

PROMISSORY NOTE

**CITY OF HAYWARD
AFFORDABLE HOUSING PROGRAM**

La Playa Place (FKA La Playa Commons) by D.R. Horton Bay, Inc.

ADMINISTRATIVE COVER SHEET

(Remove Upon Completion)

BLANK LINES: CHECKLIST

- Name of Development, p.1, upper middle
- Date of Document, p. 1, upper right
- Owner Name, p. 1, first paragraph
- Street Address of Home, p. 1, Section 1
- Owner Signatures, p. 4**

NOTICE TO OWNER: THIS DOCUMENT CONTAINS PROVISIONS RESTRICTING
RESALES AND ASSUMPTIONS.

PROMISSORY NOTE
Secured by Deed of Trust
City of Hayward Affordable Housing Program
La Playa Place by D.R. Horton Bay, Inc.

Hayward, California

**Excess Sales Proceeds and
Excess Rental Proceeds**

_____, 202_

FOR VALUE RECEIVED, the undersigned _____ (the "Owner") promises to pay to the CITY OF HAYWARD, a California charter city (the "City"), at Development Services Department, 777 "B" Street, CA 94541-5007, Attn: Housing Division Manager, or such other place as the City may designate in writing, any amounts due to the City as Excess Rental Proceeds pursuant to Section 3B of the Resale Agreement and/or any amounts due the City as Excess Sales Proceeds pursuant to Section 13 of the Resale Agreement.

1. Purpose of Note. Owner is purchasing the Home located at _____, Hayward, CA 94545 in the City of Hayward pursuant to the City of Hayward Affordable Housing Program, which provides for the rental or purchase of homes by low- and moderate-income households at affordable prices. Pursuant to the City of Hayward Affordable Housing Program, the purchase price of the Home has been set substantially below the market value so that the Home will be affordable for purchase by [**CHOOSE ONE: low or moderate**] income households. Because the purchase price has been set below the market value, the Owner is required and has agreed to execute a Resale Agreement which restricts the price of the Home upon resale and which requires the Owner to pay any Excess Sales Proceeds at resale to the City. In addition, the Resale Agreement prohibits the Owner from renting or leasing the Home except under limited circumstances and requires the Owner to pay any Excess Rental Proceeds to the City. This promissory note (the "Note") evidences both (a) the obligation of the Owner to pay any Excess Rental Proceeds to the City pursuant to Section 3B of the Resale Restriction Agreement, and (b) the obligation of the Owner to pay any Excess Sales Proceeds to the City pursuant to Section 13 of the Resale Agreement.

2. Definitions. The terms set forth in this section shall have the following meanings in this Note.

(a) "City Option" shall mean the City's options to purchase pursuant to Sections 10 and 17 of the Resale Agreement.

(b) "Excess Rental Proceeds" shall have the meaning set forth in Section 3B of the Resale Agreement.

(c) "Excess Sales Proceeds" shall have the meaning set forth in Section 13 of the Resale Agreement.

(d) "Home" shall mean the dwelling and the real property, on which the dwelling is located, which secure the deed of trust executed in connection with this Note.

(e) "Resale Agreement" shall mean the Buyer's Occupancy and Resale Restriction Agreement with Option to Purchase executed by the Owner and the City in connection with the Owner's purchase of the Home.

(f) "Term" shall mean the term of this Note, which shall be the same as the Term of the Resale Agreement, as set forth in Section 21 of the Resale Agreement.

(g) "Transfer" shall have the meaning set forth in Section 6 of the Resale Agreement.

3. Payments. In the event any Excess Rental Proceeds or Excess Sales Proceeds become due and payable under the Resale Agreement, such amounts shall be immediately due and payable hereunder. 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.

4. Security. This Note is secured by a deed of trust dated the same date as this Note (the "Deed of Trust"). Owner and City have also executed the Resale Agreement.

5. Due on Transfer. Any amounts due under this Note shall be due and payable in full on the date of any Transfer (as defined in the Resale Agreement) of the Home.

6. Default and Acceleration. The Owner shall be in default under this Note if he or she is in default under the Resale Agreement. Upon the occurrence of a default under this Note, the full amount of any Excess Rental Proceeds or Excess Sales Proceeds due under the Resale Agreement shall be immediately due and payable.

7. No Waiver by City. 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 Note, the Resale Agreement, and the 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 payments owed.

8. Attorney's Fees and Costs. Owner agrees that if any amounts due under this Note are not paid when due, to pay in addition to principal and accrued interest, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

9. Joint and Several Obligations. This 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.

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

11. Waiver. Owner and any endorsers or guarantors of this 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 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 Note or agreement to pay the same, and jointly and severally agree to pay all costs of collection when incurred, including reasonable attorneys' fees.

12. Notices. All notices required in this Note shall be sent by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personally delivered with a delivery receipt obtained and shall be deemed to be effective as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable as follows:

To the Owner:

At the address of the Home.

To the City:

City of Hayward
Office of the City Manager
777 "B" Street, CA 94541-5007
Attn: Housing Division Manager

and: City Attorney
City of Hayward
777 "B" Street, CA 94541-5007

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 12.

13. Controlling Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. Assignment by City. The City may assign its right to receive the proceeds under this Note to any person and upon notice to the Owner by the City all payments shall be made to the assignee.

15. Severability. If any provision of this 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.

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

OWNER:

By: _____
[Owner Name]

By: _____
[Co-owner Name]

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