

**GRANT AND SUBROGATION AGREEMENT  
(REHABILITATION)**

**THIS GRANT AGREEMENT** (the "Grant Agreement") made between **THE CITY OF NEW YORK** (the "City"), acting by and through the **MAYOR'S OFFICE OF HOUSING RECOVERY OPERATIONS ("HRO")**, and

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Owner Name(s)

("Owner"; if more than one Owner, the word "Owner" shall be read as if written in the plural),

the owner(s) of the property with the address:

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Property Address

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City, State, ZIP

(the "Property").

**WHEREAS**, in 2013, the federal government appropriated funds for disaster assistance to the City; and

**WHEREAS**, the Department of Housing and Urban Development ("HUD") Community Development Block Grant Disaster Relief ("CDBG-DR") Program is distributing a portion of the appropriated funds subject to compliance with federal law; and

**WHEREAS**, in order to aid residents impacted by Hurricane Sandy with CDBG-DR and other federal funds, the City established the NYC Build it Back Program (the "Program"), to rehabilitate private one- to four-family homes that have been destroyed or damaged by Hurricane Sandy; and

**WHEREAS**, the Property was damaged by Hurricane Sandy; and

**WHEREAS**, the Owner applied for benefits of the Program to rehabilitate the Property and, in the Program application, provided information about family income, tenants, and funds received for rehabilitation from other sources (e.g., insurance proceeds) that the City relied on in awarding a grant and aid to the Owner; and

**WHEREAS**, the Owner signed an agreement with a contractor participating in the Program (the "Contractor") for the rehabilitation of the Property (referred to as the "Tri-Party Agreement" or the "Home Improvement Contract"); and

**WHEREAS**, subject to the execution of this Grant Agreement and the City-procured Job Order Contract ("JOC") or Choose-Your-Own-Contractor Terms<sup>1</sup> agreed to by the Contractor, as applicable, the City agreed to pay an amount to the Contractor for the rehabilitation of the

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<sup>1</sup> The JOC contract and Choose-Your-Own-Contractor Terms are available in hard copy upon request and on-line at: <http://www.nyc.gov/html/recovery/html/jobs/contractors.shtml>.

Property, which includes an amount of \$ \_\_\_\_\_ (“Owner Contribution”) which the Owner has paid to the City prior to the execution of this Grant Agreement; and

**WHEREAS**, if applicable, the Owner paid to the City \$ \_\_\_\_\_ for upgrades, pursuant to Article V(1) of the Home Improvement Contract (the “Upgrade Amount”) prior to the execution of this Grant Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the City and the Owner (together, “the Parties”) hereby enter into this Grant Agreement, and agree as follows:

1. **Term.** This Grant Agreement begins upon the first date signed by the Owner and ends one year from Final Acceptance<sup>2</sup> of the work performed pursuant to a JOC contract or the Choose-Your-Own-Contractor Terms, as applicable, unless terminated sooner by the City or Homeowner as provided below.
2. **Grant Amount.** Subject to the terms and conditions accepted by the Contractor, the City will pay to the Contractor the Construction Amount, for the benefit of the Owner, to rehabilitate the Property as stated in the Home Improvement Contract or Tri-Party Agreement. The “Construction Amount” means the contract value stated in the Home Improvement Contract or Tri-Party Agreement, as applicable, plus any Upgrade Amount, plus or minus the value of Change Orders or Supplemental Job Orders. The “Construction Grant Amount” means the Construction Amount minus the Owner Contribution and any Upgrade Amount. The Construction Grant Amount is currently estimated to be \$ \_\_\_\_\_ (“Estimated Construction Grant Amount”). The City shall communicate the actual Construction Grant Amount to the Owner within 30 days of Final Acceptance.
3. **Additional Aid from the City.** The City shall provide to the Owner aid in addition to the Grant Amount, that includes, but is not limited to: (i) an assessment of the damage to the Property that is eligible for HUD funding; (ii) a scope of work prepared by a licensed architect or engineer, excluding work that is not eligible for reimbursement (e.g., a new porch); (iii) inspections by HRO staff and/or agents; and (iv) any necessary authorizations for change orders and supplemental work orders. In addition, if the Owner chose the City-selected contractor option, the City shall procure the Contractor, pay for bonuses to the Contractor if required by the JOC contract, and provide project management services.
4. **Owner Contribution and Upgrade Amount.** (a) The City shall hold the Owner Contribution in escrow and shall pay the Owner Contribution to the Contractor for satisfactory work pursuant to the JOC contract or Choose-Your-Own Contractor Terms. The City shall use the Owner Contribution to pay the Contractor before using funds from the CDBG-DR Program. (b) If applicable, the City shall hold the Upgrade Amount in escrow and shall pay the Upgrade Amount to the Contractor for satisfactory upgrades pursuant to the Choose-Your-Own-Contractor Terms.

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<sup>2</sup> The term “Final Acceptance” used throughout this Grant Agreement is defined in the JOC contract or Choose-Your-Own-Contractor Terms, as applicable. It occurs when the City (or its inspector) determines that the rehabilitation work covered by the Home Improvement Contract or Tri-Party Agreement is complete.

5. **Owner Certifications.** The Owner certifies the following:
  - a. The Owner provided true and accurate information on Program documents and to Program staff and has not misrepresented Owner's eligibility for the Build it Back Program and/or work under the Tri-Party Agreement or Home Improvement Contract, as applicable;
  - b. The Owner notified his/her/their Homeowner's Insurance Company about the rehabilitation work covered by this Grant Agreement if the Property is insured;
  - c. The Owner (including an undersigned representative of the Owner, if any) has full power, authority, and legal right to execute this Grant Agreement; and
  - d. The Owner will obtain flood insurance for the Property upon project completion if required by the Flood Disaster Act of 1973.
  
6. **Owner Requirements.** The Owner acknowledges that the City is paying the Construction Grant Amount and providing additional aid subject to the following requirements:
  - a. The Owner shall comply with the terms of the Home Improvement Agreement or Tri-Party Agreement and/or any other Program agreements, as applicable, and shall cooperate with the City and its agents (including its engineers, architects, and inspectors) and the Contractor (for example, Owner may not refuse to sign required construction permit applications). The Owner shall report problems concerning the City's agents, the Contractor and/or its subcontractors to HRO at the following email address: BiBRepair@recovery.nyc.gov or telephone number: (212) 615-8329.
  - b. The Owner shall comply with a Relocation Agreement with tenants, if such agreement is required by the City.
  - c. If the Property contains units that house Low-to-Moderate Income ("LMI") households<sup>3</sup> as of the date the Grant Agreement is first signed by the Owner the Owner shall, at a minimum, maintain the same number of units that house LMI households at the same rent levels through Final Acceptance; the Owner shall use best efforts to obtain documentation of tenants' household income as of the date of Final Acceptance and provide such documentation to the City within 14 days of a request by the City.
  - d. The Owner shall provide documentation of household income for all occupied dwelling units as of the date of Final Acceptance within 14 days of a request by the City.
  - e. The Owner shall maintain flood insurance on the Property if the Property is located within a 100-year floodplain or Special Flood Hazard Area designated by the Federal Emergency Management Agency ("FEMA") , commencing within 30 days of Final Acceptance. The Owner shall obtain flood insurance in force in an amount at

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<sup>3</sup> An "LMI household" means a household with income lower than 80% of the Area Median Income as defined by HUD. For fiscal year 2014, an "LMI household" is: (a) a one-member household with income of \$47,000 or less; or (b) a two-member household with income of \$53,700 or less; or (c) a three-member household with income of \$60,400 or less; or (d) a four-member household with income of \$67,100 or less; or (e) a five-member household with income of \$72,500 or less; or (f) a six-member household with income of \$77,850 or less; or (g) a seven-member household with income of \$83,250 or less; or (h) a eight-member household with income of \$88,600 or less.

least equal to the amount of the of the Construction Grant Amount (in addition to any coverage required by any other grant agreement with the City or any other Federal requirements placed on the property by virtue of accepting assistance from FEMA, SBA or any other Federal agency, including, but not limited to, a grant agreement for reimbursement related to the Property) or to the maximum limit of coverage made available, whichever is less.

7. **Default.** The Owner will be in default of this Grant Agreement if the Owner made a false certification in Paragraph 5, above, or fails to comply with the requirements in Paragraph 6 above. Before HRO may exercise the right to declare the Owner in default, HRO shall give the Owner an opportunity to be heard upon not less than five calendar days written notice that sets forth the grounds for declaring a default. HRO's decision shall be binding. Upon declaring a default, at its discretion, HRO may take any or all of the following actions:
- (a) terminate this Grant Agreement and/or the Home Improvement Contract or Tri-Party Agreement, as applicable;
  - (b) stop work on the Property or direct the Contractor to stop work on the Property, either temporarily or permanently;
  - (c) issue a change order or supplemental work order on the Home Improvement Contract or Tri-Party Agreement;
  - (d) demand reimbursement for all or a portion of the Construction Grant Amount that was paid and/or is due to the Contractor for work completed;
  - (e) require reimbursement for the cost of additional aid;
  - (f) require reimbursement for reasonable attorney's fees and/or collection costs;
  - (g) require forfeiture of the Owner Contribution and/or Upgrade Amount that was paid and/or is due to the Contractor for work completed;
  - (h) waive, forgive, and/or provide an opportunity to cure the default; and/or
  - (i) sue Owner for damages or injunctive or equitable relief.
8. **Restriction on Sale.** (a) During the Term, which includes one year following Final Acceptance, the Owner shall not sell or otherwise transfer any ownership interest in the Property without written permission of the City. This restriction will not apply to:
- i. a transfer between Owners, in which the transferee agrees to be bound by this Grant Agreement;
  - ii. a transfer from an Owner and a member of the same Owner's family, in which the transferee agrees to be bound by this Grant Agreement;
  - iii. the transfer by devise or operation of law upon the death of the Owner; or
  - iv. a court-ordered transfer.
- (b) If the Owner violates the restriction in Paragraph 8(a), the Owner or its successors, assigns, heirs, and grantees shall pay to the City an amount equal to 20 (twenty) percent of the Construction Grant Amount or the Estimated Construction Grant Amount, whichever is less.

9. **Flood Insurance.** (a) If the Owner is required to maintain flood insurance pursuant to the federal flood Disaster Act of 1973 (42 U.S.C. §§ 4100 *et seq.*), the requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property. Owner understands and acknowledges that failure to maintain required flood insurance shall result in ineligibility for any further federal disaster relief of any kind, including but not limited to CDBG-DR program assistance.

(b) Owner further certifies that upon transfer of the Property, Owner will, on or before the date of such transfer, and as part of the documents evidencing such transfer, notify all transferees in writing of transferees' continuing obligation to maintain required flood insurance in force on the Property. Owner understands and acknowledges that if Owner fails to provide such notice of required flood insurance to all transferees, and 1) no transferee subsequently maintains required flood insurance, 2) a Presidentially-declared flood disaster damages the Property, and 3) one or more transferees receives federal disaster relief of any kind to repair, replace or restore the Property as a result of such flood, Owner may be required to reimburse the full amount of such disaster relief to the federal agency that provided it to transferees, pursuant to federal law.

10. **Termination by the Owner.** (a) The Owner may terminate and cancel this Grant Agreement for convenience upon five days written notice to HRO before the Contractor commences work.

(b) The Owner may terminate the Tri-Party Agreement or Home Improvement Contract, as applicable, for convenience pursuant to the termination provisions in such agreements. The Owner shall reimburse the City for the portion of the Construction Grant Amount that was paid and/or is due to the Contractor for work completed through the date when termination is effective. Owner shall not be entitled to the return of all or a portion of the Owner Contribution and/or the Upgrade Amount, if applicable, that was paid and/or is due to Contractor for work completed through the date when termination is effective. The City shall return any unexpended portion of the Owner Contribution and/or the Upgrade Amount within 90 days. No further program benefits will be provided to the Owner.

11. **Changes.** Changes may be made to this Grant Agreement only by an amendment in writing signed by the Director of HRO and the Owner.

12. **Non-Waiver by the City.** No waiver of any breach or default shall constitute or be construed as a waiver by the City of any subsequent breach or default or of any breach or default of any other provision.

13. **Binding Nature of Grant Agreement.** This Grant Agreement shall be recorded against the Property in the Office of the City Register for the county in which the Property is located.

14. **Expiration.** Except as otherwise provided, upon the expiration of the Term, this Grant Agreement shall become null and void and of no further force and effect and HRO shall execute and deliver to Owner any document in recordable form requested by Owner to

reflect the expiration of this Grant Agreement, without prejudice to HRO's rights to enforce this Agreement with respect to any defaults or violations which occurred prior to the expiration of the Term.

15. **Choice of Law and Venue.** This Grant Agreement shall be governed by and construed in accordance with the laws of the State of New York and the laws of the United States, where applicable. The Owner agrees that any and all claims asserted by or against the City, its agents, and/or the Contractor arising under or relating to this Grant Agreement shall be solely heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York.

16. **Subrogation and Assignment.**

a. **Assignment Relating to Funds Received under CDBG-Disaster Recovery Program.**

- i. In consideration of Owner's receipt of program benefits and/or the commitment by City to provide benefits to the Owner under the Program,
- ii. Owner hereby assigns to the City all of Owner's rights to future payments and all payments previously received under any policy of casualty or property damage insurance (the "Policies"), and/or any and all compensation by virtue of any settlement, offer, or judgment against a third-party tortfeasor for the same property loss that was provided for through the Program and/or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency ("FEMA") or the Small Business Administration ("SBA"), and/or under any reimbursement or relief program administered by any other organization (singularly, a "Disaster Program" and collectively, the "Disaster Programs") that are the basis of the calculation of Owner's award to be paid to or on behalf of the Owner under the Program using CDBG-DR funds (the "Award") and that are determined in the sole discretion of the City to be a duplication of benefits ("DOB") as provided in this Agreement.
- iii. The proceeds or payments referred to in the preceding subparagraph, whether they are from insurance, FEMA or the SBA, or any other source, shall be referred to herein as "Proceeds," and any Proceeds that are a DOB shall be referred to herein as "DOB Proceeds." Upon receiving any Proceeds not previously disclosed to the City, Owner agrees to immediately notify the City of such additional amounts, and the City will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the the City, to be retained and/or disbursed as provided in this Agreement.

**b. Cooperation and Further Documentation.**

- i. Owner agrees to assist and cooperate with the City should the City elect to pursue, or participate in Owner's pursuit of, any of the claims Owner has against the insurers for reimbursement of DOB Proceeds under any such policies. Owner's assistance and cooperation shall include but shall not be limited to: allowing suit to be brought in Owner's name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing records and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by the City. Owner further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Owner would be entitled to under any applicable Disaster Program.
- ii. If requested by the City, Owner agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the City, to the extent of the Award, the Policies, any amounts received under the Disaster Programs that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the City to consummate and make effective the purposes of this Agreement.

**c. Authorization for City to Contact Third Parties.**

- i. Owner explicitly allows the City to request of any company or entity with which the Owner held Policies, or FEMA, or the SBA, or any other entity from which Owner has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the City to monitor and/or enforce its interest in the rights assigned to it under this Agreement and gives Owner's consent to such company or entity to release said information to the City.

**d. Agreement to Turn over Proceeds; Future Reassignment.**

- i. If Owner (or any lender to which DOB Proceeds are payable, to the extent permitted by superior loan documents) has received or hereafter receives any DOB Proceeds, Owner agrees to promptly pay such amounts to the City, if Owner received an Award under the Program in an amount greater than the amount Owner would have received if such DOB Proceeds had been considered in the calculation of Owner's award.
- ii. In the event that the Owner received, receives or is scheduled to receive any Proceeds not previously disclosed to the City ("Subsequent Proceeds"), Owner shall notify the City of such Subsequent Proceeds, and the City will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent DOB Proceeds shall be disbursed as follows:

- (a) If the Award has been fully expended by the City, any Subsequent DOB Proceeds shall be paid by Owner to the City up to the amount of the Award.
  - (b) If no portion of the Award has been expended by the City, any Subsequent DOB Proceeds shall be paid by Owner to the City and used to reduce the Award. If the application of the Subsequent DOB Proceeds would reduce the Award to zero, all Subsequent DOB Proceeds and any funds previously paid by the Owner to the City shall be returned to the Owner, and this Agreement shall terminate.
  - (c) If some portion of the Award has been expended by the City, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (1) Subsequent DOB Proceeds shall first be paid by Owner to the City to reduce the unexpended portion of the Award; (2) if the application of the Subsequent DOB Proceeds would reduce the unexpended Award to zero, any remaining Subsequent DOB Proceeds shall be applied to expended portion of the Award and retained by the City; (3) if the application of the Subsequent DOB Proceeds reduces both the unexpended and the expended portions of the Award to zero, any remaining Subsequent DOB Proceeds shall be returned to the Owner, and this Agreement shall terminate.
  - (d) If the City makes the determination that the Owner does not qualify to participate in the Program or the Owner determines not to participate in the Program, the Subsequent DOB Proceeds and any funds previously paid by the Owner to the City that have not been used or obligated by the Program shall be returned to the Owner, and this Agreement shall terminate.
- iii. Once the City has recovered an amount equal to the Award, the City will reassign to Owner any rights assigned to the City pursuant to this Agreement.

**17. False or Misleading Statements.**

- a. **NOTICE:** Owner is hereby notified that intentionally or knowingly making a materially false or misleading written statement relating to the Program could result in ineligibility for benefits, action to recover any Program benefits paid to or on behalf of Owner, and/or a referral to criminal law enforcement.
- b. Owner represents that all statements and representations made by Owner regarding Proceeds received by Owner have been and shall be true and correct.

- c. Owner hereby represents that he\she has received, read, and understands this notice of penalties for making a materially false or misleading written statement to obtain Program benefits.
- d. In any proceeding to enforce this Agreement, the City shall be entitled to recover all costs of enforcement, including actual attorney's fees.

We, the undersigned Parties, hereby accept all above terms and conditions.

OWNER

(Additional OWNER)

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(Additional OWNER)

(Additional OWNER)

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

THE CITY OF NEW YORK,  
acting by and through its  
Mayor's Office of Housing Recovery Operations

\_\_\_\_\_

Date: \_\_\_\_\_

State of New York     )  
                                          ) ss.:  
County of . . . . . )

On the . . . . . day of . . . . . in the year . . . . . before me, the undersigned, personally appeared . . . . ., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

State of New York     )  
                                          ) ss.:  
County of . . . . . )

On the . . . . . day of . . . . . in the year . . . . . before me, the undersigned, personally appeared . . . . ., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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 capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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State of New York     )  
                                          ) ss.:  
County of . . . . . )

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Notary Public

State of New York     )  
                                          ) ss.:  
County of . . . . .     )

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\_\_\_\_\_  
Notary Public