

**POLK COUNTY**

**HOME PROGRAM REHABILITATION/RECONSTRUCTION/NEW CONSTRUCTION**

**HOMEOWNER ASSISTANCE AGREEMENT**

**CASE NUMBER: RC22-HOME-003**

**HOMEOWNER: Michael Tyrell**

**PROPERTY ADDRESS: 2970 Warfield Dr., Bartow, FL 33830**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by Polk County, a political subdivision of the State of Florida, and **Michael Tyrell** (hereinafter referred to as the "HOMEOWNER").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING FACTS:

WHEREAS, Polk County has been designated by the United States Department of Housing and Urban Development (HUD) as a participating jurisdiction for the receipt and use of funds as provided by the HOME Investment Partnerships Program ("HOME") as provided in HUD regulations, 24 CFR §92; and,

WHEREAS, Polk County has been designated by HUD as the allocating authority for the HOME funds; and,

WHEREAS, Polk County has agreed to use the HOME funds to assist with the financing of the Rehabilitation/Reconstruction/New Construction of homes that meet the requirements as set forth in HUD regulations, 24 CFR § 92 as amended by HUD, and Polk County's rehabilitation program.

NOW, THEREFORE, Polk County and the HOMEOWNER do mutually agree with the following:

**(1) FORM OF ASSISTANCE**

HOME funds shall be used as a non-amortizing, zero percent (0%) interest rate, Deferred Payment Loan (DPL) in the principal amount of **\$168,500.00** to assist with a Rehabilitation/Reconstruction of an owner-occupied home and a grant agreement in the amount of **\$7,984.20** for construction soft costs.

**(2) USE OF FUNDS**

The HOME funds shall be used to finance Rehabilitation/Reconstruction/New Construction of single-family dwellings

**(3) AFFORDABILITY PERIOD**

The HOME affordability period is **fifteen (15) years**. The affordability period begins from the date of recording the Deferred Mortgage and Security Agreement that is subject to this Agreement.

The HOMEOWNER must occupy the home throughout the duration of the affordability period pursuant to 24 CFR Part 92.254 (a) (4). Failure to comply with the provisions set forth constitutes a default and may result in repayment/ recapture of the loan as referenced in provision (4) below. The affordability period begins the date of recording the deferred Mortgage and Security Agreement.

#### (4) REPAYMENT/RECAPTURE

The HOME loan is a zero percent (0%) interest Deferred Payment Loan and will be required to be repaid from the date of the loan, if one of the following events occurs.

- a) The HOMEOWNER sells, transfers or disposes of the property or home either voluntarily or involuntarily;
- b) The HOMEOWNER fails or ceases to occupy the home as their principal residence;
- c) The HOMEOWNER, or if the HOMEOWNER is married, the survivor of the HOMEOWNER or the HOMEOWNER's spouse dies, and the heir(s) to the property is not a low-income person as defined by program criteria. Polk County Housing and Neighborhood Development ("HND") staff will determine the heir's income eligibility, and if the heir(s) is income eligible, a modification of the loan will be prepared and presented for approval by the Polk County Board of County Commissioners. If the heir is found not to be income eligible, at the option of Polk County, an agreement for repayment may be initiated immediately upon establishment of new ownership; or
- d) The HOMEOWNER refinances the first mortgage loan at which time the remaining principal balance is due and payable to Polk County.
- e) The HOMEOWNER violates any terms of the Mortgage and Security Agreement or Mortgage Note entered into with Polk County.

In the event of a voluntary (sale) or involuntary (foreclosure) transfer of the property during the applicable period of affordability, Polk County will recapture all of the HOME Subsidy funds provided to the HOMEOWNER.

If the net proceeds from a voluntary (sale) or involuntary (foreclosure) sale are insufficient to repay the amount of the HOME subsidy, the County shall recapture the balance due on the loan or 100% of net proceeds from the sale, whichever is less. If there are no net proceeds from the sale, no repayment is required. Net proceeds are defined as the sales price minus superior loan repayment and any closing costs incurred by the HOMEOWNER.

#### 5) PROJECT REQUIREMENT

Polk County and the HOMEOWNER agree to comply with the following project requirements as set forth in HUD regulations, 24 CFR § 92 Subpart F:

- (a) The HOMEOWNER certifies that the property will be his principal residence for the life of this loan and that at the time of application and approval the HOMEOWNER's income, said income did not exceed eighty percent (80%) area median income as determined by HUD with adjustments for family size.

\$37,800.00	County Area Median Income (adjusted for family size)
30%	Percentage (%) AMI Level of HOMEOWNER
\$13,656.00	HOMEOWNER's Annual Income

- (b) The property is located in Polk County and will have after-rehabilitation or reconstruction appraised value equal to or less than ninety-five percent (95%) median sales price of the area in accordance with the Single Family Mortgage Limits under Section 203 (b) of the National Housing Act. Polk County has reviewed the household income and the property value requirements in accordance with HOME Program requirements and has approved this project eligible for funding.

- (c) The HOMEOWNER must maintain the property in good physical condition for the life of the loan. The HOMEOWNER must be current with the payment of property taxes, HOMEOWNER's insurance, homestead exemption, and flood insurance, if applicable. Polk County must be named as an additional insured on all of the HOMEOWNER's insurance policies and a copy of this policy must be provided to Polk County.

**6) HOUSING AND QUALITY STANDARDS**

The property, after Reconstruction/New Construction, must meet Florida Housing's Minimum Rehabilitation Standards, Section 8 Housing Quality Standards (HQS) or the local or Florida Building Code (latest edition), whichever is more stringent. Polk County shall verify the property has met the housing and quality standards as evidenced by an issuance of a Certificate of Occupancy upon final inspection of the property that is the subject of the Rehabilitation/ Reconstruction/New Construction.

**7) OTHER PROGRAM REQUIREMENTS**

The HOME assisted unit must comply with the following, as applicable:

- (a) 24 CFR § 92; The Code of Federal Regulations dealing with Housing and Urban Development's HOME Investment Partnership Programs.
- (b) Lead-based Paint requirements as enumerated in 24 CFR § 92.355, 42 U.S.C.4821 et seq., 24 CFR § 35 and 24 CFR 982.401(j) (except paragraph 982.40 (j)(1)(i), which are adopted and incorporated herein by reference; and
- (c) Flood insurance requirements as enumerated in Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106), which is acknowledged and incorporated herein by reference.

**8) REQUESTS FOR DISBURSEMENT OF FUNDS**

The HOMEOWNER agrees that HOME funds shall only be used for eligible HOME activities. The HOMEOWNER also agrees that any work done by a licensed contractor in performance of this Agreement shall be done pursuant to a written contract, and only after all necessary permits are obtained.

Polk County shall reserve the right, pursuant to Polk County's own procedures, of final approval of all bids submitted from independent contractors relative to performing the rehabilitation and repair of HOMEOWNER's home. The nature of the Rehabilitation/ Reconstruction/New Construction work to be performed by said contractors will be indicated upon a work write-up document; said document being identified in the applicable Reconstruction/New Construction work contract entered into between the HOMEOWNER and any Rehabilitation/ Reconstruction/New Construction contractor. The HOMEOWNER shall select the contractor(s) with Polk County's approval to perform the Rehabilitation/ Reconstruction/New Construction work upon the HOMEOWNER's aforesaid home. Polk County shall in combination with the HOMEOWNER supervise the contractor(s) selected by the HOMEOWNER relative to the Rehabilitation/ Reconstruction/New Construction of the HOMEOWNER's aforesaid home. Polk County and the HOMEOWNER, as provided for in the applicable Rehabilitation/ Reconstruction/New Construction work contract entered into between the OWNER and any Rehabilitation/Reconstruction/New Construction contractor, have the right to terminate or abandon the work contemplated pursuant to such contract.

Polk County shall have the right to enforce the provisions of said work contract by the employment of all legal methods deemed necessary in the judgment of Polk County; including the filing and prosecution of Breach of Contract court claims against applicable

Rehabilitation/Reconstruction/New Construction contractors. If the HOMEOWNER fails to execute and otherwise enter into said Rehabilitation/Reconstruction/New Construction work contract with the said HOMEOWNER selected contractor(s) within five (5) days from receipt of written request by Polk County or its authorized agent, Polk County may, upon written notice to the HOMEOWNER, immediately terminate this Agreement without penalty whatsoever.

The amount of the Rehabilitation/Reconstruction/New Construction Loan and the total amount the HOMEOWNER contracts to pay for the Rehabilitation/ Reconstruction/New Construction contractor(s) shall be determined at the sole judgment and discretion of Polk County. All monies to be used for the benefit of the HOMEOWNER pursuant to the aforesaid Rehabilitation/Reconstruction/ New Construction Loan shall be held by Polk County. All payments coming due to any contractor(s) shall be made by Polk County with written approval of HOMEOWNER pursuant to the terms and provisions of the executed Rehabilitation/Reconstruction/New Construction work contract existing between the HOMEOWNER and the contractor(s).

Upon receipt of the contractor's proper mechanic's lien waiver, if applicable, Polk County shall request a final draw. If there are funds remaining after all work has been completed, inspected and accepted and all soft costs paid in full, Polk County shall adjust the amount of the loan and de-obligate the remaining funds. The HOMEOWNER will receive documentation of outstanding loan balance.

#### **9) ENFORCEMENT OF THE AGREEMENT**

The loan shall be evidenced and secured by a Lien/Promissory Note ("Note") and a Mortgage on the property. Should there exist any prior Mortgage liens against said property, Polk County may elect to insist that said prior Mortgage liens be made inferior to any Mortgage granted by the HOMEOWNER. Failure by the HOMEOWNER to comply with the terms of this Agreement and the Note and Mortgage shall be considered a default and appropriate legal actions shall be taken to enforce the terms and conditions of the Agreement.

#### **10) DURATION OF THE AGREEMENT**

The HOME funds in the amount of \$168,500.00 are provided as a direct HOME Subsidy in the form of a Deferred Payment Loan (DPL) of a 15-year (0%) interest loan. The 15-year affordability period begins from the recording date of the Deferred Mortgage and Security Agreement that is subject to this Agreement. This Agreement will terminate and the total amount of the DPL loan will be forgiven at the end of the 15<sup>th</sup> year as long as the home remains the principal residence of the HOMEOWNER and all other terms of this Agreement, Note and Mortgage are met.

#### **11) OTHER PROVISIONS**

No discrimination against any person or group of persons by the parties on account of race, sex, creed, color, or national origin shall be made in performance of this Agreement.

Nothing contained in this Agreement or any act by the HOMEOWNER shall be deemed or construed by any of the parties hereto, or third persons to create any relationship of third party beneficiary, principal or agent, limited or general partnership, joint venture or any association or relationship involving Polk County.

All notices to the HOMEOWNER, as provided for pursuant to the provisions of this Agreement, shall be deemed received by the HOMEOWNER upon deliverance by U.S. Mail, or otherwise,

or an appropriate written communication to the HOMEOWNER's home address as listed in this Agreement.

The HOMEOWNER shall be responsible for all costs, including reasonable attorney's fees, incurred by Polk county in the enforcement of the provisions of this Agreement, Mortgage, or Note, whether legal suit is brought or not.

The HOMEOWNER will indemnify and hold Polk County harmless together with all of Polk County's employees and designated representatives, from any and all liability, claims, action suits or demands for injuries, death or property damage arising out of or in connection with the Reconstruction/New Construction of the HOMEOWNER's property due to the HOMEOWNER's negligence.

The HOMEOWNER filed application with Polk County dated May 11, 2022, for a Rehabilitation/Reconstruction/New Construction Loan that is incorporated as part of this Agreement, by this reference.

This Agreement shall be binding upon the HOMEOWNER, the estate, personal representatives, heirs and devisees of a deceased HOMEOWNER.

No delay or omission of Polk County to exercise any right or remedy accruing upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any event of default or to constitute acquiescence therein.

The use in this Agreement of the word HOMEOWNER shall apply to the plural as well as the singular.

[SIGNATURES APPEAR FOLLOWING PAGE]

IN WITNESS WHEREOF, the OWNER and COUNTY have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
Michael Tyrell

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Polk County, Florida, a political  
subdivision of the State of Florida

\_\_\_\_\_  
George M. Lindsey III                      Date  
Board of County Commissioners

Attest:  
Stacy M. Butterfield, Clerk

\_\_\_\_\_  
Deputy Clerk

**STATE OF FLORIDA  
COUNTY OF POLK**

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023 by Michael Tyrell, who ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_

My Commission Expires: \_\_\_\_\_