

Promissory Note

CITY OF MARINA

(WORKFORCE INCLUSIONARY UNITS – EQUITY SHARING)

ADMINISTRATIVE CHECKLIST

(Remove Upon Completion)

BLANK LINES: CHECKLIST

_____	Amount of Purchase Subsidy, p. 1, upper left
_____	Date of Document, p. 1, upper right
_____	Owner's Name, p. 1, first paragraph
_____	Amount of Purchase Subsidy, p. 1, first paragraph
_____	Owner's Initial Equity, p. 3, Section 8(d)
_____	Signatures, p. 6

NOTICE TO OWNER: THIS DOCUMENT CONTAINS PROVISIONS PROHIBITING ASSUMPTIONS

**Promissory Note
Secured By Deed Of Trust
(City of Marina Sea Haven – Equity-Sharing)**

\$ _____

Marina, California
_____, 20____

FOR VALUE RECEIVED, the undersigned _____ ("Owner") promises to pay to the City of Marina ("City"), a municipal corporation, at 211 Hillcrest, Marina, California 93_____, Attention: City Manager, or such other place as the City may designate in writing, the sum of _____ Dollars (\$_____) (the "Purchase Subsidy" or "Subsidy"), plus Shared Appreciation and Interest, and Excess Sales Proceeds as applicable.

1. Purchase Subsidy. This note evidences the Purchase Subsidy provided by City to Owner to enable Owner to purchase the Property located at _____, Marina, California, APN No. _____. The "Purchase Subsidy" is equal to the difference between the price paid by the Owner for the purchase of the Property and the amount reasonably determined by the City to be the initial unrestricted fair market value of the Property. The Purchase Subsidy is equal to \$_____. Owner was able to purchase the Property through a program required to implemented by the Seller of the Property as a condition of obtaining entitlements for the development in which the Property is located (the "Affordable Housing Program") designed to increase homeownership opportunities affordable to low, moderate, and workforce-income households. The Affordable Housing Program, by providing the Purchase Subsidy to Owner, enabled Owner to purchase the Property at a price affordable to Owner. In addition the Resale Restriction, as defined below, prohibits the Owner from renting or leasing the Property except under limited circumstances and requires that the Owner to pay to the City any Excess Rental Proceeds, as that term is defined in the Resale Restriction. This note also evidences the Owner's obligation to pay any Excess Rental Proceeds to the City pursuant to the Resale Restriction.

2. Security. This promissory note (the "City Note") is secured by a City Deed of Trust dated the same date as this City Note (the "City Deed of Trust"). The City Note is further secured by a Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase entered into by and between the Owner and the City ("Resale Restriction"), which places certain restrictions on the resale of the Property, the terms of which are incorporated herein. Owner acknowledges that this City Note is given in connection with the purchase of property by Owner as part of a program of the City to assist in the purchase of residences by low, moderate, or workforce-income households. Said property, including both the real property and all improvements now or hereafter erected on the property, and all easements, rights, appurtenances and all fixtures now or hereafter attached to the property shall be referred to in this City Note as

the Property. The term "Property", as used herein, shall have the same meaning as the term "Security" as used in the City Deed of Trust and "Home" in the Resale Restriction.

3. Shared Appreciation. At the time that repayment of the Purchase Subsidy is due as set forth in Section 6 below, if Owner sells the Property to anyone other than an Eligible Purchaser (as that term is defined in the Resale Restriction) or at a price that is greater than the Maximum Restricted Resale Price (as that term is defined in the Resale Restriction), Owner shall pay Shared Appreciation to the City in accordance with the schedule of Shared Appreciation set forth as Exhibit A to this City Note. If repayment is due at any time after a date twenty (20) years from the date of this City Note, the Owner shall pay no (0%) Shared Appreciation to the City.

(a) Sale to an Eligible Purchaser. If the Owner elects to sell the Property to an Eligible Purchaser at the Maximum Restricted Resale Price, upon such Eligible Purchaser assuming the obligations of the Owner pursuant to this Note and close of escrow on the Property the Owner shall be relieved of all obligations to pay the City Shared Appreciation pursuant to this Note.

4. Interest. At the time that repayment of the Purchase Subsidy is due as set forth in Section 6 below, Owner shall also pay three percent (3%) simple interest per annum ("Interest") on the outstanding balance of the Purchase Subsidy, calculated as accruing from the date of this City Note until the date of repayment of the Purchase Subsidy in full.

5. No Assumption of City Note by Subsequent Buyers. Owner acknowledges that this City Note is given in connection with the Property as part of a program of the City to assist in the purchase of residences by moderate and workforce income households. Consequently, this City Note shall not be assumable by subsequent purchasers nor by the successors and assigns of the Owner unless such Purchaser qualifies as an Eligible Purchaser, the Property is sold to the Eligible Purchase at the Maximum Restricted Resale Price and such purchaser assumes all of Owner's obligations pursuant to this Note.

6. Repayment.

(a) Deferral. No repayment of the Purchase Subsidy, Shared Appreciation, and Interest shall be due except as provided in subsection 6(b) below.

(b) Repayment in Full. Subject to subsection 6(c) below, the total amount of the Purchase Subsidy, Shared Appreciation, and Interest owed under this City Note shall immediately become due and payable: (i) in the event of a default by the Owner under this City Note (as described in Section 11 below) or the Resale Restriction; (ii) on the date a Transfer (as defined in Resale Restriction) is made whether voluntarily, involuntarily, or by operation of law and whether by deed, contract of sale, gift, devise, bequest or otherwise unless such Transfer is to an Eligible Purchaser at the Maximum Restricted Resale Price; and (iii) in the event Owner ceases to occupy the Property as his or her principal place of residence. Failure to declare such amounts due shall not constitute a waiver on the part of the City to declare them due in the event of a subsequent Transfer.

(c) Preservation of Owner's Initial Equity. In the event repayment is required due to Transfer of the Property, and Owner is not in default or otherwise in violation of this City Note, the Purchase Subsidy, Shared Appreciation, and Interest due the City hereunder shall be reduced in the amount necessary to ensure that Net Proceeds of Sale (as defined below) received by Owner are equal to Owner's Initial Equity (as defined below).

(d) Excess Rental Proceeds. In the event any Excess Rental Proceeds become due and payable under the Resale Restriction, such amounts shall be immediately due and payable.

7. Prepayments. Owner may prepay all or part of the Purchase Subsidy and Interest due under this City Note. If the Owner makes a partial prepayment, such partial prepayment shall be applied first to accrued Interest and then to the Purchase Subsidy. If the Owner prepays all of the Purchase Subsidy, such prepayment shall include Interest as calculated at the time the prepayment is made. If the Principal and Interest of this City Note are entirely prepaid, the City Deed of Trust shall remain on the Property to secure payment of Shared Appreciation and the Resale Restriction shall remain in place. Shared Appreciation may be paid only when due as specified in Section 6.

8. Definitions. The terms set forth in this Section shall have the following meanings in this City Note.

(a) "Available Appreciation" shall mean the amount calculated by subtracting the following from the actual sales price received by the Owner for the Property in an arms length transaction (or if the transaction is not an arms length transaction the Fair Market Value of the Property at the time of Transfer: (i) the amount necessary to fully repay the outstanding mortgage balance to the First Mortgage Loans; (ii) closing costs and broker commissions which shall be limited to six percent (6%) of the sales price of the Property or Fair Market Value of the Property; (iii) the Purchase Subsidy and all interest due thereon pursuant to this Note; (iv) The Owners Initial Equity; and (v) the cumulative amount of principal payments made by the Owner on any loans financing the purchase of the Property.

(b) "Fair Market Value" shall have the meaning set forth in the Resale Restriction.

(c) "Net Proceeds of Sale" shall mean the sales price of the Property upon resale by Owner less (i) principal and interest due under the First Mortgage Loan; (ii) the Purchase Subsidy, Shared Appreciation, and Interest due under this City Note; and (iii) reasonable and customary closing costs on resale paid by the Owner.

(d) "Owner's Initial Equity" shall mean the amount of _____ Dollars (\$_____), which is the amount of Owner's initial cash downpayment from Owner's own funds made in connection with the purchase of the Property.

(e) "Shared Appreciation" shall mean the percentage of the Available Appreciation that is owed to the City in accordance with Exhibit A of this City Note.

9. Certification of Sales Price on Transfer. To ensure that the Property is being sold at Fair Market Value or if the Property is sold to an Eligible Purchaser to ensure that the Property is being sold at the Maximum Restricted Resale Price, upon any sale of the Property, the Owner shall provide the City the following documentation:

(a) the final sales contract and all other documents setting forth all the terms of the sale of the Property, including at least (i) the sales price; (ii) the price to be paid for the Owner's personal property or services, if any, and any credits, allowances or other consideration, if any; and (iii) the amount of any real estate commission to be paid.

(b) a written declaration from the Owner and the purchaser under penalty of perjury, in a form acceptable to the City, that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to the City and that the Property has been sold at Fair Market Value or if the purchaser is an Eligible Purchase that the Property has been sold at the Maximum Restricted Resale Price. The certification shall also provide that neither the purchaser nor any other party has paid nor will pay to the Owner, nor has the Owner received nor will receive from the purchaser or any other party, money or other consideration, including personal property, in addition to what is included in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to file an action at law or at equity as may be appropriate. All costs and legal expenses shall be borne by the prevailing party;

(c) The name of the title company escrow holder for the sale of the Property, the escrow number, and name, address, and telephone number of the escrow officer.

(d) Upon the close of escrow, the Owner shall provide the City with a copy of the HUD-1 Settlement Statement showing the purchase price paid for the Property and all other payments from escrow, escrow instructions, and any other documents which the City may reasonably request.

10. Notice to the City of Transfers. Owner shall provide the City with written notice of intent to Transfer in accordance with the Resale Restriction.

11. Default. The Owner shall be in default under this City Note if he or she is in default under any mortgage loan on the Property (including the First Mortgage Loan), or if, after the notice and cure period provided by the City to the Owner pursuant to the notice and cure provisions of the City Deed of Trust or Resale Restriction, the Owner (i) fails to pay any money when due under this City Note; (ii) breaches any representation or covenant made in this City Note in any material respect; (iii) breaches any provision of the City Deed of Trust; or (iv) breached any provision of the Resale Restriction.

12. Acceleration. Upon the declaration of a default under this City Note, the City Deed of Trust, the Resale Restriction or the First Mortgage Loan, the City shall have the right to

declare the full amount of the Purchase Subsidy along with any Shared Appreciation and Interest under this City Note immediately due and payable upon written notice by the City to the Owner without further demand. Any failure by the City to pursue its legal and equitable remedies upon default shall not constitute a waiver of the City's right to declare a default and exercise all of its rights under this City Note, and the City Deed of Trust. Nor shall acceptance by the City of any payment provided for herein constitute a waiver of the City's right to require prompt payment of any remaining Purchase Subsidy, Shared Appreciation or Interest owed.

13. No Offset. Owner hereby waives any rights of offset it now has or may hereafter have against the City, its successors and assigns, and agrees to make the payments called for herein in accordance with the terms of this City Note.

14. No Waiver by the City. No waiver of any breach, default or failure of condition under the terms of this City Note shall be implied from any failure of the City to take, or any delay by the City in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of the City Note must be made in writing and shall be limited to the express written terms of such waiver.

15. Waiver. Owner and any endorsers or guarantors of this City Note, for themselves, their heirs, legal representatives, successors and assigns, respectively, severally waive diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of non-payment of this City Note, and expressly waive any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waive the right to plead any and all statutes of limitations as a defense to any demand on this City Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

16. Notices. Notices to the City or the Owner required hereunder shall be given in the manner described in Section 13 of the City Deed of Trust.

17. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of Owner and lender, and that City neither undertakes nor assumes any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality adequacy or suitability of the Property or any other matter. City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Owner agrees that neither Owner, nor Owner heirs, successors or assigns shall ever claim, have or assert any right or action against City for any loss, damage or other matter arising out of or resulting from any condition of the Property and will hold City harmless from any liability, loss or damage for these things.

18. Indemnity. Owner agrees to defend, indemnify, and hold City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that City may incur as a direct or indirect consequence of:

(a) Owner's default, performance, or failure to perform any obligations as and when required by the City Note and City Deed of Trust;

(b) Owner's purchase of the Property; or

(c) the failure at any time of any of Owner's certifications, representations, or warranties to be true and correct.

19. Controlling Law. This City Note shall be construed in accordance with and be governed by the laws of the State of California. The venue for any legal action pertaining to this agreement shall be Monterey County, California.

20. Attorney Fees and Costs. In the event suit is filed in connection with the collection or enforcement of this City Note, the non-prevailing party agrees to pay reasonable attorneys fees paid or incurred by the prevailing party. City attorney's fees, if awarded, shall be calculated at the market rate.

21. Joint and Several Obligations. This City Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

22. Assignment by City. The City may assign its right to receive the proceeds under this City Note to any person and upon notice to the Owner by the City that all payments shall be made to the assignee. The City may not transfer or assign the City Note to a profit-making entity without first obtaining approval of the lender of the First Lender Loan. The City may transfer or assign this City Note to a government agency or non-profit entity without obtaining approval of the lender of the First Lender Loan.

23. Entire Agreement. This City Note (along with the City Deed of Trust and the Resale Restriction) sets forth the entire understanding and agreement of the City and the Owner and any amendment, alteration or interpretation of this City Note must be in writing signed by both the City and the Owner.

24. Severability. If any provision of this City Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

OWNER

EXHIBIT A
Schedule of Shared Appreciation

Year of Transfer of Property	City Shared Appreciation	Owner's Share of Appreciation
1	75%	25%
2	72%	28%
3	69%	31%
4	66%	34%
5	63%	37%
6	59%	41%
7	55%	45%
8	51%	49%
9	47%	53%
10	43%	57%
11	39%	61%
12	35%	65%
13	31%	69%
14	27%	73%
15	23%	77%
16	19%	81%
17	15%	85%
18	11%	89%
19	7%	93%
20 and beyond	0%	100%