

APPENDIX D SUBROGATION AGREEMENT

SUBROGATION AGREEMENT

This Subrogation and Assignment Agreement ("Agreement") is made and entered into on this ____day ____ of _____, 20____, by and between _____ ("Business") and the *[insert name of administrative entity]* ("Grantor/Lender").

In consideration of Business' receipt of funds or the commitment by Grantor/Lender to evaluate Business' application for the receipt of funds (collectively, the "Grant/Loan Proceeds") under the *[insert name of administrative entity]* Business Relocation Assistance Program (the "Program") administered by Grantor/Lender, Business hereby assigns to Grantor/Lender all of Business' future rights to reimbursement and all payments received from any grant, subsidized loan, 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 *[insert name of relevant disaster recovery related program]* to the extent of Grant/Loan Proceeds paid or to be paid to Business under the Program and that are determined in the sole discretion of *[insert name of administrative entity]* 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 not listed on the Duplication of Benefits Affidavit Business agrees to immediately notify the Grantor/Lender who will notify *[insert name of administrative entity]* of such additional amounts, and *[insert name of administrative entity]* 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 Grantor/Lender, to be retained and/or disbursed as provided in this Agreement.

Business agrees to assist and cooperate with the Grantor/Lender elect to pursue any of the claims Business has against the insurers for reimbursement of DOB Proceeds under any such policies. Business' assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Business' 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 the Grantor/Lender. Business further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Business would be entitled to under any applicable Disaster Program.

If requested by the Grantor/Lender, Business agrees to execute such further and additional documents and instruments as may be requested to further and better assign to the Grantor/Lender, to the extent of the Grant/Loan Proceeds paid to Business under the 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 the Grantor/Lender to consummate and make effective the purposes of this Agreement.

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

If Business (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, Business agrees to promptly pay such amounts to the Grantor/Lender, if Business received Grant/Loan Proceeds under the Program in an amount greater than the amount Business would have received if such DOB Proceeds had been considered in the calculation of Business' award.

In the event that the Business receives or is scheduled to receive any Proceeds not listed on its Duplication of Benefits Affidavit ("Subsequent Proceeds"), Business shall pay such Subsequent Proceeds directly to the Grantor/Lender, and IDED 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 the Business. Subsequent DOB Proceeds shall be disbursed as follows:

1. If the Business has received full payment of the Grant/Loan Proceeds, any Subsequent DOB Proceeds shall be retained by the Grantor/Lender and remitted to IDED.
2. If the Business has received no payment of the Grant/Loan Proceeds, any Subsequent DOB Proceeds shall be used by the Grantor/Lender to reduce payments of the Grant/Loan Proceeds to the Business, and all Subsequent DOB Proceeds shall be returned to the Business.
3. If the Business has received a portion of the Grant/Loan 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/Loan Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to the Business; and (B) any remaining Subsequent DOB Proceeds shall be retained by the Grantor/Lender and remitted to IDED.
4. If the Grantor/Lender makes the determination that the Business does not qualify to participate in the Program or the Business determines not to participate in the Program, the Subsequent DOB Proceeds shall be returned to the Business, and this Agreement shall terminate.

Once the Grantor/Lender has recovered an amount equal to the Grant/Loan Proceeds paid to Business, the Grantor/Lender will reassign to Business any rights assigned to the Grantor/Lender pursuant to this Agreement.

Business represents that all statements and representations made by Business regarding Proceeds received by Business shall be true and correct as of the date of Closing.

NOTICE: Business and the person executing this Agreement on behalf of the Business are hereby notified that intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of *[insert applicable law/regulation]* and, depending upon the amount of the Grant/Loan Proceeds, is punishable by *[insert potential terms of violation]*.

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The person executing this Agreement on behalf of the Business 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 the Grant/Loan Proceeds.

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

BUSINESS

[insert business name]

By: _____

Name: _____

Title: _____

GRANTOR/LENDER:

[insert name of administrative entity]

By: _____

Name: _____

Title: _____