



Office of Long-Term Resiliency

Recapture Policy Manual

Version 2.1

March 22, 2024

VERSION HISTORY

Version Number	Change Date	Summary of Change
1.0	7/19/2022	Original Document
2.0	3/30/2023	<p>Updated formatting in 1.0 Acronyms and Definitions, and made the following changes:</p> <ul style="list-style-type: none"> • Added Definition of “Homeowner Grant Agreement” • Updated definition of Low-to-Moderate Income Resident/Person/Individual • Updated definition of National Flood Insurance Program (NFIP) <p>Updated 3.0 Recapture Circumstances with the following:</p> <ul style="list-style-type: none"> • Item 1, Duplication of Benefits: added clarifying language regarding the timeline of assistance that would count as a DOB. • Item 2, Ineligibility: clarified existing language and changed “DEO” to “CDBG-DR” • Item 3, Program Non-Compliance: updated language for clarity and accuracy • Item 5, Voluntary Withdrawals: updated language to clarify at what point awarded funds are subject to recapture following withdrawal • Updated language and reference in the paragraph following the numbered list. <p>Updated language under 4.1.1 File Reconciliation to include the options for potential recapture.</p> <p>Updated language under 4.2.1 File Reconciliation to expand upon when DEO’s OLTR Contract Team performs reconciliation of files for all recipients.</p> <p>Added section 4.2 Subrecipient Administered Programs</p> <p>Added clarifying language under 5.1 Applicability.</p> <p>Updated Appendix A: HRRP Recapture Letter and Appendix C: HRRP Subrogation Agreement to specify their applicability specifically to HRRP</p> <p>Added Subrecipient Recapture Letter and Subrecipient Subrogation Agreement to Appendices</p> <p>Updated the term “applicant” to “recipient” throughout the document.</p> <p>Inserted page breaks between sections and made minor formatting changes throughout for consistency with other program documents.</p>
2.1	3/22/2024	<p>As of July 1, 2023, and per Florida HB 5, ch. 2023-173, L.O.F. the former Florida Department of Economic Opportunity has been renamed the Florida Department of Commerce, referred to as “FloridaCommerce.” To reflect this change, all references to the former Florida Department of Economic Opportunity (including “the Department” and “DEO”) have been updated to represent FloridaCommerce.</p> <p>Formatting and branding updated to reflect new agency branding.</p> <p>Updated Version History numbering to better reflect the</p>

Office of Long-Term Resiliency Recapture Policy Manual

		substantiality of the changes made in the March 30, 2023 edits (now Version 2.0).

VERSION POLICY

Version history is tracked in the table above, with notes regarding version changes. The dates of each publication are also tracked in this table.

Substantive changes in this document that reflect a policy change will result in the issuance of a new version of the document. For example, a substantive policy change after the issuance of Version 1.0 would result in the issuance of Version 2.0, an increase in the primary version number. Non-substantive changes such as minor wording and editing or clarification of existing policy that do not affect interpretation or applicability of the policy will be included in minor version updates denoted by a sequential number increase behind the primary version number (i.e., Version 2.1, Version 2.2, etc.).

POLICY CHANGE CONTROL

Policy review and changes for the State of Florida Office of Long-Term Resiliency are considered through a change- control process. Policy clarifications, additions, or deletions are needed during the course of the program to more precisely define the rules by which the Program will operate. Program staff will document policy-change requests that will be tracked in the program files. Requests are compiled and brought before supervisory staff in a policy meeting. Subject matter experts working in a particular policy area or task area that will be affected by the policy decision may be invited to assist in policy evaluation, if necessary. Policy meetings will be held as frequently as is necessary to consider policy decisions critical to moving the Program forward in a timely manner. Policy decisions will be documented and will result in the revision of the document in question.

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1.0 Acronyms and Definitions

Action Plan – Community Development Block Grant-Disaster Recovery Action Plan for Disaster Recovery provides the high-level strategy to carry out strategic and high-impact activities to minimize or eliminate risks and reduce losses from future disasters. The Action Plan also describes the opportunity to improve state and local planning protocols and procedures.

Applicant – Any entity that submits a response to the request for applications for potential funding through the Community Development Block Grant-Disaster Recovery Program.

Community Development Block Grant (CDBG) – Supports community development activities to build stronger and more resilient communities. To support community development, activities are identified through an ongoing process. Activities may address needs such as infrastructure, economic development projects, public facilities installation, community centers, housing rehabilitation, public services, clearance/acquisition, microenterprise assistance, code enforcement, homeowner assistance, etc.

Duplication of Benefits (DOB) – When a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose within the same time period, and the total assistance received for that purpose is more than the total need for assistance.

Federal Emergency Management Agency (FEMA) – An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

Homeowner Grant Agreement – Written agreement between FloridaCommerce and an awarded applicant detailing the grant award, award calculation and any requirements placed on the applicant in order to participate in the HRRP. The Homeowner Grant Agreement must be executed by the applicant prior to the commencement of construction.

Increased Cost of Compliance (ICC) – Structures damaged by a flood may be required to meet certain building requirements, such as elevation or demolition, to reduce the risk of future flood damage before the structure can be repaired or rebuilt. To help cover these costs, the National Flood Insurance Program includes Increased Cost of Compliance coverage for all new and renewed Standard Flood Insurance Policies. Increased Cost of Compliance is a potential source of Duplication of Benefits, as a supplement to an existing National Flood Insurance Program policy. Policy holders are only eligible to receive Increased Cost of Compliance payment if a Substantial Damage Letter has been issued by the local floodplain manager.

Low-to-Moderate Income (LMI) Resident/Person/Individual – A person whose annual income does not exceed 80 percent of the median income for the area as most recently determined by the U.S. Department of Housing and Urban Development.

National Flood Insurance Program (NFIP) – Created by Congress in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. The Federal Emergency Management Agency manages the NFIP.

- NFIP Zone A refers to those applicants within the 100-year flood zone.
- NFIP Zone V refers to those applicants within the 100-year flood zone with velocity (coastal storm surge risk).
- NFIP Zone X refers to those applicants outside of the 100-year flood zone.

Office of Long-Term Resiliency (OLTR) – The Florida Department of Commerce's office dedicated to the administration of Community Development Block Grant-Disaster Recovery and Community Development Block Grant-Mitigation funded programs and activities.

Recipient – An individual or entity that executed a Homeowner Grant Agreement and/or has received assistance or benefits from the Rebuild Florida Program (Program benefits).

Reconciliation Case Agent – The person assigned to assist the recipient in the Recapture process. This person is different than their Program Case Manager.

Recapture of Funds – The process in which benefits or funds were found to be duplicated or overpaid to recipients for any reason, thus requiring repayment of partial or full CDBG-DR awarded funds amount.

Repayment – The identified amount of duplicated funds identified during the recapture process a recipient would need to remit.

Small Business Administration (SBA) – SBA's Office of Disaster Assistance (ODA) provides affordable, timely and accessible financial assistance to applicants, recipients, renters, and businesses. SBA provides low-interest, long-term loans which are the primary form of federal assistance for the repair and rebuilding of non-farm, private sector disaster losses.

Subrogation Agreement – A signed agreement requiring program beneficiaries to repay any assistance received but not calculated or reported in the CDBG-DR awarded funds and address any potential duplication of benefits . Each agreement requires the following statement: "Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729."

2.0 Introduction

The Office of Long-Term Resiliency (OLTR) will make every effort to ensure that all Florida Department of Commerce's (FloridaCommerce) grants are awarded and disbursed in accordance with the State of Florida Action Plan and subsequent amendments, the grant agreement executed by and between the State of Florida and the Department of Housing and Urban Development (HUD), and applicable state and federal regulations. Recipients were awarded funding pursuant to policies and procedures outlined by the specific program from which funding was sought. However, situations may arise where a recipient needs to return all or part of the awarded funding to the respective program. This document sets forth the policies that will guide the FL FloridaCommerce Recapture Program in its efforts to recapture funds that have been overpaid to recipients for any reason.

2.1 Regulatory Framework

Community Development Block Grant (CDBG) regulations (24 CFR 570.502) governing grant administration and Office of Management and Budget (OMB) cost principles [2 CFR 200.403 (a)] require that payment of Community Development Block Grant-Disaster Recovery (CDBG-DR) funds to beneficiaries be necessary and reasonable; and prohibit beneficiaries from retaining excess funds not used for eligible, approved costs. The provision of CDBG-DR funds in excess of what is needed for immediate use is also prohibited [2 CFR 200.305 (b) (1)].

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), as amended, (the "Stafford Act"), and Federal Register Notice, Vol. 76, No. 221, Wednesday, November 16, 2011, provides that CDBG-DR funding may only be provided to the extent that it does not duplicate funding provided to a beneficiary for the same purpose. Common examples of duplicative funding include, but are not limited to:

1. Payments under the National Flood Insurance Program (NFIP);
2. Payments from private insurance;
3. Funding from the United States Federal Emergency Management Agency (FEMA);
4. Small Business Administration (SBA) loans; or
5. Charitable donations or work performed by not-for-profit organizations.

2.2 Recapture Calculation

The Recapture Calculation is the amount of Program allowable cost that was incurred by the contractor prior to the recipient either withdrawing from the Program or becoming non-compliant with program requirements.

3.0 Recapture Circumstances

FloridaCommerce awards are based on a variety of factors. Below are the most common circumstances that may result in a revision to an award, which then may require repayment from a recipient:

1. Duplication of Benefits (DOB): Per the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5207), if a recipient received additional benefits (FEMA, NFIP, SBA, ICC, private insurance, assistance from nonprofit, or other disaster assistance) subsequent to execution of a Subrecipient Grant Agreement or Homeowner Grant Agreement (HGA), that are duplicative of CDBG-DR or CDBG-MIT funds awarded in the Subrecipient Grant Agreement or HGA, the recipient’s award will receive a negative award adjustment to reflect the duplication in benefits and the recipient must repay the difference.
2. Ineligibility: Federal law, program policies, and program procedures set forth mandatory eligibility requirements to receive CDBG-DR funds. Any point in time after program eligibility is determined, eligibility criteria (ownership, occupancy, etc.) need to be maintained in program perpetuity to remain eligible. If at any point during the lifetime of the program it is determined that the recipient is ineligible, the recipient will be required to repay any assistance received from that program.
3. Program Non-Compliance: Each FloridaCommerce program has guidelines set forth in the programs’ policy manuals, and guidelines set forth in the grant agreements signed by recipients. If any recipient fails to comply with these guidelines or grant agreements, the recipient must repay the funds. For example, failure to submit mandatory documentation or to allow for mandatory inspections or access to the property, may result in the requirement to repay the full award or funds expended by the Housing Repair and Replacement Program (HRRP) for the recipient.
4. Awards from Multiple Programs: Recipients cannot receive awards from different FloridaCommerce programs for the same scope of work, or for inconsistent programmatic purposes. An example of receiving funds for inconsistent programmatic purposes is a circumstance in which a recipient receives funds for repairing their home and decides not to conduct any repairs, but instead sells the home through FloridaCommerce’s Voluntary Home Buyout Program. In such circumstances, the recipient must return funds for the repair of the home since the recipient did not conduct the repair. Please note: Interim Mortgage Assistance is considered part of the Single-Family Homeowner Program and it is handled in Recapture as one recipient in one program.
5. Voluntary Withdrawals: Recipients may decide to withdraw from the FloridaCommerce Program. For the HRRP program, if any recipient withdraws after the Subrogation Agreement has been executed, the recipient is required to repay any funds the contractor has expended prior to Program withdrawal. If a subrecipient withdraws after the Subrogation Agreement has been executed, the subrecipient is required to repay all expended funds prior to the Program closing the grant. A recipient can withdraw from the program at any time. However, once the Subrecipient Agreement or Homeowner Grant Agreement has been executed and the recipient is moved into “Withdrawn” status, any funds expended up to the Withdrawn date are subject to recapture.
6. Fraud: Recipients who receive awards based upon fraudulent information must repay these funds to the program. These cases will also be referred to the appropriate agencies for investigation.

Any of these circumstances, or a combination of these circumstances, may require FloridaCommerce to recapture some or all of its grant award. Duplication of Benefits are addressed in the Subrogation Agreement (See Appendix C: Subrogation Agreements).

4.0 The Reconciliation Phase: File Reconciliation and Recapture Letter

4.1 Housing Repair and Replacement Program

4.1.1 File Reconciliation

Prior to issuance of a Recapture Letter, FloridaCommerce's OLTR Contracts Team will perform a full and complete reconciliation of the files for all recipients who have been identified as having a potential recapture, either due to overpayment of DOB funds, program ineligibility post Eligibility review, voluntary withdrawal, program non-compliance, fraud, or multiple award. Once the Contracts Team has determined and documented the amount and basis for repayment a Recapture Letter will be prepared.

4.1.2 Recapture Letter

The Recapture Letter will be sent via certified mail to the current mailing address of the recipients on file. The letter will also be sent electronically to the email(s) in the recipient's file. The letter will contain the Program's procedures for repaying the funds, as well as a 30-day requirement to remit funds identified for recapture to the Rebuild Florida program. It is ultimately FloridaCommerce's responsibility to ensure any recaptured funds are documented and repaid. A sample letter is attached in HRRP Recapture [Letter](#).

4.2 Subrecipient Administered Programs

4.2.1 File Reconciliation

Prior to issuance of a Recapture Letter, the applicable subrecipient program staff will perform a full and complete reconciliation of the files for all recipients who have been identified as having made a fraudulent claim, being non-compliance with the program, having voluntarily withdrawn from the program, or having received a potential overpayment or a DOB (e.g., having been awarded through multiple CDBG-DR or CDBG-MIT programs). Once the program staff has determined and documented the amount and basis for repayment a Recapture Letter will be prepared.

4.2.2 Recapture Letter

The Recapture Letter will be sent via certified mail to the current mailing address of the recipients on file. The letter will also be sent electronically to the email(s) in the recipient's file. The letter will contain the Program's procedures for repaying the funds, as well as a 30-day requirement to remit funds identified for recapture to the program. It is ultimately FloridaCommerce's responsibility to ensure any recaptured funds are documented and repaid. A sample letter is attached in Subrecipient Recapture Letter.

5.0 Recaptured Funds

All funds recovered as a result of this policy will be tracked and returned to the state's CDBG-DR account or U.S. Treasury in the event that the CDBG-DR Grant has been closed out. Each received payment will be filed into the Florida Information Accounting Resource (FLAIR) via a Remittance Advice Form, as appended to this policy (Appendix B: Remittance Advice Form). FloridaCommerce is responsible for ensuring its internal system for debt collection is adequate to effectively collect amounts due, and to comply with State of Florida law and HUD requirements.

5.1 Applicability

This policy shall apply to all CDBG-DR funds managed by OLTR or any of its beneficiaries under all OLTR programs. Per HUD, FloridaCommerce is required to and responsible for the management of the Recapture process. FloridaCommerce must issue to each awarded recipient of program assistance a subrogation agreement along with the recipient's grant agreement. FloridaCommerce must track any necessary repayments. This process will be documented within the system of record to ensure compliance with applicable program requirements.

Appendix A: Recapture Letter

HRRP Recapture Letter



RebuildFlorida.gov
844-833-1010

[Date]

[Applicant Name]
[Mailing Address]
[City, State Zip]

Dear [First Name],

You are receiving this notification because the Rebuild Florida Housing Repair and Replacement Program (HRRP) has determined there is a change in total benefits received for Hurricane Irma, you were not in compliance with the Rebuild Florida Program and wouldn't allow work to complete, or there is an additional mitigating circumstance in which remittance of funds to the Program are necessitated. Rebuild Florida's Recapture Policy states any duplicative funding or funding expended for non-compliance must be remitted to or accounted for by the Program, regardless of when it is received. When you executed your grant agreement, you agreed to Rebuild Florida's subrogation terms and stipulations as outlined in the Subrogation agreement executed on [DATE].

This is your notice that you are now in recapture with Rebuild Florida. Your total recapture amount is [\$amount]. You have 30 days from the date of this letter to remit the funding to Rebuild Florida. Failure to account for the duplicative assistance will result in Rebuild Florida pursuing repayment of all disbursed funds. Funds can be issued in the form of a money order or cashier's check made payable to the below:

By Mail:
Rebuild Florida Reconciliation Unit
FL DEO Finance and Administration Program
107 E Madison Street
Tallahassee, FL 32399

The Rebuild Florida Team



Florida Department of Economic Opportunity | Caldwell
Building | 107 E. Madison Street | Tallahassee, FL 32399
www.FloridaJobs.org
www.twitter.com/FLDEO
www.facebook.com/FLDEO



An equal opportunity employer/program. Auxiliary aids and service are available upon request to Individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.

Subrecipient Recapture Letter

Ron DeSantis
GOVERNOR



Meredith Ivey
ACTING SECRETARY

[Date]

[Subrecipient Name]

[Mailing Address]

[City, State, Zip]

Dear [First Name],

You are receiving this notification because the Rebuild Florida [Insert Program Name (Abbr.)] has determined there is a change in total benefits received for [Insert Disaster], you were not in compliance with the Rebuild Florida Program, or there is an additional mitigating circumstance in which remittance of funds to the Program are necessitated. Rebuild Florida's Recapture Policy states any [Insert Recapture Circumstance(s)] or funding expended for non-compliance must be remitted to or accounted for by the Program, regardless of when it is received. When you executed your grant agreement, you agreed to Rebuild Florida's subrogation terms and stipulations as outlined in the Subrogation agreement executed on [Date].

This is your notice that you are now in recapture with Rebuild Florida. Your total recapture amount is [Samount]. You have 30 days from the date of this letter to remit the funding to Rebuild Florida. Failure to account for the [Insert Recapture Circumstance(s)] will result in Rebuild Florida pursuing repayment of all disbursed funds. Funds can be issued in the form of a money order or cashier's check made payable to the below:

By Mail:
Rebuild Florida Reconciliation Unit
FL DEO Finance and Administration Program
107 E. Madison Street
Tallahassee, FL 32399

Respectfully,

Office of Long-Term Resiliency
Bureau of Business Economy Recovery

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
(850) 245.7105 | www.FloridaJobs.org | [www.Twitter.com/FLDEO](https://twitter.com/FLDEO) | www.Facebook.com/FLDEO

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Appendix B: Remittance Advice Form



Ron DeSantis GOVERNOR
J. Alex Kelly SECRETARY

Remittance Advice		INVOICE (check#):	
Recipient Name:		DESCRIPTION:	
Street Address:		AMOUNT:	
Address 2:		FLAIR INFORMATION	
City, State:		ORG:	40-32-00-00-000
ZIP Code:		EO/VR:	KQ/03
		OBJECT:	001800
		FUND/BE:	20-2-261006 / 40300200
		GRANT:	DRH18
REMITTANCE		PAYMENT ADDRESS	
NOTE: Duplication of benefits received by recipient		Bureau of Financial Management	
		MSC#85	
		107 E Madison Street	
		Tallahassee, FL 32399-4124	
FloridaCommerce Contact:			
NAME:	Lemuel Toro, Revenue Program Administrator		
PHONE #:	(850) 245-7359		
EMAIL :	lemuel.toro@Commerce.fl.gov		

Caldwell Building | 107 E. Madison Street Tallahassee, FL 32399
850.245.7105 | www.FloridaJobs.org | [Twitter: @FLACommerce](https://twitter.com/FLACommerce)

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.

Appendix C: Subrogation Agreements

HRRP Subrogation Agreement

REBUILD FLORIDA HOUSING REPAIR OR REPLACEMENT SUBROGATION AGREEMENT

In consideration of the receipt by the undersigned Recipient(s) of the Grant Amount under the Rebuild Florida Housing Repair and Replacement Program (the "Program") being administered by the Florida Department of Economic Opportunity ("DEO"), the Recipient(s) hereby assigns to DEO all of his and/or her future rights to reimbursement and all payments which may be received, or have been previously received and not disclosed to DEO, under any Federal Emergency Management Agency ("FEMA") program, Small Business Administration ("SBA") program, policy of flood, casualty or property damage insurance, nonprofit donations or grants, or any other funding, or from claims or causes of action Recipient may have ("Proceeds" or "Duplication of Benefits") related to physical damage to the Damaged Property (not including contents) caused by Hurricane Irma that have not previously been included in the calculation of the Grant Amount. (Capitalized terms shall have the meanings given to them in the Grant Agreement(s) governing the Grant Amount executed by Recipient(s) on the same day as this Subrogation Agreement ("Agreement").

The DEO's rights under this Agreement regarding Proceeds shall be subject to the following:

- A. If Proceeds are received by the Recipient(s) between the date of this Agreement and the date of the first disbursement of the Grant Amount, then DEO shall re-calculate the Grant Amount by including such as a Duplication of Benefits in the grant calculation, and DEO may reduce the Grant Amount and require that, within the period of time identified pursuant to the Grant Agreement, the Recipient(s) deposit such Proceeds into the Homeowner DOB Gap Funding Account maintained by the Program.
- B. If Proceeds are received by the Recipient after the date of the first disbursement of the Grant Amount, but before the final disbursement, then the Recipient(s) must repay DEO the difference between (i) the total amount of Program disbursements as of the date the Proceeds were received, and (ii) the total Grant Amount that would have been made if such Proceeds had been included in DEO's original Grant Amount calculation.
- C. If Proceeds are received by the Recipient after the date of the final disbursement of the Grant Amount, then the Recipient(s) must turn over to DEO the total amount of the Proceeds up to, but not exceeding, the Grant Amount.

Notwithstanding the foregoing, if Proceeds are received while the Recipient(s) are in default under the Grant Agreement, then DEO can recover the amount of Proceeds up to the Grant Amount disbursed.

Recipient(s) agree to assist and cooperate with DEO should DEO elect to pursue any of the claims the Recipient has or may have against any insurers for reimbursement under any policies insuring the Damaged Property or against others for physical damage to the Damaged Property. The Recipient(s) assistance and cooperation shall include allowing suit to be brought in the name(s) of the Recipient(s), giving depositions, providing documents, producing records and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by DEO.

If requested by DEO, the Recipient(s) agree to execute such further and additional documents and instruments as may be requested to further and better assign to DEO the Proceeds or any insurance policies and/or any rights thereunder as contemplated by this Agreement, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by DEO to consummate and make effective the purposes of this Agreement.

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

Recipient(s) agrees that any lawyer or claims adjuster representing the Recipient(s) in connection with Damaged Home are authorized and instructed to communicate with DEO regarding the nature and status of claims and to share information with DEO relating to the claims. The lawyer and claims professional shall protect the interest of the State in any proceeds resulting from the claim upon receipt of notice of this subrogation.

If the Recipient(s) (or any lender holding a lien on the Damaged Property) hereafter receive any Proceeds for physical damage to the Damaged Home (not including contents), the Recipient(s) agree to promptly pay such Proceeds, or an equivalent amount of funds, to DEO in accordance with the terms of this Agreement.

The Recipient(s) acknowledge that this Agreement does not impair the rights of the Recipient(s) mortgage lender as loss-payee under any deed of trust or mortgage on the Damaged Property.

If DEO has recovered an amount equal to the Award, the DEO will reassign to Recipient any rights assigned to the DEO pursuant to this Agreement.

In any proceeding to enforce this Agreement, DEO shall be entitled to recover all costs of enforcement, including actual attorneys' fees.

Signature

Date

Signature

Date

Subrecipient Subrogation Agreement

State of Florida

Department of Commerce

Federally Funded

Community Development Block Grant

Disaster Recovery (CDBG-DR) Subrogation Agreement

This Subrogation and Assignment Agreement (“Agreement”) is made and entered by and between *[insert Subrecipient name]* (hereinafter referred to as “Subrecipient”) and the State of Florida, Department of Commerce (hereinafter referred to as “FloridaCommerce”).

In consideration of Subrecipient’s receipt of funds or the commitment by FloridaCommerce to evaluate Subrecipient’s application for the receipt of funds (collectively, the “Grant Proceeds”) under the FloridaCommerce Community Development Block Grant-Disaster Recovery Program (the “CDBG-DR Program”) administered by FloridaCommerce, Subrecipient hereby assigns to FloridaCommerce all of Subrecipient’s future rights to reimbursement and all payments received from any grant, subsidized loan, lawsuit or 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”) (singularly, a “Disaster Program” and collectively, the “Disaster Programs”) that was the basis of the calculation of Grant Proceeds paid or to be paid to Subrecipient under the CDBG-DR Program and that are determined in the sole discretion of FloridaCommerce to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, FEMA or the SBA or any other source, and whether or not such amounts are a DOB, 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, Subrecipient agrees to immediately notify FloridaCommerce who 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 FloridaCommerce, to be retained and/or disbursed as provided in this Agreement. The amount of DOB determined to be paid to FloridaCommerce shall not exceed the amount received from the CDBG-DR Program.

Subrecipient agrees to assist and cooperate with FloridaCommerce to pursue any of the claims Subrecipient has against the insurers for reimbursement of DOB Proceeds under any such policies. Subrecipient’s assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Subrecipient’s name(s) and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by FloridaCommerce. Subrecipient further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that Subrecipient would be entitled to under any applicable Disaster Program.

If requested by FloridaCommerce, Subrecipient agrees to execute such further and additional documents and instruments as may be requested to further and better assign to FloridaCommerce, to the extent of the Grant Proceeds paid to Subrecipient under the CDBG-DR Program, 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 FloridaCommerce to consummate and make effective the purposes of this Agreement.

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

If Subrecipient (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Subrecipient agrees to promptly pay such amounts to FloridaCommerce, if Subrecipient received Grant Proceeds under the CDBG-DR Program in an amount greater than the amount Subrecipient would have received if such DOB Proceeds had been considered in the calculation of Subrecipient's award.

In the event that Subrecipient receives or is scheduled to receive any subsequent Proceeds, Subrecipient shall pay such subsequent Proceeds directly to FloridaCommerce, and FloridaCommerce will determine the amount, if any, of such subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to Subrecipient. Subsequent DOB Proceeds shall be disbursed as follows:

1. If Subrecipient has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by FloridaCommerce.
2. If Subrecipient has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by FloridaCommerce to reduce payments of the Grant Proceeds to Subrecipient, and all Subsequent DOB Proceeds shall be returned to Subrecipient.
3. If Subrecipient has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to Subrecipient; and (B) any remaining Subsequent DOB Proceeds shall be retained by FloridaCommerce.
4. If FloridaCommerce makes the determination that Subrecipient does not qualify to participate in the CDBG-DR Program or Subrecipient determines not to participate in the CDBG-DR Program, the Subsequent DOB Proceeds shall be returned to Subrecipient, and this Agreement shall terminate.

Once FloridaCommerce has recovered an amount equal to the Grant Proceeds paid to Subrecipient, FloridaCommerce will reassign to Subrecipient any rights assigned to FloridaCommerce pursuant to this Agreement.

Subrecipient represents that all statements and representations made by Subrecipient regarding Proceeds received by Subrecipient shall be true and correct as of the date of the signing of this Agreement.

Warning: Any person who intentionally or knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

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Office of Long-Term Resiliency Recapture Policy Manual

The person executing this Agreement on behalf of Subrecipient hereby represents that he\she has received, read, and understands this notice of penalties for making a false claim or statement regarding Proceeds received by Subrecipient.

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

INSERT SUBRECIPIENT NAME

DEPARTMENT OF COMMERCE

By

Signature

Insert Authorizing Official Name

Title

Insert Authorizing Official Title

Date

By

Signature

Title

Date
