



**Housing Trust Fund Corporation
NY Rising Housing Recovery Program**

SUBROGATION AND ASSIGNMENT AGREEMENT

This Subrogation and Assignment Agreement (“Agreement”) is made this ____ day of _____, 20____, by _____ (name), with the address of _____ (street, city, county, state) (“Homeowner”).

1. Subrogation and Assignment Relating to Funds Received under the Housing Trust Fund Corporation Program.

(a) Homeowner enters this Agreement in consideration of the evaluation by the Housing Trust Fund Corporation (“HTFC”) of its application (the “Application”) for disaster assistance funds, monies, or other benefits (“Benefits”) or its receipt of Benefits under the HTFC NY Rising Housing Recovery Program (“Program”).

(b) Homeowner acknowledges that the Program is subject to the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. §§ 5121-5207, (the “Stafford Act”). Under the Stafford Act, Homeowner may receive assistance only to the extent that it has a disaster recovery need that is not fully met by insurance or other disaster assistance. Homeowner further acknowledges that this Agreement is intended to ensure that it does not receive Benefits that duplicate benefits available for the same purposes from another source. Homeowner promises to reimburse HTFC for the full amount of any Benefits that Homeowner previously received, subsequently receives, or (or with reasonable effort would be) eligible to receive for the same purposes for which the Benefits are awarded.

(c) Homeowner subrogates and assigns to HTFC all of its future rights to reimbursement and all payments or proceeds determined to be a Duplication of Benefits (“DOB”), as provided in this Agreement. This includes payments or proceeds received from any grant, subsidized loan, insurance policies of any type or coverage, or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency (“FEMA”) or the Small Business Administration (“SBA”) (each, singularly, a “Disaster Program” and, collectively, the “Disaster Programs”) to the extent such payments and/or proceeds, in the sole discretion of HTFC or its designated agent, constitute a DOB. Payments and proceeds referred to in this paragraph, regardless of DOB or source, shall hereafter be referred to as “Proceeds,” and any Proceeds that are a DOB shall hereafter be referred to as “DOB Proceeds.”

(d) Homeowner agrees to immediately notify HTFC upon receiving any Proceeds not previously disclosed in connection with their Application. HTFC will thereafter determine, in its

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sole discretion, whether any or all such Proceeds constitute DOB Proceeds. Homeowner must pay all DOB Proceeds to HTFC, as provided in Section 3 of this Agreement.

2. **Cooperation and Further Documentation.**

(a) Homeowner agrees to assist and cooperate with HTFC, if HTFC pursues any claims for reimbursement Homeowner has, or may have, against insurers. Homeowner's assistance and cooperation includes, but is not limited to allowing suit to be brought in Homeowner'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 HTFC reasonably requests. Homeowner also agrees to assist and cooperate with HTFC to attain and collect any DOB Proceeds available to Homeowner under any applicable Disaster Program.

(b) Homeowner agrees to execute additional documents and instruments upon HTFC request to further and better subrogate and assign to HTFC (to the extent of Program Benefits Homeowner received) any amounts received under the Disaster Programs that are DOB Proceeds and any rights thereunder. Homeowner further agrees to take all actions and to do all things requested by ~~the~~ HTFC to make this agreement effective.

(c) Homeowner expressly authorizes each of its insurers; any entity to which Homeowner applied for storm recovery assistance or from which it received, is now receiving, or is eligible to receive disaster recovery benefits, including FEMA, SBA, and any other entity, to release upon HTFC request, any nonpublic or confidential information the HTFC finds useful to effect the rights subrogated and assigned by Homeowner.

3. **Agreement to Turn Over Proceeds; Future Reassignment.**

(a) If Homeowner receives any Proceeds, or any notice that he/she is scheduled to receive Proceeds, and such Proceeds have not been previously disclosed in connection with its Application ("Subsequent Proceeds"), Homeowner must immediately notify HTFC and provide HTFC with copies of any communications concerning the Subsequent Proceeds.

(b) Upon receipt of such notice from Homeowner, HTFC will determine the amount of the Subsequent Proceeds that constitute DOB Proceeds (the "Subsequent DOB Amount") and thereafter provide Homeowner with notice of its determination (the "DOB Notice"). Upon receipt of any such DOB Notice, Homeowner hereby ~~covenants and~~ agrees to proceed as follows:

- (i) If Homeowner has received all of the Subsequent Proceeds, Homeowner must surrender the Subsequent DOB Amount to HTFC, within three (3) business days of Homeowner's receipt of its DOB Notice.

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- (ii) If Homeowner has received only part of the Subsequent Proceeds, but more than the Subsequent DOB Amount identified in the DOB Notice, then Homeowner shall surrender the Subsequent DOB Amount to HTFC, within three (3) business days of Homeowner's receipt of its DOB Notice.
- (iii) If Homeowner has received part of the Subsequent Proceeds, but less than the Subsequent DOB Amount, Homeowner shall surrender to HTFC all of the Subsequent Proceeds it has received, within three (3) business days of Homeowner's receipt of its DOB Notice. Upon Homeowner's receipt of any further Subsequent Proceeds, Homeowner shall, within three (3) business days, surrender to HTFC the outstanding balance of the Subsequent DOB Amount.
- (iv) If Homeowner has not yet received any Subsequent Proceeds, Homeowner shall notify HTFC of this fact, within three (3) business days of Homeowner's receipt of its DOB Notice. Thereafter, Homeowner shall notify HTFC within three (3) business days of its receipt of any or all of the Subsequent Proceeds and proceed as instructed by HTFC.

4. **Miscellaneous.**

(a) Homeowner represents that all of its statements and representations are true and correct as of the date of ~~closing the award under this Program~~this Agreement.

(b) In any proceeding to enforce this Agreement, HTFC shall be entitled to recover all costs of enforcement, including actual attorney's fees.

(c) Homeowner waives the right to have any judicial proceeding arising out of this Agreement tried by a jury.

(d) This Agreement may be modified only by written amendment signed by Homeowner and agreed to by HTFC.

(e) Homeowner makes this Agreement in and under the jurisdiction of the state of New York. Homeowner agrees that any action must be brought in the State of New York and adjudicated pursuant to New York law and any applicable federal law without giving effect to conflict of law provisions.

(f) The captions in this Agreement are for convenience only, are not a part of this Agreement and expressly do not modify, explain, enlarge, or restrict any provision of this Agreement.

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By executing this Agreement, Homeowner acknowledges and understands that Section 189 of the New York State Finance Law: (1) makes it a violation of state law to knowingly present or cause to be presented to any employee, officer or agent of the State of New York (including any division or public benefit corporation) (a) a false or fraudulent claim for payment or approval; or (b) to use or cause to be made or use a false record or statement to get a false or fraudulent claim paid or approved by the State of New York. Persons who violate this Section may be liable for a civil penalty of not less than \$6,000 and not more than \$12,000, plus three times the amount of all damages, including consequential damages, sustained because of their action as well as costs incurred to recover any such penalties or damages.

IN WITNESS WHEREOF, Homeowner has caused this Agreement to be duly executed as of the day and year first above written.

Homeowner(s):

By: _____ By: _____
 Printed Name: _____ Printed Name: _____
 Title: _____ Title: _____
 Date: _____ Date: _____

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