

PROMISSORY NOTE SECURED BY A SUBORDINATE DEED OF TRUST  
AND BORROWER'S AGREEMENT TO THE CONDITIONS OF THIS LOAN

(Homebuyer Assistance Program Loan No. 00-05)

October 25, 2000

County of Santa Barbara, California

825 Patterson Road, Santa Maria, California (the "Property")

[Property Address]

**I. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received (the "Loan"), in the amount of  
Thirty Thousand 00/100

U. S. dollars (\$ 30,000.00) (this amount is called "Principal"), under the terms of this  
Promissory Note Secured by a Subordinate Deed of Trust and Borrower's Agreement to the

Conditions of this Loan ("this Note"), I, the undersigned, Dale L. Richards and

Aniko Richards, Husband\* (singularly and collectively, the "Borrower"), promise to  
pay to the order of the County of Santa Barbara, (the "County"), a share of the equity in the  
Property, or such other amount as required in Section V(C) of this Note, upon transfer or  
refinance of the Property, under the terms and conditions set forth in this Note.

**(A) Relationship between County and Borrower**

The relationship between County and Borrower is solely one of creditor and  
debtor.

**(B) Loan Authority**

1. The Loan evidenced by this Note is being made pursuant to

(a.) the HOME Investment Partnerships Program and the regulations  
issued thereunder [Title II of the Cranston-Gonzalez National Affordable  
Housing Act, Public Law No. 101-625, 104 Stat. 4079 (1990), 24  
C.F.R. Part 92, as amended from time to time) (the "HOME"  
Program)]; and

(b.) the County of Santa Barbara Homebuyer Assistance Program,  
approved on June 27, 1995, by Board of Supervisors and any regulations

Certified to be a true and correct  
copy of the original  
FIRST AMERICAN  
INSURANCE  
COMPANY

established thereunder; and

(c.) Affordable Housing Program Administration and Guidelines which govern the expenditure of Local Affordable Housing Funds when such funds are used; and

(d.) California State regulations governing the expenditure of Redevelopment Authority funds when such funds are used.

2. The intent of making this Loan under these Programs is to assist first-time homebuyers (as defined in the HOME Program and the Homebuyer Assistance Program Guidelines) earning up to 80% of area median income (as defined in the HOME Program) to purchase homes in the County of Santa Barbara in which they will reside as their principal residences.

**(C) Security**

This Note is secured by a deed of trust on the Property dated the same date as this Note (the "Subordinate Deed of Trust").

The indebtedness evidenced by this Note, and any other financial obligation which may hereafter be imposed on me by the County, is subordinate to the indebtedness evidenced by a note payable to a senior lender (the "First Note"), which note is secured by a first deed of trust on the Property (the "First Deed of Trust").

**(D) Use of Funds**

This Loan is being made in order to assist me in purchasing the Property.

The purchase price of the Property is One Hundred Fifty Thousand 00/100  
\_\_\_\_\_dollars (\$ 150,000.00 ).

My downpayment amount is Fifteen Thousand 00/100

dollars (\$ 5,000.00 ) ("My Downpayment"). My Downpayment is the actual cash amount of money I have paid for the purchase of the Property from my own funds (excluding closing costs), including gifts.

The amount of the First Note is One Hundred Five Thousand 00/100 dollars (\$ 105,000.00 ).

## **(E) Deferral of Payments**

For the duration of this note, there shall be no payments due under this Note so long as no Transfer or Refinance of the Property or Event of Default has occurred.

## **II. DEFINITIONS**

The following terms are specially defined for this Note and distinguished from non-defined terms by the capitalization of their first letters. Their definitions can be found in the sections indicated below:

"Borrower"	-	First sentence of this Note, Section I
"Capital Improvements"	-	Section V(G)
"Equity"	-	Section III
"Equity Share"	-	Section III
"Event of Default"	-	Section IX
"Evidence of Capital Improvements"	-	Section V(H)
"Fair Market Value"	-	Section V(F)
"First Deed of Trust"	-	Section I(C)
"First-Time Homebuyer"	-	Section VIII(B)
"First Note"	-	Section I (C)
"HOME Program"	-	Section I(B), Subsection 1
"County"	-	First Sentence of this Note, Section I
"County's Capital Contribution"	-	Section III
"County's Equity Percentage"	-	Section III
"County's Equity Share"	-	Section III
"Loan"	-	First sentence of this Note, Section I



"Maturity Date"	-	Section V(C), Subsection 1
"My Capital Contribution"	-	Section III
"My Downpayment"	-	Section I(D)
"My Equity Percentage"	-	Section III
"My Equity Share"	-	Section III
"Non-Luxury Capital Improvement"	-	Section V(E)
"Note"	-	First sentence of this Note, Section I
"Notice of Dishonor"	-	Section XII
"Prepayment"	-	Section VI
"Presentment"	-	Section XII
"Principal"	-	First sentence of this Note, Section I
"Property"	-	Third line of this Note
"Refinance"	-	Section V(E)
"Subordinate Deed of Trust"	-	Section I(C)
"Transfer"	-	Section V(D)
"Value of Capital Improvements"	-	Section V(G)

### III. EQUITY SHARING

Upon Transfer or Refinance of the Property (these capitalized terms are defined in Section V(D) and V(E), respectively of this Note), this Note shall become due and payable and the Equity in the Property shall be divided between the County and me in proportion to our relative Equity Shares in the Property. If the amount of Equity is less than the sum of My Capital Contribution and the County's Capital Contribution, see Section V(C), Subsection 2 of this Note.

"Equity" is defined as the dollar amount remaining after subtracting the following from the sales price at the time the Property is first sold after the date of this Note or, if there is no sale, the Fair Market Value of the Property (as defined in Section V(F) of this Note):

- (1) the amount owed on any loans senior to this Loan; and
- (2) all of my actual transfer costs, including any costs of brokers' commissions, transfer taxes, escrow fees, title costs and fees, recording costs, and County-approved appraisal, fees paid by me in connection with my sale of the Property.

"Equity Share" is defined as the proportionate division of Equity between the County and myself based on each of our relative capital contributions to the purchase and improvement of the Property.

"My Equity Share" is My Equity Percentage multiplied by the total Equity in the Property.

"County Equity Share" is the County's Equity Percentage multiplied by the total Equity in the Property.

"My Equity Percentage" is the percentage figure calculated by dividing the dollar value of My Capital Contribution by the total dollar value of the County's Capital Contribution and My Capital Contribution at the time of Transfer or Refinance.

"County Equity Percentage" is the percentage figure calculated by dividing the dollar value of the County's Capital Contribution by the total dollar value of My Capital Contribution and the County's Capital Contribution at the time of Transfer or Refinance.

"My Capital Contribution" to the Property is the total of My Downpayment, my payments of principal on the First Note, and the Value of Capital Improvements (as defined in Section V(G) of this Note) at the time of Transfer or Refinance that I have made to the Property (provided such Improvements were documented at the time they were made to the satisfaction of the County in accordance with the procedure outlined in Section V(H) of this Note, and I have written to the County at the time of Transfer or Refinance requesting that a determination be made of the Value of Capital Improvements).

"County's Capital Contribution" is the Principal amount of this Note and any other funds that the County may contribute to the Property for any reason. (For example, in the event I default on my loan or abandon the Property, this would include the amount the County pays for security or maintenance.) County's Capital Contribution shall not include any development incentives or other subsidies provided by the County which reduce the value of the property in order to assist low-income homebuyers



My Equity Share and My Equity Percentage and the County's Equity Share and the County's Equity Percentage can be calculated at any time as long as the current Fair Market Value has been determined. However, they are most importantly calculated at the time of Transfer or Refinance in order to calculate the amount of repayment due to County under this Note.

#### **IV. INTEREST CHARGED ONLY IN THE EVENT OF DEFAULT**

This Note will bear no interest **unless I default** under the terms of this Note or the Subordinate Deed of Trust securing it. In the case of any Event of Default described in Section IX(A) of this Note, interest from the date of the Event of Default shall be calculated at the greater of the following amounts:

- (1) Ten percent (10%) per annum, on the outstanding Principal balance; or,
- (2) The prevailing rate for notes secured by deeds of trust on residential property, on the date of default, charged by the lender having the First Deed of Trust on the Property or, if no such lender exists, as determined by the County.

If interest is due, it shall be due and payable in addition to any other amounts due and payable under the terms of this Note.

#### **V. PAYMENT**

##### **(A) Time of Payment**

1. In the event of a Transfer or Refinance, as defined in subsections (D) and (E) of this Section, I will pay in one lump sum the amount due on the date of the first Transfer or Refinance of the Property to occur after the date of this Note.

2. In the case of an Event of Default specified in Section IV, I will pay all interest due in one lump sum on the date specified in the notification I receive from the County of the Event of Default. I will continue to pay accrued interest monthly for as long as the Event of Default continues. In the event I choose to pay off the Loan while an Event of Default is pending, or in the event of subsequent foreclosure on the Property, in addition to any unpaid interest due, payment of the amount indicated in subsection (C)3. of this Section will be due.

##### **(B) Place of Payment**

When payment is due hereunder, I will make my payment at the Office of the Treasurer - Tax Collector, Affordable Housing Program, 105 E. Anapamu Street Suite

301, Santa Barbara, CA 93101 or mailed to the Affordable Housing Program, P.O. Box 2219, Santa Barbara, CA, 93120-2219, or at a different place if required by the County.

**(C) Amount of Payment**

1. As long as I occupy the Property without the occurrence of a Transfer, Refinance or Event of Default, no payment amount shall be due. After a period of thirty (30) years from the date of execution of this Note (the "Maturity Date"), I will be released from the obligations under this Note, including the obligation to pay the County's Equity Share, and the restrictions of the Subordinate Deed of Trust which secures this Note, except that upon Transfer or Refinance, the amount of Principal will become due.

2. In the event that I Transfer the Property sooner than the Maturity Date, the amount of payment due shall be the greater of the following:

(i) the County's Equity Share; or

(ii) the Principal loan amount. However in the event the amount of Equity is less than the loan Principal, the County will forgive repayment in the amount of five (5) percent of the Principal amount of this Loan multiplied by the whole number of full or partial years from the beginning of the execution of this Note until the time of payment, however, in no case will the County forgive an amount which exceeds the difference between the Equity and the Principal amount of the Loan.

3. In the event that I Refinance or Prepay before the Maturity Date, the amount of payment due shall be the greater of the following:

(i) the County's Equity Share; or

(ii) the Principal amount of this Loan.

**(D) Transfer**

"Transfer" shall mean any transfer of title to, or sale, conveyance, rental, or lease of the Property, including execution of an installment sale contract giving the purchaser a right to possess the Property before transfer of title, or judicial sale on execution or other legal process of foreclosure or trustee's sale of the Property (regardless of or by whom initiated), or deed in lieu of foreclosure, provided, however, that "Transfer" shall not include any of the following: (i) a transfer resulting from death of a Borrower under this Loan where the transfer is to a co-Borrower; (ii) a



transfer by a Borrower to any person who becomes a co-owner of the Property provided the Borrower retains at least a fifty percent (50%) interest in the Property and the co-owner agrees to become a co-Borrower under this Note and occupy the Property as his/her principal residence; (iii) a transfer resulting from a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree in which one Borrower becomes the sole owner of the Property and becomes obligated to continue to make the loan payments; (iv) a transfer between co-Borrowers; (v) a transfer by Borrower into an inter vivos trust in which Borrower is a beneficiary and Borrower continues to occupy the Property.

**(E) Refinance**

"Refinance" shall mean paying off the First Note secured by the First Deed of Trust prior to its maturity date with funds secured from a new loan, provided, however, that "Refinance" for purposes of repayment of this Note shall not include any of the following: (i) I secure the new loan only to lower the interest rate on the First Note secured by the First Deed of Trust and I am not securing the new loan for the purpose of borrowing additional funds; or (ii) the additional funds are secured entirely to pay for Non-Luxury Capital Improvements approved, in advance, by County. "Non-Luxury Capital Improvements" are defined as substantial improvements, such as room additions, which increase the habitable space of the home.

I understand that if I Refinance the First Note secured by the First Deed of Trust, I am required to repay to the County the entire amount I owe under the terms of this Note as set forth herein, including the County's Equity Share.

When I Refinance the First Note for any reason, I will be responsible for any and all refinance costs (including the payment of all loan costs, fees, and points). In addition, if I refinance without paying off this Note, I will be responsible for paying in full any and all costs of escrow and for the cost of the appraisal required to determine the Fair Market Value, and these costs may not be added to the new loan amount.

**(F) Fair Market Value**

"Fair Market Value" is defined as the selling price agreed to between a willing buyer and seller in an arms-length transaction; or, in the event of a Transfer of the Property through other than an arms-length sale or in the event of Refinance, "Fair Market Value" is defined as the highest price of the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, and a buyer, being willing and able to buy but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the Property is reasonably adaptable and available.



For Refinances, Transfers other than arms-length sales, or for any case where the County disputes that the selling price represents the true market value of the Property, Fair Market Value shall be determined by an appraisal that conforms to the Uniform Standards of Professional Appraisal Practice and is from a County-approved appraiser certified by the State of California.

**(G) Capital Improvements**

"Capital Improvements" are defined as any substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the Property or substantial or total loss of value of said improvements. Capital Improvements do not include maintenance items such as carpeting, blinds, roof replacement or new paint.

The "Value of Capital Improvements" shall be the dollar amount by which the Improvements are determined to have increased the Fair Market Value of the Property.

The Value of Capital Improvements upon which My Capital Contributions will be calculated shall be the Fair Market Value of the Improvements when considered as additions or fixtures to the Property. This amount shall be determined based upon the amount by which said Improvements contribute to an increased market value of the Property as a result of the Improvements at the time the determination is made. The Value of Capital Improvements may not necessarily be the same as the actual cost of construction of the Improvements. The Value of Capital Improvements shall only include Capital Improvements (i) that have been made or installed by me or at my direction; (ii) for which I have notified the County of the work being done and provided evidence of the cost of the work as required below; (iii) for which I have obtained all required building and zoning permits and approvals; (iv) which cost \$2,000 or more to install; and (v) for which I have written to the County at least thirty (30) days and no more than one hundred twenty (120) days before the time of Transfer or Refinance to request a determination be made of the Value of Capital Improvements upon which My Capital Contribution will be calculated.

The Value of the Capital Improvements shall not include any amounts necessary to repair any violations of applicable building, plumbing, electric, fire or housing codes or any other provisions of the County of Santa Barbara Building or Housing Codes, or the HOME Program required Section 8 Housing Quality Standards, as set out at 24 CFR Section 882.109 or any other repairs needed to put the Property into a sellable condition as determined by County.

The Value of Capital Improvements used to calculate My Capital Contribution shall be mutually agreed upon between the County and me at the time of Transfer or

Refinance provided that I have sent proper notice and documentation to County as set forth in Section (H). In the event that the Value of Capital Improvements cannot be arrived at by mutual agreement, I am entitled to obtain at my own expense an appraisal from an appraiser certified by the State of California. This appraisal must conform to the Uniform Standards of Professional Appraisal Practice. This appraisal will be used by the County as evidence of the Value of the Capital Improvements provided that the appraisal separates and appraises the value of the improvements for which evidence under Section (H) was provided and indicates clearly the dollar amount by which the Fair Market Value of the Property has been increased as a direct result of those Capital Improvements.

**(H) Evidence of Capital Improvements**

In order for me to adjust My Capital Contribution for the Value of Capital Improvements, I must have sent to the County by first-class mail within sixty (60) days following the completion of the Capital Improvements proof of satisfactory completion (including evidence of any and all required permits and approvals) of the Improvements along with proof of the costs.

**VI. BORROWER'S RIGHT TO PREPAY**

I have a right to repay this Loan in full at any time before it is due. Payment before it is due is known as "Prepayment." Partial Prepayments are not allowed. When I make a Prepayment, I will notify the County in writing that I am doing so. Determination of Fair Market Value must be made in order to calculate the County's Equity Share for a Prepayment. Fair Market Value shall be determined by an appraisal that conforms to the Uniform Standards of Professional Appraisal Practice and is from a County-approved appraiser certified by the State of California.

**VII. LOAN CHARGES**

If the interest or other loan charges collected or to be collected in connection with this Loan exceed what is allowed under applicable State or federal law, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permit limits will be refunded to me. The County may choose to make this refund by reducing the amount I owe under this Note or by making a direct payment to me. If a refund reduces the amount I owe under this Note, the reduction will be treated as a partial Prepayment.

**VIII. WARRANTIES AND PROMISES OF BORROWER**



**(A) Occupancy**

I promise to occupy the Property as my principal place of residence for the term of this Loan.

I promise that I shall not rent or lease the Property.

I promise that in the event I intend to Transfer or Refinance the Property, I shall promptly send prior written notice to the County.

I promise to comply with all reasonable requests from the County to provide documentary proof that I am using the Property as my principal place of residence and that no Transfer or Refinance of the Property has occurred. My failure to comply with the County's reasonable request for documentary proof shall constitute a presumption that I am not using the Property as my principal place of residence or that a Transfer or Refinance of the Property has occurred and shall constitute an Event of Default as set forth in Section IX of this Note.

**(B) First-Time Homebuyer**

I further warrant that I am a First-Time Homebuyer, meaning that I qualify under one or more of the following definitions:

I have not owned my principal residence within the three-year period immediately preceding the date of this Note;

I am a displaced homemaker, which means that I have not worked full-time, full-year in the labor force for a number of years but have, during such years, worked primarily without remuneration to care for the home and family and I am currently unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment;

I am a single parent, which means that (1) I am unmarried or legally separated from a spouse; and (2) I have one or more minor children for whom I have custody or joint custody, or I am pregnant;

I own or owned my principal residence during the three-year period before the date of this Note, but the dwelling was a structure either (i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or (ii) not in compliance with State, Local or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

**(C) Income Eligibility**

I warrant that the financial and other information I have provided to the County, the senior lender, or their agents in order to determine my annual gross household income and my eligibility to qualify to obtain this Loan was true, correct, and complete as of the date of my application for this Loan, which date was less than six (6) months prior to the date of this Note.

**(D) Breach of These Warranties**

I understand and agree that if any of the warranties set forth in this Section are untrue in any material respect or I break any of the above promises, the County at its sole discretion may declare this Note immediately due and payable and shall be entitled to enforce all conditions of this Note to which it is entitled in the Event of Default under the terms of this Note as set forth in Section IX of this Note.

**IX. DEFAULTING UNDER THE TERMS OF THIS NOTE**

**(A) Event of Default**

An Event of Default shall have occurred if: (i) I fail to observe or to perform any covenant, condition or agreement to be observed or performed by me pursuant to this Note or the Subordinate Deed of Trust, or if any of the warranties or promises made by me under Section VIII are determined by the County to be false or are subsequently breached; (ii) I fail to pay the indebtedness hereunder or any installment thereof, whether Principal, interest, or the County's Equity Share when they are due and payable; or (iii) any event occurs which, under the terms of any deed of trust on the Property, entitles that lender to exercise the rights or remedies thereunder.

**(B) Notice of Default**

If the County determines that I am in default, the County shall send me a written notice by certified mail telling me that if I do not correct the default by a certain date, the County may require me to pay immediately the full amount of Principal or the County's Equity Share, whichever is greater, and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me. Should I fail to correct the default, the County shall require the Principal or the County's Equity Share, whichever is greater, plus interest at the maximum rate permitted under the terms of this Note to be immediately due and payable and shall notify me thereof in writing, sent certified mail, return receipt requested. Should I fail to remit to County such amount within thirty (30) days of



receipt of the notice, the County may institute foreclosure proceedings in accordance with the Subordinate Deed of Trust.

**(C) No Waiver By County**

Even if, at a time when I am in default, the County does not require me to pay immediately in full as described above, the County will still have the right to do so if I am in default at a later time.

**(D) Payment of County's Costs and Expenses**

If the County has required me to pay immediately in full as described above, the County will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**X. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the County a notice of my different address.

Any notice that must be given to the County under this Note will be given by mailing it by first class mail to the County at the address stated in Section V(B) above or at a different address if I am given a notice of that different address.

**XI. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The County may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## **XII. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the County to demand payments of amount due. "Notice of Dishonor" means the right to require the County to give notice to other persons that amounts have not been paid.

## **XIII. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the County under this Note, the Subordinate Deed of Trust, dated the same date as this Note, protects the County from possible losses which might result if I do not keep the promises which I make in this Note. The Subordinate Deed of Trust is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust.

## **XIV. RIGHT OF FIRST REFUSAL**

Prior to offering the property for sale for a price lower than the Fair Market Value, I shall send to the County at the address specified in Section V above, written notice of my intent to sell or Transfer the property. The notice shall specify the asking price for the property.

The County shall have 15 days after receipt of such notice to send to me written notice of the County's intent to exercise its option to purchase. If the County sends a notice of intent to exercise its option, the County or its designee shall then have an additional 60 days to purchase the property at the asking price. Such time shall be extended by the length of any delays caused by me or my agents. I shall be responsible for all costs and provide all reports as is customary for sellers of residential property in the County, including title insurance, termite report, and required corrective work.

This option shall be binding on my heirs, devisees, administrators, executors or assigns.



BY SIGNING BELOW, the Borrower accepts and agrees to the terms and covenants contained in this security instrument.

Dale L. Richards

Borrower Dale L. Richards

564-85-0995

Social Security Number

Aniko Richards

Borrower Aniko Richards

563-39-5585

Social Security Number

APPROVED AS TO FORM:

STEPHEN SHANE STARK, County Counsel

ELIZABETH FARNUM, Deputy County Counsel

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

On OCTOBER 25, 2000 before me, STACY AVILA a Notary Public in and for said

County and State, personally appeared DALE L. RICHARDS AND ANIKO RICHARDS

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Stacy Avila  
NOTARY SIGNATURE



(THIS AREA FOR OFFICIAL NOTARIAL SEAL OR STAMP)