resident Director shall also serve concurrently as a director of the Park Acquisition Corporation of Marin Valley Mobile Country Club, except for the initial directors described in Section 4.6(a).

b. One (1) additional Director shall be a person with an educational background and at least three (3) years of experience in the field of non-profit housing who has been appointed in accordance with Section 4.6.

c. One (1) additional Director shall be a person with an educational background and at least three (3) years of experience in the health care field or social services field who has been appointed in accordance with Section 4.6.

d. One (1) additional Director shall be a person with an educational background and at least three (3) years of experience in the field of nonprofit management, real estate finance, or banking who has been appointed in accordance with Section 4.6.

The Directors fulfilling the requirements of subsections (b), (c), and (d) shall be referred to collectively herein as the "Outside Directors." In the event that the Board determines it is

infeasible to fill the Outside Director positions with one Outside Director fulfilling the requirements of each of (b), (c) and (d), the Board may fill the Outside Director positions with persons meeting the qualifications of any of (b), (c), or (d). The Outside Directors may not be or have been residents of Marin Valley Mobile Country Club and may have no financial interest in Marin Valley Mobile Country Club.

Section 4.4 Compensation and Reimbursement of Directors. The Directors shall serve without compensation, although they may be reimbursed for their expenditures on behalf of the Corporation.

Section 4.5 Restriction on Interested Persons as Directors. No more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, and/or (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. Any violation of this Section 4.5 shall not affect the enforceability of any transaction entered into by the Corporation.

Section 4.6 Election and Term of Office of Directors.

a. The initial Directors shall be appointed by the Corporation's incorporator and shall serve for a term of twelve (12) months. All subsequent directors shall be elected or appointed pursuant to this Section.

b. The Resident Directors shall be elected by the eligible residents of Marin Valley Mobile Country Club. The elections of Resident Directors shall be coordinated by the Park Acquisition Corporation of Marin Valley Mobile Country Club (the "PAC"), pursuant to policies and procedures for such election established by the PAC. If the PAC fails to conduct an election to select the Resident Directors, the Resident Directors shall be appointed by the Board of Directors.

c. The Outside Directors shall be appointed by the Board of Directors.

d. Except as provided herein in subsections (a) and (c) with respect to initial terms and term staggering, the term of office for each Director shall be the longer of four (4) years or until his or her successor is appointed, but not longer than six (6) years. In order to stagger the terms of the Directors, the term of office for the initial Directors shall vary, as determined by the Board, such that in each year approximately one-fourth (1/4th) of the number of Directors are replaced.

e. Appointment of Directors shall take place every year at a regular meeting or a special meeting of the Corporation, or more frequently as necessary to fill vacancies.

Section 4.7 Vacancies on the Board. A vacancy shall be deemed to exist if the actual number of directors is less than the authorized number for any reason.

Section 4.8 Removal of Directors. The board of directors of the Corporation may remove any director from the Board for good cause; provided, however, that so long as the Policy is in effect, no Outside Director may be removed without prior written consent of FSA. Absence of a director from three (3) or more consecutive Board meetings shall constitute good cause for removal. ~~Resident Directors may be removed for cause pursuant to the policies and procedures for such election established by the PAC.~~

Section 4.9 Resignations of Directors. Except as provided below, any director may resign by giving written notice to the president or secretary of the Corporation. The resignation shall be effective when the notice is given or at any later time specified in the notice. Except on notice to the Attorney General of California, no director may resign if the Corporation would be left without a duly elected or appointed director.

Section 4.10 Filling Vacancies. Vacancies shall be filled by the board of directors of the Corporation. Replacement Directors will serve until the expiration of the term of the Director being replaced.

Section 4.11 No Vacancy on Reduction of Number of Directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term expires.

Section 4.12 Meetings of the Board. A regular meeting of the Board shall be held at least once a year at such time and place as shall be designated by the directors for the purpose of organization, election of officers, and the transaction of other business.

Section 4.13 Special Meetings. Special meetings of the Board may be called for any purpose and at any time by the president, the secretary, or any two (2) directors.

Section 4.14 Notice. Notice of all meetings shall be given to the Directors and the residents of Marin Valley Mobile Country Club. Notice of annual meetings shall be given not less than ten (10) days prior to the meeting if delivered by first class mail, email, telephone, or bulletin board or any other reasonable form of notification. Notice of regular meetings shall be given not less than three (3) days prior to the meeting if delivered by first class mail, email, telephone, or bulletin board. Notice of special meetings shall be given not less than twenty-four (24) hours prior to the meeting if delivered by first class mail, email, telephone, or bulletin board. The notice must state the date and time of the meeting.

Section 4.15 Waiver of Notice. Notice of a meeting need not be given to any director who either before or after the meeting signs a waiver of notice a written consent to the holding of the meeting or an approval of the minutes of the meeting. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting also need not be given to any director who attends the meeting and does not protest, before or at the commencement of the meeting, the lack of notice to him or her.

Section 4.16 Quorum. ~~A majority of the directors currently on the Board shall constitute a quorum for the transaction of business, except to adjourn; provided, however, that a quorum must include at least one (1) Outside Director.~~ Every action taken or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board.

Section 4.17 Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment to another time shall be given to the directors who were not present at the time of the adjournment.

Section 4.18 Action Without a Meeting. Any action that the Board is required or permitted to take may be taken without a meeting if all members of the Board consent in writing to the action. ~~Such action by written consent shall have the same effect as any action approved at a meeting by the unanimous vote of the directors.~~ For the purpose of this section, "all members of the Board" shall not include any "interested director" as defined by Section 5233 of the California Corporations Code. All such consents shall be filed with the minutes of the proceedings of the Board.

Section 4.19 Meetings by Conference Telephone. Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all persons participating in the meeting can hear each other. Participation by directors in a meeting in the manner provided in this Section 4.19 constitutes presence in person at the meeting.

Section 4.20 Committee of Directors. The Board may, by resolution, designate one (1) or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board. Any committee, to the extent provided in the Board's designating resolution, shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

- a. Fill vacancies on the Board or on any committee;
- b. Fix compensation of directors for serving on the Board or any committee;
- c. Amend or repeal these Bylaws;
- d. Amend or repeal any resolution of the Board which is not by its express terms so amendable or repealable;
- e. Appoint any other committees of the Board or the members of established committees;
- f. Spend corporate funds to support a nominee for director after there are more people nominated for director than can be elected; and

g. Approve any self-dealing transaction, except as provided by Section 5233(d)(3) of the California Corporations Code.

~~Section 4.21 Committee Meetings. Meetings and actions of committees shall be governed by and held and taken in accordance with the provisions of this Article IV concerning meetings of directors, with such changes in the context of such Bylaws as are necessary to substitute the committee and its members for the Board and its members. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board may adopt rules for the governance of any committee not inconsistent with the provisions of these Bylaws concerning meetings of directors.~~

Section 4.22 Standard of Care - General. A director shall perform the duties of a director, including duties as a member of any committee of the Board on which the director may serve, in good faith, in a manner such director believes to be in the best interest of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- a. One or more officers or employees of the Corporation whom the director believes to be reliable and competent in the matters presented;
- b. Counsel, independent accountants, or other persons as to matters which the director believes to be within such persons' professional or expert competence; or
- c. A committee of the Board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need thereof is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

Except in the case of a self-dealing director, as defined in Section 5233 of the California Corporations Code, a person who performs the duties of a director in accordance with the above shall have no liability based upon any alleged failure to discharge that person's obligations as a director, including (without limiting the generality of the foregoing) any actions or omissions that exceed or defeat a public or charitable purpose to which the Corporation, or assets held by it, may be dedicated.

Section 4.23 Standard of Care -- Investments. Except with respect to assets held for use or used directly in carrying out the Corporation's charitable activities, in investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing the Corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income as well as the probable safety of the Corporation's capital. The provisions of Section 4.22 shall apply to this Section 4.23.

The Board shall also comply with all additional standards, if any, imposed by the Corporation's articles of incorporation, these Bylaws, or the express terms of any instrument or agreement pursuant to which the assets were obtained by the Corporation.

Section 4.24 Self-Dealing Transactions. A self-dealing transaction is one (a) to which the Corporation is a party and (b) in which one or more of the directors has a material financial interest, either directly or because the transaction is between the Corporation and any entity in which one or more of the Corporation's directors has a material financial interest. The Board shall not approve a self-dealing transaction unless:

- ~~a. the Corporation is entering into the transaction for its own benefit;~~
- b. the transaction is fair and reasonable as to the Corporation at the time the Corporation entered into the transaction;
- c. the Board's approval occurs prior to consummating the transaction or any part thereof, unless (i) the Board's approval was not reasonably practicable to obtain prior to consummating the transaction, (ii) a committee or person authorized by the Board approves the transaction prior to its consummation, and (iii) the Board ratifies the transaction at its next meeting after determining that (i) and (ii) have been satisfied;
- d. the Board's approval is made in good faith;
- e. the Board's approval is made by a vote of a majority of the directors then in office without counting the vote of the interested director or directors;
- f. the Board's approval is made with knowledge of (i) the material facts concerning the transaction and (ii) the interested director's or directors' interest in the transaction; and
- g. after reasonable investigation, the Board has considered and in good faith determined after reasonable investigation under the circumstances that, under the circumstances, the Corporation could not have obtained a more advantageous arrangement with reasonable effort.

Section 4.25 Inspection. Every director shall, at his or her own expense, have the absolute right at any reasonable time during the business hours of the Corporation to inspect and copy all books, records, and documents, and to inspect the physical properties, of the Corporation.

ARTICLE 5. OFFICERS

Section 5.1 Officers of the Corporation. The officers of the Corporation shall be a president, a secretary, and a chief financial officer. Any number of offices may be held by the same person, except that neither the secretary nor the chief financial officer may serve

concurrently as the president. The president, vice-president (if-any), and chief financial officer must be members of the Board.

Section 5.2 Election of Officers. The officers of the Corporation, except those appointed under Section 5.3, shall be chosen annually by the Board, shall serve at the pleasure of the Board, and shall serve until a successor is chosen or such officer resigns or is removed from office.

Section 5.3 Other Officers. The Board may appoint or may authorize the president, or any other officer, to appoint any other officers that the Corporation may require. Each officer so appointed shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or as determined by the Board.

Section 5.4 Removal of Officers. Any officer may be removed with or without cause by the Board, and if the officer was appointed by an officer, then also by the officer who appointed him or her. ~~If the officer removed is a director, removal is pursuant to Section 4.8~~

Section 5.5 Resignation of Officers. Any officer may resign at any time by giving written notice to the president or secretary of the Corporation. The resignation shall take effect as of the date the notice is received or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. Any resignation as an officer shall not affect the resigning officer's position as a director of the Corporation. However, an officer's resignation as a director pursuant to Section 4.9 shall automatically constitute resignation as an officer upon the effective date of resignation as a director.

Section 5.6 Vacancies in Office. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office. Vacancies may be filled as they occur.

Section 5.7 Reimbursement of Expenses. The Corporation may provide reimbursement for expenditures on behalf of the Corporation by its officers.

Section 5.8 President. The president shall preside at meetings of the Board and shall exercise and perform such other powers and duties as may from time to time be assigned to the president by the Board.

Section 5.9 Secretary. The secretary shall have the following duties:

a. The secretary shall keep or cause to be kept, at the Corporation's principal office, or such other place as the Board may direct, a book of minutes of all meetings, proceedings, and actions of the Board and of committees of the Board. The minutes of the meetings shall include the time and place that each meeting was held, whether the meeting was annual, regular, or special, and, if special, how authorized and the notice given.

b. The secretary shall keep or cause to be kept, at the Corporation's principal office, a copy of the Corporation's articles of incorporation and these Bylaws, as amended to date.

c. The secretary shall give or cause to be given notice of all meetings of the Board and of committees of the Board required by these Bylaws to be given. The secretary shall keep the corporate seal in safe custody and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

Section 5.10 Chief Financial Officer. The Chief Financial Officer ("CFO") shall have the following duties:

a. The CFO shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's funds, properties, and transactions. The CFO shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, these Bylaws, or the Board. The books of account shall be open to inspection by any director at all reasonable times during the business hours of the Corporation.

b. The CFO shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the Board may designate; shall disburse the Corporation's funds as the Board may order; shall render to the president and the Board, when requested, an account of all transactions and of the financial condition of the Corporation; and shall have such other powers and perform such other duties as the Board or the Bylaws may prescribe.

c. The CFO shall cause the books of the Corporation to be audited annually by an independent auditor and in compliance with generally accepted accounting principles.

Section 5.11 Required Signatures for Checks. All checks, drafts, or other order for payment of money issued in the name of the Corporation shall be signed by two officers, one of which must be the CFO.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Fiscal Year. The fiscal year of this Corporation shall end each year on December 31.

Section 6.2 Corporate Seal. This Corporation may have a seal, which shall be specified by resolution of the Board. The seal may be affixed to any corporate instruments, as directed by the Board or any of its officers, but failure to affix it shall not affect the validity of the instrument.

Section 6.3 Indemnification. The Corporation shall indemnify its directors, officers, employees, and agents, including persons formerly occupying any such position, to the fullest extent permitted by law against all expenses, judgments, fines, and other amounts actually and reasonably incurred by them in connection with any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

In all cases where indemnification is sought, the Corporation shall be subject to the restrictions and requirements contained in Section 5238 of the California Corporations Code.

Section 6.4 Insurance. The Board may adopt a resolution authorizing the purchase of insurance on behalf of any director, officer, employee, or agent of the Corporation against any liability asserted against or incurred by the director, officer, employee, or agent in such capacity or arising out of the director's, officer's, employee's, or agent's status as such, whether or not this Corporation would have the power to indemnify the director, officer, employee, or agent against that liability under law, to the extent such insurance is commercially available and is economically feasible for the Corporation to purchase.

Section 6.5 Annual Report to Directors. The Board shall cause an annual report to be sent to the directors and all residents of Marin Valley Mobile Country Club within one hundred twenty (120) days after the end of the Corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- a. The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year;
- b. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- c. The revenue or receipts of the Corporation, both unrestricted and restricted for particular purposes, for the fiscal year; and
- d. The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year.

Section 6.6 Annual Statement of Certain Transactions. As part of the annual report pursuant to Section 6.5, the Corporation shall annually furnish a written statement to all directors the directors and all residents of Marin Valley Mobile Country Club that lists covered transactions in which the Corporation, its parent, or any subsidiary was a party and in which any director or officer of the Corporation, its parent, or any subsidiary had a direct or indirect material financial interest. A mere common directorship is not a material financial interest. For the purpose of this Section 6.6, covered transactions required to be reported are any transaction during the previous fiscal year (i) involving more than Fifty Thousand Dollars (\$50,000), or (ii) which was one of a number of transactions in which the same interested person had a direct or indirect material financial interest, and which in the aggregate involved more than Fifty Thousand Dollars (\$50,000). The statement prepared pursuant to this Section 6.6 shall contain the following information:

- a. A brief description of the covered transaction;
- b. The names of the interested person or persons;
- c. A brief description of the person's or persons' relationship to the Corporation; and

d. A brief description of the nature of the person's or persons' interest in the transaction, and, where practicable, the amount of such interest. (In the case of a transaction with a partnership in which such a person is a partner, only the interest of the partnership need be stated.)

The statement prepared pursuant to this Section 6.6 shall also briefly describe the amount and circumstances of any indemnifications or advances aggregating more than Ten Thousand Dollars (\$10,000) paid during the fiscal year to any current or former officer or director of the Corporation pursuant to Section 6.3.

Section 6.7 Amendment of Bylaws. The Bylaws may be amended or repealed and new Bylaws adopted by an affirmative vote of at least four (4) of the seven (7) directors; provided that the affirmative vote includes at least one (1) Outside Director. Such amended or newly adopted Bylaws shall take effect immediately. Notwithstanding the above, so long as the Policy is in effect, the following provisions shall not be amended without prior written consent of FSA: Sections 4.2(d) and (f), 4.3, 4.4, 4.8, 4.16, and this Section 6.7.

**MINUTES OF A BOARD MEETING
MARIN VALLEY SENIOR COMMUNITY, INC.**

December 3, 2005 at 10:00 a.m. at the
Marin Valley Mobile Home Clubhouse

CALL TO ORDER: The meeting was called to order by Bill O'Connor, president. Approximately eighty people were present. O'Connor stated that the purpose of this meeting was to introduce the board members, report on the current progress of the attorneys in achieving a non-profit status, and answer questions from residents.

OFFICER'S ROLL CALL AND INTRODUCTION: O'Connor asked the other resident directors, (Owen Haxton, John Wallace, and Pat Miller), and the outside directors (Clark Blasdell, Peter Tiernan, and Laura Levine) to make a brief statement regarding their qualifications.

ADOPTION OF MINUTES: Moved by Haxton, seconded by Wallace, that the minutes of the board meeting on October 12, 2005, be approved. Carried 7-0.

RESOLUTION TO ADOPT RENTAL HARDSHIP POLICY: O'Connor presented the draft of a resolution authorizing resident rent assistance. Currently, there is a resident rent assistance program in effect, and it is in no way affected by this resolution. The new policy is actually more generous than the present one (three months assistance as opposed to one month). Our attorneys want the new one as another piece of information to show the IRS that the corporation is specifically designed to help seniors and is truly a public benefit corporation. The new resolution will go into effect if and when title is transferred to the corporation. Moved by Wallace, seconded by Tiernan, to adopt the resolution. Approved 7-0.

REPORT ON CURRENT STATUS AND PROGRESS: O'Connor reviewed the formation of the corporation and stated that the attorneys expect to have the application for 501c3 status ready to submit to the IRS by the end of the year.

O'Connor said that the MVSC board will replace NFA and hold the title to the Park. He noted that while there are four Park residents on MVSC, there are none on NFA. Moreover, the three appointed directors are all Novato residents and have many years experience in low income housing, social services, and the formation of nonprofit entities.

Discussion by the board followed, during which Haxton stated the he favors moving forward but that the proposed documents do not require that home owners of this community elect their representatives, and that the corporation can amend the bylaws "without you even knowing it;" that the bylaws could change so that PAC no longer would conduct the election; that home owners have less control than with title remaining with NFA.

**CORPORATE AUTHORIZING RESOLUTION
RE: Resident Rent Assistance Program**

Marin Valley Senior Community, Inc.

At a duly constituted meeting of the Board of Directors of Marin Valley Senior Community, Inc., a California nonprofit public benefit corporation (the "Corporation") held on December 3, 2005 the following resolution was adopted:

WHEREAS, the Corporation is firmly committed to the mission of providing and preserving quality senior housing; and

WHEREAS, the Corporation, acting in accordance with this mission wishes to adopt a Resident Rent Assistance Program for the residents of the Marin Valley Mobile Country Club (the "Park"); and

WHEREAS, upon acquisition of the Park by the Corporation, the Resident Rent Assistance Program will provide rent assistance to qualifying Marin Valley Mobile Country Club residents who are unable to pay their rent due to an unexpected financial hardship; and

WHEREAS, upon acquisition of the Park by the Corporation, the Resident Rent Assistance Program will provide a rental assistance credit to qualified residents of the Marin Valley Country Club for a period of up to three months.

NOW, THEREFORE, BE IT RESOLVED: The Corporation hereby approves and adopts the Resident Rent Assistance Program.

SECRETARY'S CERTIFICATE

I, Patricia Miller, hereby certify that the foregoing is a true copy of the Resolution adopted by the Board of Directors of the above mentioned Corporation, in accordance with the bylaws of the Corporation, and that said resolution is in full force and effect.

Dated: December 3, 2005

By: Patricia Miller
Patricia Miller

Its: Secretary