TOWN OF FAIRFAX
STAFF REPORT

To: Mayor, Members of the Town Council

From: Michael Rock, Town Manager (MFR)
Laurie Ireland-Ashley, Finance Director

Date: February 3, 2010

Subject: Adoption of a Resolution to issue the Second 2009-10 Private Placement TRAN

RECOMMENDATION

Staff recommends that Council approve the resolution authorizing the issuance of the second TRAN (tax and revenue anticipation notes) for the 2009-10 fiscal year.

BACKGROUND

The attached resolution authorizes the issuance by the Town of Fairfax of a second $500,000 tax and revenue anticipation notes (TRAN) for 2010. The Council authorized the first 2009-2010 Private Placement TRAN in October, 2009 The attached resolution authorizes the issuance by the Town of Fairfax of tax and revenue anticipation notes (TRAN) in an amount of $500,000. The resolution authorizes various financing documentation, including a note purchase agreement. The resolution authorizes the Mayor, Town Manager, and Finance Director, or any of them to sign financing documentation in connection with the issuance of the TRAN. The previous resolution appointed the law firm of Quint & Thimmig LLP, as bond counsel to the Town and the Wulff, Hansen & Co. as financial advisor. Both of these firms have worked with the Town in the past and have handled multiple TRANs.

The maturity of the 2010 TRAN will be April 23, 2010. The Town will receive the funds at the end of February. The Town borrowed $500,000 in October, 2009 under a similar TRAN agreement with Tiburon. The Town's prior year borrowing was $1,000,000, which was due at the end of June 2008. There was no TRAN for the year of 2008-09.

DISCUSSION

The purpose of the temporary borrowing is to increase available cash balances which provide operating funds to cover cash shortfalls, and has been a standard operating practice of the Town for many years. Cash shortfalls arise due to the timing differential of monthly cash receipts and disbursements throughout the 2009-10 fiscal year. These cash shortfalls will occur primarily in the calendar fourth quarter of 2009 as we await the first property tax payment in mid-December. There was no TRAN for the year of 2008-09, however given the current economic climate it seems only prudent to avail ourselves of every means necessary to assist the Town financially. With the current state of the State's budget challenges the pooled TRAN process stalled and the Town searched for additional investor resources. This is a private placement TRAN with the Town of Tiburon for authorization of the short-term note in the amount of $500,000.

The attached resolution authorizes the issuance by the Town of Fairfax of tax and revenue anticipation notes (TRAN) in an amount of $500,000 for the spring of 2010.

AGENDA ITEM # 11

TOWN OF FAIRFAX

RESOLUTION NO. ____

RESOLUTION PROVIDING FOR THE BORROWING OF FUNDS FOR FISCAL YEAR 2009-2010 AND THE ISSUANCE AND SALE OF A 2010 TAX AND REVENUE ANTICIPATION NOTE THEREFOR

RESOLVED, by the Town Council of the Town of Fairfax (the "Town")

WHEREAS, pursuant to Article 7.6 (commencing with section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Law"), this Town Council (the "Council") has found and determined that moneys are needed for the requirements of the Town, a public body duly organized and existing under the laws of the State of California, to satisfy obligations payable from the general fund of the Town (the "General Fund"), and that it is necessary that said sum be borrowed for such purpose at this time by the issuance of temporary notes therefor in anticipation of the receipt of taxes, revenue and other moneys to be received by the Town for the General Fund during or allocable to the fiscal year of the Town beginning July 1, 2009, and ending June 30, 2010 ("Fiscal Year 2009-2010");

WHEREAS, the Town of Tiburon ("Tiburon") has agreed to purchase a short-term note of the Town on a private placement basis and the Town desires to authorize the sale of such short-term note to Tiburon; and

WHEREAS, a form of note purchase agreement (the "Note Purchase Agreement") has been prepared relating to the sale of a note for the Town;

NOW THEREFORE, it is hereby DETERMINED AND ORDERED as follows:

Section 1. Limitation on Maximum Amount. The principal amount of the note issued pursuant hereto, when added to the interest payable thereon, shall not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, revenue and other moneys of the Town for the General Fund attributable to Fiscal Year 2009-2010, and available for the payment of said note and the interest thereon (as hereinafter provided).

Section 2. Authorization and Terms of Note. Solely for the purpose of anticipating taxes, revenue and other moneys to be received by the Town for the General Fund allocable to Fiscal Year 2009-2010, and specifically with respect to the property tax revenue to be received by the Town in April 2010, and not pursuant to any common plan of financing, the Town hereby determines to and shall borrow the principal amount of not to exceed five hundred thousand dollars ($500,000) by the issuance of a temporary note under the Law, designated "Town of Fairfax (Marin County, California) 2009 Tax and Revenue Anticipation Note" (the "Note"). The

Note shall be dated as of its date of delivery, shall mature, on or before April 23, 2010, and shall bear interest, payable at maturity, and computed on a 30-day month/360-day year basis, at 4% per annum. Both the principal of and interest on the Note shall be payable in lawful money of the United States of America, as described below.

Section 3. Form of Note. The Note shall be issued in fully registered form, without coupons, and shall be substantially in the form and substance set forth in Exhibit A attached hereto and by reference incorporated herein. The Note shall be issued in fully registered form, registered to Tiburon.

Section 4. Use of Proceeds. The moneys so borrowed shall be deposited in a segregated account in the General Fund to be withdrawn, used and expended by the Town for any purpose for which it is authorized to expend funds from the General Fund including, but not limited to, current expenses, capital expenditures and the discharge of any obligation or indebtedness of the Town.

Section 5. Security. The principal amount of the Note, together with the interest thereon, shall be payable from taxes, revenue and other moneys which are received by the Town allocable to the General Fund for the Fiscal Year 2009-2010. As security for the payment of the principal of and interest on the Note, the Town, hereby pledges all property tax revenues receivable by the Town in April 2010 (such pledged amounts being hereinafter called the "Pledged Revenues"). Pursuant to section 5451 of the California Government Code, the Pledged Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Pledged Revenues and be effective, binding, and enforceable against the Town, its successors, purchasers of the Pledged Revenues, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, this Resolution irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. No prior pledge of such revenues has been made by the Town to secure any other borrowing and no such pledge will be made prior to the full payment of the Note. To the extent not so paid from the Pledged Revenues, the Note shall be paid from any other moneys of the Town lawfully available therefor. In the event that there are insufficient unrestricted moneys received by the Town to permit the repayment of the Note from such property tax revenues, then the amount of any deficiency shall be satisfied and made up from any other moneys of the Town lawfully available for the repayment of the Note and interest thereon..

Section 6. Repayment. The Town will irrevocably direct the Marin County Treasurer-Tax Collector to transfer to a special escrow account at Bank of America in Fairfax, California (the "Escrow Bank"), all property tax revenues owed to the Town in April 2010, and the Escrow Bank will be irrevocably directed to transfer to Tiburon, on the maturity date of the Note, the total principal amount of the Note, plus interest accrued thereon to such date. The Escrow Bank will be directed to transfer the remaining amounts of property tax revenues to the Town only after Tiburon shall have been paid in full.

Section 7. Execution of Note. The Note shall be executed in the name of the Town, with the manual or facsimile signature of the Mayor, the Town Manager or the Finance Director and the manual or facsimile counter-signature of the Town Clerk (although at least one of such

signatures shall be manual), and said officers are hereby authorized to cause the blank spaces thereof to be filled in as may be appropriate.

Section 8. No Transfer or Exchange of Note. The Note is not subject to transfer or exchange.

Section 9. Covenants and Warranties. It is hereby covenanted and warranted by the Town that all representations and recitals contained in this Resolution are true and correct, and that the Town has reviewed all proceedings heretofore taken relative to the authorization of the Note and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of the Note have existed, happened and been performed in due time, form and manner as required by law, and the Town is duly authorized to issue the Note and incur indebtedness in the manner and upon the terms provided in this Resolution. The Town has duly taken all proceedings necessary to be taken, and will take any additional proceedings necessary to be taken, for the prompt collection and enforcement of the taxes, revenue, cash receipts and other moneys pledged hereunder in accordance with law and for carrying out the provisions of this Resolution.

Section 10. Sale of Note. The Note shall be sold to Tiburon at a purchase price equal to the principal amount thereof. The Mayor, the Town Manager and the Finance Director are each hereby individually authorized and directed, for and in the name and on behalf of the Town, to sell the Note to Tiburon and to execute and deliver a Note Purchase Agreement in substantially the form attached hereto as Exhibit B, together with any additions thereto or changes therein deemed necessary or advisable by the Mayor, the Town Manager or the Finance Director, subject to the terms and conditions of the Note Purchase Agreement. Approval of any additions or changes in such form of Note Purchase Agreement and compliance with the conditions precedent to the execution of the Note Purchase Agreement by the Mayor, the Town Manager or the Finance Director shall be conclusively evidenced by execution and delivery of the Note Purchase Agreement.

Section 11. Preparation of the Note; Execution of Closing Documents. Quint & Thimmig LLP, as bond counsel to the Town, is directed to cause a suitable Note to be prepared showing on its face that the same bears interest at the rate aforesaid, and to cause the blank spaces therein to be filled in to comply with the provisions of this Resolution in accordance with the Note Purchase Agreement, and to procure its execution by the proper officers, and to cause the Note to be delivered when so executed to Tiburon upon the receipt of the purchase price by the Town, in accordance with the Note Purchase Agreement.

The Mayor, the Town Manager and the Finance Director, or any of them, are further authorized and directed to make, execute and deliver to Tiburon (a) a certificate in the form customarily required by purchasers of bonds of public corporations generally, certifying to the genuineness and due execution of the Note, and (b) a receipt in similar form evidencing the payment of the purchase price of the Note which receipt shall be conclusive evidence that said purchase price of the Note has been paid and has been received on behalf of the Town. Such officers and any other officers of the Town are hereby authorized to execute any and all other documents required to consummate the sale and delivery of the Note.

Section 12. Effective Date. This Resolution shall take effect upon its adoption by this Council.

* * * * * * * * * *

Passed, approved and adopted this 3rd day of February, 2010.

_____
Mayor of the Town of Fairfax

ATTEST:

_____
Town Clerk

I, the undersigned Town Clerk of the Town of Fairfax, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the Town Council of the Town at a meeting thereof on the 3rd day of February, 2010, by the following vote of the members thereof:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Town Clerk

EXHIBIT A

FORM OF NOTE

TOWN OF FAIRFAX
(Marin County, California)
2009-10 TAX AND REVENUE ANTICIPATION NOTE

INTEREST RATE:	MATURITY DATE:	ISSUE DATE:
4%	April 23, 2010	February, 2010

REGISTERED OWNER: TOWN OF TIBURON, CALIFORNIA

PRINCIPAL SUM: FIVE HUNDRED THOUSAND DOLLARS

The TOWN OF FAIRFAX, Marin County, State of California (the "Town"), acknowledges itself indebted, and promises to pay, to the Registered Owner stated above (the "Owner"), on the Maturity Date stated above, the Principal Sum stated above, in lawful money of the United States of America, and to pay interest hereon in like lawful money at the rate per annum stated above, calculated on the basis of 360-day year composed of twelve 30-day months. The principal of and interest on this Note shall be payable at maturity to the Owner.

It is hereby certified, recited and declared that this Note, in the aggregate principal amount of five hundred thousand dollars ($500,000), issued pursuant to the provisions of a resolution of the Town Council of the Town entitled "A RESOLUTION PROVIDING FOR THE BORROWING OF FUNDS FOR FISCAL YEAR 2009-2010 AND THE ISSUANCE AND SALE OF A 2009 TAX AND REVENUE ANTICIPATION NOTE THEREFOR," duly passed and adopted on February 3, 2010 (the "Resolution"), and pursuant to Article 7.6 (commencing with section 53850) of Chapter 4, Part 1, Division 2, Title 5, of the California Government Code, and that all things, conditions and acts required to exist, happen and be performed precedent to and in the issuance of this Note exist, have happened and have been performed in regular and due time, form and manner as required by law, and that this Note, together with all other indebtedness and obligations of the Town, does not exceed any limit prescribed by the constitution or statutes of the State of California.

The principal amount of this Note, together with the interest hereon, shall be payable from taxes, revenue and other moneys which are received by the Town for the Fiscal Year 2009-2010, and specifically with respect to the property tax revenue to be received by the Town in April 2010. As security for the payment of the principal of and interest on this Note, the Town, has pledged all property tax revenues receivable by the Town in April 2010 (such pledged amounts being hereinafter called the "Pledged Revenues"). The principal of this Note and the interest hereon shall constitute a first lien and charge thereon and shall be paid from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, this Note shall be paid

from any other moneys of the Town lawfully available therefor. In the event that there are insufficient unrestricted moneys received by the Town to permit the repayment of this Note from such property tax revenues, then the amount of any deficiency shall be satisfied and made up from any other moneys of the Town lawfully available for the repayment of this Note and interest hereon. The Town has irrevocably directed the Marin County Treasurer-Tax Collector to transfer to a special escrow account at Bank of America in Fairfax, California (the "Escrow Bank"), all property tax revenues owed to the Town in April 2010, and the Escrow Bank has been irrevocably directed to transfer to the Owner, on the maturity date of the Note, the total principal amount of the Note, plus interest accrued thereon to such date. The Escrow Bank has been directed to transfer the remaining amounts of property tax revenues to the Town only after the Owner shall have been paid in full.

This Note is issuable as a registered note, without coupons, in the total principal amount thereof. this Note is not subject to exchange or transfer.

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

IN WITNESS WHEREOF, the Town of Fairfax has caused this Note to be issued in the name of the Town and to be executed by the manual signature of the Mayor and countersigned by the facsimile signature of the Town Clerk, all as of the Issue Date stated above.

TOWN OF FAIRFAX

By _____
Mayor

Countersigned:

_____
Town Clerk

EXHIBIT B

FORM NOTE PURCHASE AGREEMENT

Town Council
Town of Fairfax
142 Bolinas Road
Fairfax, California 94930

Councilmembers:

The undersigned Town of Tiburon, California (the "Tiburon") offers to enter into this agreement with the Town of Fairfax (the "Town"), which, upon your acceptance hereof, will be binding upon the Town and Tiburon. This offer is made subject to the acceptance of the Note Purchase Agreement by the Town and written delivery of such acceptance to Tiburon at or prior to 11:59 P.M., Pacific Time, on the date hereof.

1. Purchase and Sale of the Note. Upon the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, Tiburon hereby agrees to purchase from the Town, and the Town hereby agrees to sell to Tiburon for such purpose, the Town's $500,000 2009-2010 Tax and Revenue Anticipation Note (the "Note").

The Note shall be dated February, 2010 shall bear interest at a rate of 4% per annum, and shall mature on April 23, 2010 (or such earlier date as moneys for the prepayment of the Note shall be available to the Town). The purchase price to be paid by Tiburon for the Note shall be $500,000, representing the principal amount of the Note.

2. The Note. The Note shall be described in, and shall be issued and secured pursuant to the provisions of the Resolution of the Town Council of the Town, adopted February 3, 2010 (the "Resolution"), and Article 7.6, Chapter 4, Part 1, Division 2, Title 5 (commencing with section 53850) of the California Government Code (the "Act").

3. Private Placement; Note Constitute Investment of Tiburon; No Transfer or Exchange.

(a) Tiburon has sufficient knowledge and experience in financial and business matters, including purchase and ownership of obligations of a nature similar to the Note to be able to evaluate the risks and merits of the investment represented by the purchase of the Note.

(b) Tiburon is acquiring the Note for its own account and not with a view to, or for sale in connection with, any distribution of the Note or any part thereof. Tiburon has not offered to sell, solicited offers to buy, or agreed to sell the Note or any part thereof, and Tiburon has no intention of reselling or otherwise disposing of the Note.

(c) Tiburon acknowledges that the Note is not assignable, exchangeable or transferable.

(d) Tiburon has made his own credit inquiry and analysis with respect to the Town and the Note and has made an independent credit decision based upon such inquiry and analysis. The Town has furnished to Tiburon all the information which Tiburon, as a reasonable investor, has requested of the Town as a result of Tiburon having attached significance thereto in making its investment decision with respect to the Note, and Tiburon has had the opportunity to ask questions of and receive answers from

knowledgeable individuals concerning the Town and the Note. Tiburon is able and willing to bear the economic risk of the purchase and ownership of the Note.

(e) Tiburon understands that the Note has not been registered with any federal or state securities agency or commission.

4. Closing. At 9:00 A.M., Pacific Time, on February 24, 2010, or such other time or such other date as shall have been mutually agreed upon by the Town and Tiburon (the "Closing"), the Town will deliver to Tiburon, the Note in definitive form, duly executed, together with other documents hereinafter mentioned; and Tiburon will accept such delivery and pay the purchase price thereof in immediately available funds to the Town.

The Note will be issued in the form of a single fully registered note, registered in the name of Tiburon.

The Town has irrevocably directed the Marin County Treasurer-Tax Collector to transfer to a special escrow account at Bank of America in Fairfax, California (the "Escrow Bank"), all property tax revenues owed to the Town in April 2010, and the Escrow Bank has been irrevocably directed to transfer to the Owner, on the maturity date of the Note, the total principal amount of the Note, plus interest accrued thereon to such date. The Escrow Bank has been directed to transfer the remaining amounts of property tax revenues to the Town only after the Owner shall have been paid in full.

5. Representations, Warranties and Agreements of the Town. The Town hereby represents, warrants and agrees with Tiburon that:

(a) The Town is a municipal corporation and general law city organized and validly existing under the laws of the State of California, with the power to issue the Note pursuant to the Act.

(b) At or prior to the Closing, (i) the Town will have taken all action required to be taken by it to authorize the issuance and delivery of the Note; (ii) the Town has full legal right, power and authority to enter into this Note Purchase Agreement and to adopt the Resolution, and the Town has full legal right, power and authority to perform its obligations under each such document or instrument, and to carry out and effectuate the transaction contemplated by this Note Purchase Agreement and the Resolution; (iii) the execution and delivery or adoption of, and the performance by the Town of the obligations contained in the Note, the Resolution and this Note Purchase Agreement have been duly authorized and such authorization shall be in full force and effect at the time of the Closing; (iv) this Note Purchase Agreement constitutes a valid and legally binding obligation of the Town; and (v) the Town has authorized the consummation by it of all transactions contemplated by this Note Purchase Agreement.

(c) No consent, approval, authorization, order, filing, registration, qualification, election or referendum, of or by any person, organization, court or government agency or public body whatsoever is required in connection with the issuance, delivery or sale of the Note or the consummation of the other transactions effected or contemplated herein or hereby.

(d) The issuance of the Note, the execution, delivery and performance of this Note Purchase Agreement, the Resolution and the Note, and compliance with the provisions hereof do not conflict with or constitute on the part of the Town a violation of or default under, the Constitution of the State of California or any other existing law, charter, ordinance, regulation, decree order or resolution and do not conflict with or result in a violation or breach of, or constitute a default under, any agreement, indenture, mortgage, lease or other instrument to which the Town is a party or by which it is bound or to which it is subject.

(e) To the best of the Town's knowledge, no action, suit, proceeding, hearing or investigation is pending or (to the knowledge of the Town) threatened against the Town: (i) in any way affecting the existence of the Town or in any way challenging the respective powers of the several offices of the titles of the officials of the Town to such offices; or (ii) seek to restrain or enjoin the sale, issuance or delivery of the Note, the application of the proceeds of the sale of the Note, or the collection of the revenue or assets of the Town pledged or available to pay the principal and interest on the Note, or the Pledge thereof, or in any way contesting or affecting the validity or enforceability of the Note, this Note Purchase Agreement or the Resolution or contesting the powers of the Town or its authority with respect to the Note, the Resolution or this Note Purchase Agreement; or (iii) in which a final adverse decision could (a) materially adversely affect the operations of the Town or the consummation of the transactions contemplated by this Note Purchase Agreement and the Resolution, or (b) declare this Note Purchase Agreement to be invalid or unenforceable in whole or in material part.

(f) Between the date hereof and the date of the Closing, the Town has not, without prior written consent of Tiburon, borrowed any additional moneys.

(g) Between the date of the Closing and the maturity date of the Note, the Town will not, without prior written consent of Tiburon, borrow any additional moneys secured by the same source of funds for the security of the Note.

(h) Any certificates signed by any officer of the Town and delivered to Tiburon shall be deemed a representation and warranty by the Town, as the case may be, to Tiburon as to the statements made therein but not of the person signing the same.

6. Conditions to Closing. Tiburon has entered into this Note Purchase Agreement in reliance upon the representations and warranties of the Town contained herein and the performance by the Town of its obligations hereunder, both as of the date hereof and as of the date of Closing. Tiburon's obligations under this Note Purchase Agreement are and shall be subject, at the option of Tiburon, to the following further conditions at the Closing:

(a) The representations and warranties of the Town contained herein shall be true, complete and correct in all material respects as of the date hereof and as of the date of Closing, as if made at and as of the Closing, and the statements made in all certificates and other documents delivered to Tiburon at the Closing pursuant hereto shall be true, complete and correct in all material respects on the date of the Closing; and the Town shall be in compliance with each of the agreements made by it in this Note Purchase Agreement.

(b) At the time of the Closing, (i) this Note Purchase Agreement and the Resolution shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to in writing by Tiburon; (ii) all actions under the Act which, in the opinion of the firm of Quint & Thimmig LLP, bond counsel ("Bond Counsel"), shall be necessary in connection with the transactions contemplated hereby, shall have been duly taken and shall be in full force and effect; and, (iii) the Town shall perform or have performed all of their obligations required under or specified in the Resolution or the Note Purchase Agreement to be performed at or prior to the Closing.

(c) No decision, ruling or finding shall have been entered by any court or governmental authority since the date of this Note Purchase Agreement (and not reversed on appeal or otherwise set aside), or to the best knowledge of the Town, pending or threatened.

(d) No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling or regulation of the Securities and Exchange Commission, shall have been issued or made with the purpose or effect of prohibiting the issuance, offering or sale of the Note as contemplated hereby and no

legislation shall have enacted, or a bill favorably reported for adoption, or a decision by a court established under Article III of the Constitution of the United States rendered, or a ruling, regulation, proposed regulation or official statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or issued, to the effect that the Note or any securities of the Town or of any similar body of the type contemplated herein are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Trustee Indenture Act of 1939, as amended and as then in effect.

(e) At or prior to the date of the Closing, Tiburon shall receive one copy of the following documents in each case dated as of the Closing Date and satisfactory in form and substance to Tiburon:

(1) An approving opinion of Bond Counsel, as to the Note, addressed to the Town.

(2) A letter setting forth that Tiburon can rely upon the approving opinion of Bond Counsel.

(3) A certificate signed by appropriate officials of the Town to the effect that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or public body, pending, or to his or her knowledge, threatened against the Town (but in lieu of or in conjunction with such certification Tiburon may, at its sole discretion, accept certificates, opinions of counsel to the Town or Bond Counsel, that in their opinion the issues raised in any such pending or threatened litigation are without substance and that the contentions of all plaintiffs therein are without merit).

(4) A certificate signed by appropriate officials of the Town to the effect that (i) the representation, agreements and warranties of the Town herein are true and correct in all material respects as of the date of Closing; and (ii) the Town has complied with all the terms of the Resolution and this Note Purchase Agreement to be complied with by the Closing and such documents are in full force and effect.

(5) A certificate, together with fully executed copies of the Resolution, of the Town Clerk to the effect that (i) such copies are true and correct copies of the Resolution; and (ii) that the Resolution was duly adopted and has not been modified, amended, rescinded or revoked and is in full force and effect on the date of the Closing.

(6) Such additional legal opinion, certificates, proceedings, instruments and other documents as Tiburon may reasonably request to evidence compliance (i) by the Town with legal requirements; (ii) the truth and accuracy, as of the time of Closing, of the representations of the Town herein contained; and, (iii) the due performance or satisfaction by the Town at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Town.

If the Town shall be unable to reasonably satisfy the conditions requested by Tiburon to evidence compliance with the terms and conditions set forth in this Note Purchase Agreement, Tiburon's obligations for the purchase of the Note shall be terminated for any reason permitted by this Note Purchase Agreement, and this Note Purchase Agreement may be canceled by Tiburon at, or at any time prior to, the time of Closing. Notice of such cancellation shall be given to the Town in writing, or by telephone or telegraph confirmed in writing. Notwithstanding any provision herein to the contrary, the performance and any and all obligations of the Town hereunder and the performance of any and all conditions contained herein for the benefit of Tiburon may be waived by Tiburon in writing at its sole discretion.

7. Conditions to Obligations of the Town. The performance by the Town of its obligations is conditioned upon (i) the performance by Tiburon of its obligations hereunder; and (ii) receipt by the Town and Tiburon of opinions and certificates being delivered at the Closing by persons and entities other than the Town.

8. Expenses. The Town shall pay the expenses incident to the performance of its obligations hereunder from the proceeds of the Note (or from any other source of available funds of the Town) which expenses include and are limited to: (i) the cost of the preparation and reproduction of the Resolution; (ii) the fees and disbursements of Bond Counsel, (iii) the fees and expenses of Wulff, Hansen & Co., as financial advisor to the Town in connection with the issuance of the Note, (iv) the fees and disbursements of any other advisors or consultants retained by the Town in connection with the issuance of the Note, and (v) any other fees and expenses required in connection with the issuance of the Note.

All costs or expenses incurred by Tiburon as a result of nonpayment or other default by the Town shall be borne by the Town.

All other costs and expenses incurred by Tiburon as a result of or in connection with the purchase of the Note shall be borne by Tiburon.

9. Notices. Any notice or other communication to be given under this Note Purchase Agreement (other than the acceptance hereof as specified in the first paragraph hereof) may be given by delivering the same in writing if to the Town, to the Finance Director, Town of Fairfax, 142 Bolinas Road, Fairfax, CA 94930, or if to Tiburon to the Finance Director, Town of Tiburon, 1505 Tiburon Boulevard, Tiburon, CA 94920.

10. Parties in Interest; Survival of Representations and Warranties. This Note Purchase Agreement when accepted by the Town in writing as heretofore specified shall constitute the entire agreement between the Town and Tiburon. This Note Purchase Agreement is made solely for the benefit of the Town and Tiburon (including the successors or assigns of Tiburon). No person shall acquire or have any rights hereunder or by virtue hereof. All the representations, warranties and agreements of the Town in this Note Purchase Agreement shall survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of Tiburon, (b) delivery of and payment by Tiburon for the Note hereunder, and (c) any termination of this Note Purchase Agreement.

11. Execution in Counterparts. This Note Purchase Agreement may be executed in several counterparts each of which shall be regarded as an original of all of which shall constitute one and the same document.

12. Applicable Law. This Note Purchase Agreement shall be interpreted, governed and enforced in accordance with the law of the State of California.

Very truly yours,

TOWN OF TIBURON, as Purchaser

By _____
Finance Director

The foregoing is hereby agreed to and accepted as of the date first written above:

TOWN OF FAIRFAX

By _____
Finance Director