

Georgia Department of Community Affairs
Community HOME Investment Program
HOMEOWNER REHABILITATION ASSISTANCE LOAN AGREEMENT

This Loan Agreement (“Agreement”), entered into this 6th day of December 2018 by and between Mary E. Rivers (“Borrower”), and the City of Dalton (“Program Participant”), located at PO Box 1205, Dalton, GA 30720.

WHEREAS, The State Recipient or Sub-recipient (“Program Participant”) administers the CHIP-funded Homeowner Rehabilitation Assistance Program (“DCA Program”) on behalf of DCA; and,

WHEREAS, Borrower has requested a CHIP improvement loan in the principal amount of \$79,374 (the “Loan”) to finance the rehabilitation of Borrower’s home located at 1007 MLK Jr. Blvd., Dalton, GA 30720 (said improvements are hereinafter collectively referred to as the “Improvements”). Said Improvements are located upon land more particularly described in Exhibit A of the Deed to Secure Debt (“Security Deed”) and incorporated herein by this reference (the “Land”; the Improvements and the Land are sometimes hereinafter collectively referred to as the “Premises”); and,

WHEREAS, pursuant to the Program Participant’s approval of the Loan to Borrower, Borrower and the Program Participant wish to enter into this Agreement in order to set forth the terms and conditions of the Loan;

NOW, THEREFORE, the parties hereto, for and in consideration of their mutual promises, covenants and agreements herein contained, do hereby mutually covenant, agree, consent and warrant as follows:

1. Note: Collateral. Borrower shall sign a real estate note (“Note”) in the total principal sum of \$79,374 with a simple interest rate of zero percent (0%) per annum (the “Note”). The entire principal amount of the Note, together with any accrued and unpaid interest thereon, shall be due and payable as indicated on the Note. The Note shall be secured by a Security Deed granting the Program Participant a security interest in Premises. This Agreement, the Note and the Security Deed are sometimes hereinafter collectively referred to as the “Loan Documents”. In the event that Borrower needs to borrow additional CHIP funds from DCA, as determined by the Program Participant, to complete the rehabilitation to the Premises as set forth in the Contractor’s Proposal, Borrower agrees to execute any and all additional loan documents as are required by the Program Participant.

2. Disbursement of Loan Proceeds. Borrower must make certain that all applicable parts of the Contractor Payment Request (Exhibit A) are completed and that the contractor, the Borrower and the Program Participant have executed the same. A disbursement request must show: (i) the portion of the rehabilitation work completed at that time; (ii) that, except for any amounts designated as

retainage or as claims for work actually in progress or as claims for work for which the particular disbursement request is being requested, all outstanding claims for labor, materials and fixtures have been paid and lien waivers with respect thereto have been obtained from any general contractor; (iii) that there are no liens outstanding against the Premises except the Program Participant's security title, other DCA approved security titles, inchoate liens for property taxes not yet due and inchoate mechanics and materialmen's liens with respect to the amounts described in subparagraph (ii) above; (iv) that Borrower has complied with all of its obligations as of the date thereof; (v) that all rehabilitation prior to the date of the disbursement request has been done substantially in accordance with the Program Participant approved Contractor's Proposal, the CHIP Requirements; (vi) that all funds previously advanced by the Program Participant have been applied directly to the costs for which funds were requested under the applicable disbursement request; (vii) contractor's certification of receipt of any applicable permits, licenses or certificates required under local, state or federal law; and (viii) that all change orders have been approved in writing by DCA to the extent required by DCA.

3. Retainage. The Program Participant can withhold from disbursement up to ten percent (10%) of each amount requested under any one disbursement request until Borrower provides: (i) proof, satisfactory to the Program Participant, that the rehabilitation has been completed in accordance with the Contractor's Proposal, the CHIP Requirements and any DCA requirements; (ii) duplicate original insurance certificates evidencing the types and levels of insurance as set forth below; and (iii) final lien waivers from any general contractor and subcontractors.

4. Lender Check. The Program Participant will disburse the Loan proceeds via a check either made payable to the contractors and materialmen, and others requesting payment from Borrower, or to Borrower alone, or to both Borrower and those persons requesting payment from Borrower.

5. Use of Loan Proceeds. Borrower agrees to use the Loan proceeds solely to rehabilitate the Premises in accordance with the Contractor's Proposal attached hereto as Exhibit B and incorporated herein by this reference ("Contractor's Proposal") and to not use said Loan proceeds for activities, cost or expenses which are not permitted under the CHIP Requirements or under any DCA requirements. Borrower agrees not to use any of the Loan proceeds to finance new construction activities. Further, Borrower agrees to provide the City with an appraisal (or other form acceptable to the Program Participant) of the Premises submitted at time of the application which appraisal would include before and after rehabilitation values of the Premises.

6. Insurance. (a) Program Participant of City of Dalton Title Insurance: Borrower agrees to provide the Program Participant with an original Lender title insurance policy, in an amount, form and substance and written by a title insurance company and through a title agent satisfactory to the Program Participant, and insuring the interest of the Program Participant under the Security Deed, subject only to such liens and encumbrances as are acceptable to the Program Participant. Said insurance policy shall be in an aggregate amount at least equal to the Loan. If a local lender is also providing financing for the rehabilitation of this property, a single Title Insurance Policy insuring both the local lender and DCA is acceptable. (With prior written consent of the Program Participant, Borrower may submit an attorney's certificate of title in lieu of the title insurance policy); (b) All

Risk Hazard Insurance: For so long as the Loan or any portion thereof remains outstanding, Borrower shall have insurance on the Premises for the benefit of Lender, insuring against loss or damage to the Premises by fire, lightning, windstorm, hail, collapse, explosion, malicious mischief, riot, civil commotion, aircraft, vehicles, and smoke and such other hazards as the Program Participant may from time to time require, all in amounts approved by the Program Participant, with loss payable to the Program Participant, without contribution by the Program Participant, pursuant to the New York Standard or other mortgagee claim satisfactory to the Program Participant. The Program Participant reserves the right to require any insurance proceeds from any loss, damage or destruction to the Premises to be used to repay all principal and interest outstanding under the Note;

(c) Flood Insurance: If Borrower's home is located in an area identified by the Federal Emergency Management Agency as having special flood hazards, Borrower agrees to maintain flood insurance insuring the Premises in an amount, form and substance acceptable to the Program Participant.

7. Selection of Contractor from List. Borrower agrees to select a contractor from Program Participant's list of approved contractors to perform the rehabilitation work described on the Contractor's Proposal (Exhibit B). Borrower agrees to execute a written agreement with said contractor and to execute the Addendum to Construction Contract (Exhibit C) which will be provided to Borrower by the Program Participant. Borrower agrees that any and all contractors selected to perform work shall be properly licensed by the State of Georgia to engage in the type of work for which said contractor is hired.

8. Federal Requirements. Borrower shall comply with all regulations governing CHIP.

9. Indemnification. Borrower hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless, the Program Participant, its officers, agents and employees of and from any and all claims, demands, liabilities, losses, costs or expenses caused by, growing out of or happening in connection with the performance of this Agreement, or the rehabilitation of the Premises.

10. Program Participant Not Obligated to Disburse. The Program Participant shall not be obligated to disburse Loan proceeds: (a) With respect to hard costs, in excess of the lesser of actual costs incurred by the Borrower or an amount corresponding to the percentage of the completion of the improvements; (b) If an Event of Default as described below shall have occurred and not been cured; or if there exists any event or state of facts which constitutes or, with notice and the passage of time (or both) would constitute an Event of Default under this Agreement or any of the Loan Documents (the Program Participant may regardless of whether a default remains unremedied or uncured, make any advance permitted under the terms of this Agreement without thereby waiving the Program Participant's rights, remedies and powers with respect to any such Event of Default and without thereby becoming liable to make any other or more further advances hereunder); (c) If the Premises shall have been damaged by fire or other casualty; (d) If in the reasonable judgment and opinion of the Program Participant the estimated remaining cost of rehabilitation of the improvements (including any allowable soft costs) exceed the total of: (i) the remaining portion of the Loan, plus (ii) the remaining portion of any other funds committed to the rehabilitation of the Improvements; (e) If condemnation proceedings or similar types or proceedings are commenced

with respect to all or a material portion of the Premises; (f) If in the reasonable judgment and opinion of the Program Participant, Borrower or the Premises shall have failed to satisfy or is in violation of any requirement set forth in the CHIP Requirements; or (g) If the Program Participant has not received the original filed and recorded Security Deed or its lender title insurance policy.

11. Inspections. For so long as the Loan, or any portion thereof remains outstanding, Borrower agrees to permit the Program Participant or its representatives and agents to enter upon the Premises upon reasonable notice and to inspect the Improvements and all materials to be used in the rehabilitation thereof and to cooperate and cause all contractors to cooperate with the Program Participant and its representatives and agents during such inspections; provided, however, that this provision shall not be deemed to impose upon the Program Participant any obligation to undertake such inspections or any liability for the failure to detect or the failure to act with respect to any defect which was or might have been disclosed by such inspections.

12. Application. Borrower warrants that the representations, statements and other matters contained in the CHIP-funded Homeowner Rehabilitation Assistance Program Application and all its attachments were true and complete in all material respects as of the date of filing. Borrower is aware of no event which would require any amendment to the Application (other than an amendment which has been filed with and approved by Lender) which would make such representations, statements and other matters true and complete in all material respects and not misleading in any material respect. Borrower is aware of no event or other fact which should have been, and has not been, reported in the Application as material information.

13. Conflicts of Interest. Borrower warrants and represents that no member, employee, officer, agent, consultant, or official of Recipient, nor any member of their immediate family has any interest, direct or indirect, in this Agreement or any proceeds or benefits arising therefrom.

14. Debarment and Suspension. Borrower warrants and represents that it is not presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from participation in this transaction or the DCA Program by any federal department or agency.

15. Survival of Representations and Warranties. All representations and warranties made under this Agreement shall be deemed to be made, and shall be true and correct, at and as of the date hereof. All representations and warranties made under this Agreement shall survive the execution hereof.

16. Event of Default. Occurrence of one or more of the following events will at the sole discretion of the Program Participant constitute an event of default ("Event of Default") under this Agreement: (a) Borrower shall use CHIP Funds for any purpose other than as authorized in this Agreement, or the CHIP requirements; or (b) Borrower shall default in the payment, when due, of any principal of or interest on the Note; or (c) Any warranty or representation in this Agreement shall be found to be false or materially misleading; or (d) Borrower shall default in the performance of any covenant, condition or agreement of this Agreement and such non-monetary default shall not

be cured within thirty (30) days from the City's written notice; or (e) Borrower shall be adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy shall be filed against it and it shall admit the material allegations thereof, or an order, judgment or decree shall be entered approving such petition and such order, judgment or decree shall not be vacated or stayed within thirty (30) days of its entry or a receiver or trustee shall be appointed for Borrower or the Premises or any part thereof and remain in possession thereof for thirty (30) days; or (f) any Event of Default shall occur under the Security Deed or the Loan Documents; or (g) Borrower shall fail to occupy the Premises as Borrower's principal residence; or (h) Borrower shall default in the performance of any covenant contained in any loan, note, security deed or agreement relating to the Premises which Borrower may have with any other lender; or (i) Borrower shall fail to provide: (i) proof, satisfactory to the Program Participant, that the rehabilitation has been completed in accordance with the Contractor's Proposal, the CHIP Requirements and any DCA requirements; (ii) duplicate original insurance certificates evidencing the types and levels of insurance as set forth herein; and (iii) final lien waivers from any general contractor and subcontractors.

17. Remedies. Upon occurrence of an Event of Default, the Program Participant may, in its sole discretion: (i) immediately suspend or terminate this Agreement and deny Borrower any future disbursements under this Agreement; (ii) declare the Note immediately due and payable and institute proceedings for its collection, including but not limited to all costs of collection, securing or attempting to collect or secure this Note, including reasonable attorneys' fees, whether the same is collected or secured by suit or otherwise, providing the collection of such costs and fees is permitted by applicable law; (iii) exercise any and all rights under the Security Deed, including but not limited to foreclosure; and (iv) take any and all action in law, equity or otherwise which it deems necessary or advisable. The rights and remedies of Lender shall be cumulative. Any election of any right or remedy will not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy. The rights and remedies available to the Program Participant in the event of a suspension or termination of this Agreement will survive such suspension or termination.

18. Calculation of Cure Period. The time period to cure a default shall be calculated from: (i) the postmark date stamped on the written notice of default, if sent by registered or certified mail; (ii) the date of actual receipt, if delivered personally; or (iii) the date of actual receipt or refusal of delivery, if sent by registered courier or delivery service.

19. Written Notices; Date Received. All notices and other communications required or permitted under this Agreement shall be in writing and, if mailed by prepaid first-class mail or certified mail, return receipt requested, at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the earlier of the date shown on the receipt or three (3) Business Days after the postmarked date thereof and, if telecopied, shall be followed forthwith by letter and shall be deemed to have been received on the next Business Day following dispatch and acknowledgment of receipt by the recipient's telecopy machine. In addition, notices hereunder may be delivered by hand or overnight courier, in which event the notice shall be deemed effective when delivered. All notices and other communications under this Agreement shall be given to the parties at the addresses indicated on the first page.

20. Change of Address. Any party hereto may change the address to which notices shall be directed under this Agreement by giving ten (10) Business Days' written notice of such change to the other parties.
21. Entire Agreement. This Agreement constitutes the entire agreement among and between the parties. There are no representations, oral or otherwise, other than those expressly set forth herein. No modification of this Agreement shall be binding unless both parties have executed a written amendment to this Agreement.
22. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the respective parties and their successors and assigns.
23. Invalid Provisions. In the event that any part or portion of this Agreement is, for any reason, set aside or found to be unlawful, those lawful parts or portions remaining shall continue in full force and effect.
24. Governing Law/Judicial Interpretation. Except to the extent superseded by federal law, the parties expressly agree that the laws of the State of Georgia shall control in all instances involving the interpretation and validity of the within Agreement. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same. The parties hereby agree that the agents of each have participated in the preparation hereof.
25. Further Actions. Each party agrees to perform any and all further acts and to execute and deliver any and all additional documents which may be reasonably necessary to carry out the terms of this Agreement.
26. Assignment. No right, benefit or advantage inuring to Borrower under this Agreement and no obligation imposed on the Borrower hereunder may be assigned without the prior written approval of Lender.
27. Effective Date. This Agreement shall be effective on the date executed by the Program Participant as indicated below.
28. No Agency or Partnership or Joint Venture. The Program Participant is not an agent or representative of Borrower and Borrower is not an agent or representative of the Program Participant. Borrower shall be solely responsible for procuring and providing all personnel, facilities and services necessary to perform any and all obligations under this Agreement, the CHIP requirements. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between the Borrower and the Program Participant.

29. No Waiver. No failure or delay on the part of the Program Participant to exercise any right, power or privilege hereunder shall operate as a waiver of any such right, power or privilege hereunder. No failure or delay on the part of the Program Participant to exercise any single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise of any right, power or privilege hereunder.

30. Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year indicated below.

Executed this 6th day of
December 2018 by:

Executed this 6th day of
December 2018 by:

Mary E. Rivers

Program Participant

Mary E. Rivers
Signature of Grantee

By: Dennis Mock

Title: Mayor

Attest:

Name:

Title:

Shonda Gullett
Shonda Gullett
Grant Administration

Attest:

Name:

Title:

Jay Okafor
Jay Okafor
contractor