

**CITY OF COLLEGE STATION  
DOWN PAYMENT ASSISTANCE PROGRAM  
REAL ESTATE LIEN NOTE**

**DATE:** May \_\_\_\_, 2004

**BORROWER:** MICHAEL CHAD CANNON

**BORROWER'S MAILING ADDRESS:** 111 Luther  
(including county) Brazos County  
College Station, Texas 7784\_\_

**LENDER:** CITY OF COLLEGE STATION, TEXAS

**LENDER'S MAILING ADDRESS:** P.O. Box 9960  
(including County) Brazos County  
College Station, Texas 77842

**PLACE OF PAYMENT:** City of College Station  
(including County) 1101 Texas Avenue  
Brazos County  
College Station, Texas 77842

**PRINCIPAL AMOUNT:** FIFTEEN THOUSAND AND NO/100 DOLLARS  
(\$15,000.00)

**ANNUAL INTEREST RATE ON  
UNPAID PRINCIPAL FROM DATE:** 0% per annum for a period of ten (10) years

**PROPERTY** (including any improvements):

All that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas, and being Lot Four (4), Block "A", West Park 2nd Addition, City of College Station, Brazos County, Texas, according to plat thereof recorded in Volume 128, Page 574, of the Official Records of Brazos County, Texas.

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

A. Purpose. This Note implements requirements applicable to assistance furnished by the City of College Station Community Development Office ("Lender") to MICHAEL CHAD CANNON ("Borrower") under a Down Payment Assistance Program ("Program") to help eligible families become homeowners. This Program is being carried out by Lender using HOME funds pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 United States Code §§ 12701 et seq.) and 24 Code of Federal Regulations Part 92. The Lender has assisted the Borrower in purchasing the Property for use as the Borrower's principal residence. The Lender or any authorized party who takes this Note by assignment and is entitled to receive amounts due under this Note is called the "Note Holder."

B. Nonrecourse Note. Payment of this Note may be enforced solely out of the proceeds of sale of the Property, whether the sale constitutes a Sale under Paragraph 3.A. or a Default under Paragraph 5.A. (except to the extent of fraud or misrepresentation by the Borrower). The Note Holder may not seek or obtain a deficiency judgment or any other recovery from the Borrower personally in the event that the proceeds of sale are insufficient to fully satisfy the amounts due on this Note. However, the Note Holder may, at its option, seek and obtain a personal judgment for all amounts payable under this Note against any Borrower responsible for any fraud or misrepresentation that constitutes a Default under subparagraph 5.A.(v). This right shall be in addition to any other remedies available to the Note Holder for such fraud or misrepresentation.

C. Obligation to Repay Subsidy or Principal. In return for the down payment assistance that the undersigned Borrower has received pursuant to the Program for the purchase of the Property, Borrower hereby promises to pay FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) to the order of Lender. Payment of Principal under this Note will be initially deferred and then forgiven as stated in Paragraph 1.D. Principal may be prepaid as stated in Paragraph 4. The amount of Principal that remains outstanding, as calculated under Paragraph 1.D(i), shall be due and payable on the Closing Date of any Sale, as defined in Paragraph 3.A., or in the event of Default, as stated in Paragraph 5.

D. Deferral and Forgiveness of Principal. If payment is not yet due under Paragraphs 3 and 5:

(i) the outstanding Principal balance of this Note shall be reduced by 1/120<sup>th</sup> for each month Borrower fulfills the obligations as stated in the Deed of Trust referenced in Paragraph 10 herein;

(ii) on the first day of the eleventh (11th) year after the date of execution of this Note, the outstanding Principal balance of this Note shall be reduced to zero; and

(iii) if Borrower does not sell the Property and is not in Default under this Note, Borrower will owe nothing on this Note at the end of ten (10) years after the date of execution of this Note, and Borrower will be due a release under Paragraph 10.

## 2. INTEREST

No interest will be charged on this Note unless and until a Default has been declared by the Note Holder under Paragraph 5. Borrower agrees to pay interest at a yearly rate of ten percent (10)% per annum on the then-outstanding Principal balance of this Note from the date of any Notice of Default until paid.

## 3. PAYMENT DUE ON SALE

A. Sale. For purposes of this Note, a "Sale" means any sale or transfer of the Property, or any interest therein (including a beneficial interest), from a Borrower to any other person or entity. As used herein the term Sale includes, but is not limited to, any transfer of any interest in the Property that results from the death, divorce, legal separation, or legal incapacity of a Borrower. Borrower authorizes the Note Holder, in its sole discretion, to determine whether any transfer, sale, transaction, or other event that substantially affects Borrower's or Note Holder's interests in the Property constitutes a Sale as defined herein.

B. Notice. Borrower agrees to mail, certified mail, return receipt requested, or hand-deliver notice of any proposed Sale and a copy of any sales contract to the Note Holder at least fourteen (14) calendar days before the proposed Closing Date or other date on which the transfer shall become effective.

C. In the event of a Sale within the ten (10) years after the date of this Note, Borrower will pay the Principal then outstanding under Paragraphs 1.C. and 1.D(i) to the Note Holder on the Closing Date or other effective date of the transfer.

#### 4. BORROWER'S RIGHT TO PREPAY

Except in the event of a Sale of the Property as described in Paragraph 3, this Note may not be prepaid. In the event of prepayment, the Note Holder will use all prepayments to reduce the amount of Principal that Borrower owes under this Note.

#### 5. DEFAULT

A. **Events of Default.** Any of the following events shall constitute a Default under this Note, as of the date of the Notice of Default under Paragraph 5.B:

(i) **Rental.** If the Borrower rents or leases (Including an oral lease) the Property, or any unit in a two to four unit Property, to any person or entity during the five (5) years after the date of this Note, the Borrower is in Default under this Note, except that the Borrower may rent limited space, such as a room or basement, in a single-unit Property, or in the Borrower's unit in a multi-unit Property, to the extent permitted by the law of the jurisdiction, provided that the Borrower continues to occupy the unit as his or her Principal Residence.

(ii) **Failure to Occupy Property as Principal Residence.** If all Borrowers are continuously absent from the Property for a period of more than thirty (30) days, or move substantially all their personal possessions out of the Property, without the written consent of the Note Holder, Borrowers shall be deemed not to be occupying the Property as their Principal Residence and shall be in Default under this Note.

(iii) **Any Transfer of the Property Other than a Sale.** Sale is defined in Paragraph 3.A. Any transfer of the Property or any interest therein (including a beneficial interest) that is not a Sale as defined in Paragraph 3.A. is a Default under this Note.

(iv) **Any Default under the Deed of Trust.**

(v) **Borrower's Fraud or Misrepresentation.** Any willful misstatement of, or failure to disclose, a material fact by Borrower relating to his or her eligibility for assistance with respect to the Property under the Lender's Program is a Default under this Paragraph. Recovery against the Borrower responsible for the fraud or misrepresentation is not limited to the proceeds of fraud or sale of the Property but may include personal judgment and execution thereon to the full extent authorized by law.

(vi) **Failure to Pay Principal Upon Sale of Property.** If, in the event of a Sale of the Property, Borrower for any reason fails to provide Notice as required under Paragraph 3.B. of this Note or fails to pay the Principal then outstanding on the Closing Date of the Sale or other effective date of the transfer as required under Paragraph 3.C., Borrower shall be in default under this Note.

B. **Notice of Default and Amount Due.** If Borrower is in Default, the Note Holder may send Borrower a written Notice of Default stating the reason Borrower is in Default and demanding immediate payment of the following: (i) the full amount of Principal then due on this Note; (ii) all of the interest that accrues on that amount pursuant to Paragraph 2 of this Note from the date of the Notice of Default until paid, and (iii) all of the Note Holder's costs and expenses reimbursable under Paragraph 5.C.

C. **Payment of Note Holder's Costs and Expenses.** If the Note Holder has provided Borrower with a Notice of Default under Paragraph 5.B., the Note Holder has the right to be repaid from the proceeds of foreclosure 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.

D. **No Waiver By Note Holder.** Even if, at any time when Borrower is in Default, the Note Holder does not require Borrower to pay immediately in full under Paragraph 5.B., the Note Holder will still have the right to do so if Borrower is in Default for the same reason, or for another reason, at any later time.

## 6. GIVING OF NOTICES

Any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the Property Address above, or at a different address if Borrower gives the Note Holder written notice of a different address to the Beneficiary's mailing address as listed in the Deed of Trust.

Except as stated in Paragraph 3.B., any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the "Place of Payment" address shown on page 1 of this Note, or at a different address, if Borrower is given a notice of that different address.

## 7. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed from the proceeds of a Sale of the Property. Any person who is a guarantor, surety or endorser of this Note is also obligated to the same extent. 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 Note Holder may enforce its rights under this Note against each person individually or against all signers, successors, guarantors, sureties, or endorsers together.

## 8. WAIVERS

Borrower 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 that the Note Holder formally demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

## 9. SENIOR LIENS

The indebtedness evidenced by this Note is subordinate in all respects to the indebtedness evidenced by one or more notes payable to one or more Senior Lien Holders, which notes are secured by the following "Senior Lien":

A first and superior Deed of Trust dated May \_\_\_\_, 2004, filed for record in the Official Records of the Office of the County Clerk of Brazos County on May \_\_\_\_, 2004, under Clerk's File Number \_\_\_\_\_ from MICHAEL CHAD CANNON to \_\_\_\_\_, Trustee, for the benefit of \_\_\_\_\_, securing a Promissory Note of even date therewith, in the principal amount of \$\_\_\_\_\_, from MICHAEL CHAD CANNON, and payable to the order of \_\_\_\_\_, as provided therein.

## 10. DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated the same date as this Note and subordinate to any Senior Liens described above, secures this Note. The subordinate Deed of Trust describes the conditions under which the Borrower may be required to make immediate payment in full of all amounts owed under this Note. One of those conditions, as set forth therein, is as follows:

### **Transfer of the Property**

If all or any part of the Property or any interest in it (including a beneficial interest) is sold or transferred without notice to the Note Holder and compliance with the terms of the Note and this Deed of Trust, the Note Holder will require immediate payment in full of all sums secured by this Deed of Trust. In the event of such a sale, or in the event of any other Default under the Note or the Deed of Trust, the Note Holder may give the Borrower Notice of Default and acceleration under Paragraph 5 of the Note.

### **11. RELEASE AND SATISFACTION**

This Note shall be deemed satisfied and Borrower shall be entitled to a release of the Deed of Trust upon payment of a reasonable fee, as determined by the Note Holder, for preparation and recordation of the release under any of the circumstances: (a) ten (10) years have elapsed from the date of this Note and there has been no Sale or Default under this Note, as described in Paragraph 1.D(iii); (b) if upon the Closing Date or other effective date of a Sale in accordance with Paragraph 3, the then-outstanding Principal balance is paid in full; (c) upon full prepayment under Paragraph 4; or (d) upon payment of all amounts due upon Default under Paragraph 5.

### **12. COMPLIANCE WITH ENVIRONMENTAL LAWS**

Borrower agrees to comply with all applicable environmental laws and authorities.

### **13. MAINTENANCE OF PROPERTY**

The Property must be maintained to meet all applicable City codes, including community appearance standards and code enforcement ordinances.

### **14. GOVERNING LAW**

This Note and the Deed of Trust shall be governed by the law of the State of Texas. Venue shall lie with a court of competent jurisdiction in Brazos County, Texas.

  
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MICHAEL CHAD CANNON