

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is entered into by and between the **City of Gainesville, Florida, a municipal corporation**, whose mailing address is P.O. Box 490, Station 06, Gainesville, Florida 32627, ("City"), and **Joyce Henry-Hettel**, ("Borrower"), whose address is 1119 NW 36th Terrace, Gainesville, Florida 32605, ("Property").

WITNESSETH:

WHEREAS, in 2006, the Borrower received \$12,015.00 ("Housing Assistance") from the City pursuant to the City's "Owner Occupied Housing Full Rehabilitation Program," which is a program that assists very low income and low-income homeowners in repairing health and safety violations in their homes, ("Housing Assistance Program"), to rehabilitate her home addressed above; and

WHEREAS, as a result of the Housing Assistance the Borrower received from the City, the City holds a lien encumbering the Property as evidenced by a promissory note and a mortgage that the Borrower executed on April 28, 2006. The mortgage was recorded in the public records on June 5, 2006, at O.R. Book 3387, Page 1271, Public Records of Alachua County ("Mortgage"); and

WHEREAS, under the terms and conditions of the Housing Assistance Program and the promissory note and Mortgage (attached as **Attachment A**), the Housing Assistance the Borrower received from the City would be entirely forgiven if, among other things, the Borrower owned and occupied the Property for ten (10) consecutive years from the date of execution of the promissory note and Mortgage. However, if during the 10-year period title to the Property is transferred to another party and/or the Borrower ceases to occupy the Property as her primary residence, then the entire balance of the Housing Assistance becomes due and payable to the City; and

WHEREAS, the Borrower has entered into a contract to sell the Property and desires to close on the sale and move prior to the satisfaction of the 10-year period described above; and

WHEREAS, under the terms of the Housing Assistance Program and the promissory note and Mortgage, \$12,015.00, which includes the entire balance of the Housing Assistance, will be disbursed to the City when the sale of the Property closes; and

WHEREAS, the City agrees upon closing of the Property to hold its \$12,015.00 in escrow, subject to the terms of this Agreement.

NOW, THEREFORE, the City and the Borrower agree as follows:

- 1. FUNDS OF THE CITY:** The City and the Borrower agree that the \$12,015.00 disbursed to the City by the closing agent upon closing of the Property is lawfully due to and constitutes the property of the City under the terms and conditions of the Housing Assistance Program and the promissory note and Mortgage.
- 2. ESCROW FUNDS:** Notwithstanding Section 1, the City agrees that it will hold its \$12,015.00 in escrow subject to the terms of this Agreement ("Escrow Funds"). The Escrow Funds will not be held in a separate escrow account, but rather will be commingled with other funds of the City and accounted for separately to ensure they are available for performance of this Agreement.

3. TERMS OF ESCROW:

- 3.1 At closing, upon disbursement of the \$12,015.00 to the City, the City will execute the necessary documents to satisfy the City's lien on the Property.
- 3.2 On or before July 16, 2015, City staff will prepare and submit an agenda item to the City Commission asking the City Commission if it wishes to amend the repayment terms of the Housing Assistance Program policy.
- 3.3 The City agrees to hold the Escrow Funds in escrow until July 17, 2015, pending any action by the City Commission to: 1) amend the repayment terms of the City's Housing Assistance Program, or 2) take any other appropriate action in regards to the Borrower's obligations to repay the Housing Assistance. If the City Commission takes any action to amend the repayment terms of the City's Housing Assistance Program or takes any other appropriate action in regards to the Borrower's obligations to repay the Housing Assistance, the applicable portion of the Escrow Funds, if any, as determined by the City Commission shall be immediately delivered to Borrower and any remaining portion of the Escrow Funds shall remain the property of the City, upon which this Agreement shall terminate.
- 3.4 If by July 17, 2015, the City Commission takes no action that would affect the Borrower's obligations to repay the Housing Assistance, the Escrow Funds shall remain the property of the City, upon which this Agreement shall terminate.

4. WAIVER OF CLAIMS AND RIGHTS TO CHALLENGE OR LITIGATE: Both parties waive any and all claims and rights to challenge or litigate the City's right to the \$12,015.00. Both parties acknowledge that this waiver is supported by consideration, in that the \$12,015.00 will be disbursed to the City upon closing of the Property and the City will execute the necessary documents to satisfy in full the City's lien on the Property. This waiver does not extend to any claims or rights to enforce this Agreement.

5. NON-WAIVER: The failure of either party to exercise any right shall not be considered a waiver of such right in the event of any further default or non-compliance.

6. SOVEREIGN IMMUNITY: Nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28 Florida Statutes.

7. VALIDITY AND SEVERABILITY: If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable law, rules or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, and shall not invalidate the remaining provisions of this Agreement. If any provisions of this agreement shall be declared illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

8. GOVERNING LAW AND VENUE: The Agreement and the legal relations between the Parties hereto shall be governed and construed in accordance with the laws of the State of Florida. In the event of any legal proceedings arising from or related to this Agreement, venue for such proceedings shall be in Alachua County, Florida.

9. ASSIGNMENT OF INTEREST: This Agreement is not assignable.

10. SUCCESSORS: The City and Provider each bind their respective successors in all respects to all of the terms, conditions, covenants, and provisions of this Agreement.

11. CAPTIONS AND SECTION HEADINGS: Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.

12. AMENDMENTS: This Agreement may be modified and amended by mutual agreement of the parties; however, any modification shall only become effective upon a written amendment to this Agreement, duly executed by the duly authorized representative of each Party.

13. THIRD PARTY BENEFICIARIES: This Agreement does not create any relationship with, or any rights in favor of, any third party.

14. CONSTRUCTION: This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement. Both parties acknowledge having received the advice of independent legal counsel prior to entering into this Agreement.

15. ATTACHMENTS: All attachments to this Agreement are incorporated into and made part of this Agreement by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

CITY:


Russ Blackburn, City Manager

Date: 5-14-15

BORROWER:

Print Name: _____

Date: _____

WITNESS:

Signature: Helen Harris
Print Name: Helen Harris

WITNESS:


Signature: Karen E Pruss
Print Name: KAREN E PRUSS

WITNESS:

Signature: _____
Print Name: _____

WITNESS:

Signature: _____
Print Name: _____

APPROVED AS TO FORM AND LEGALITY
By:  Sean M. McDermott
Assistant City Attorney II
City of Gainesville, Florida 5/13/15