



REBUILD NC HOMEOWNER GRANT AGREEMENT
(Rehabilitation)

THIS AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 20__, by _____ (“Participant(s)/Homeowner(s)”), in consideration for the grant offered by the North Carolina Department of Public Safety, Office of Recovery and Resiliency (“NCORR”). The undersigned makes the following representations, covenants, promises, and agreements in favor of NCORR and in consideration of the award of grant funds as more fully set forth below (the “Agreement”). By signing this Agreement, the undersigned agree(s) to the terms and conditions as stated herein.

SECTION 1: HOMEOWNER INFORMATION	
Homeowner	Co-Homeowner
Name:	Name:
Damaged Home Address:	
Mailing Address (if different from Physical Address):	Mailing Address (if different from Physical Address):
SECTION 2: IMPLEMENTING AGENCY	
Name: North Carolina Office of Recovery and Resiliency	
Mailing Address: PO Box 110465, Durham, NC 27709	
SECTION 3: GRANT INFORMATION	
Grant Amount:	Application Number:
Grant Signing Date:	Program Type: State-Managed Rehabilitation
Disbursement of Funds: The proceeds of the Grant will be disbursed by NCORR to the Contractor and/or their designees to complete the Rehabilitation of Homeowner’s property in accordance with the scope of work agreed upon by NCORR, the Homeowner(s), and the Contractor and/or their designees, and any NCORR approved Change Order(s). Subsequent Change Orders must be approved by NCORR prior to initiating additional work. All approved change orders will be incorporated into a final amended Grant Agreement to be signed by the Homeowner(s) prior to program closeout.	

RECITALS

WHEREAS, Hurricane Matthew made landfall on the coast of North Carolina on October 8, 2016, leading to the declaration of fifty counties in the State as federal disaster areas and significantly impacting residents of central and eastern North Carolina; and

WHEREAS, Hurricane Florence made landfall on the coast of North Carolina on September 14, 2018, leading to the declaration of fifty-two counties in the State as federal disaster areas and significantly impacting residents of central and eastern North Carolina; and

WHEREAS, the Participant(s) owned and occupied the property located at the damaged home address listed above (the “Damaged Property”) as his/her/their primary residence at the time of the October 8, 2016 disaster or the time of the September 14, 2018 disaster; and

WHEREAS, the Damaged Property was damaged by the October 8, 2016 disaster and/or the September 14, 2018 disaster; and

WHEREAS, the United States Department of Housing and Urban Development (“HUD”) has allocated Community Development Block Grant Disaster Recovery (“CDBG-DR”) Program funds to the State of North Carolina through its Department of Commerce (“DOC”) under the Continuing Appropriations Act of 2017 (Public Law 114-254) for the purpose of assisting in the recovery efforts necessitated by the devastation caused by Hurricane Matthew in effected counties; and

WHEREAS, on January 2, 2019, the North Carolina General Assembly passed the Disaster Recovery Act of 2018 (S.L. 2018-136) creating NCORR, which assumed from NCEM the duty of managing the State’s CDBG-DR program; and

WHEREAS, on June 14, 2019, HUD allocated CDBG-DR funds to NCORR making the agency the new grantee and responsible entity for disaster recovery; and

WHEREAS, NCORR is the Grantee for the State of North Carolina (the “State”) and will make assistance, including CDBG-DR funds for Homeowner Recovery, Small Rental Repair, Multi-Family Rental Housing, Strategic Buyout, Supportive Housing and Services, Public Housing Restoration, Economic Development, Infrastructure, Resiliency, Public Facilities and Community Recovery available to the Counties, its citizens, federally recognized tribes and other entities in accordance with the State’s Approved Action Plan and Amendments; and

WHEREAS, the Participant(s) applied for assistance from the CDBG-DR Homeowner Recovery Program (the “Program”). In the Program application, the Participant(s) provided among other things, information regarding household income, demographics, and funds received for disaster relief assistance from other sources (e.g., insurance, the Federal Emergency Management Agency (“FEMA”), the Small Business Administration (“SBA”), non-profits, etc.) that NCORR has relied on in determining the Participant’s eligibility for, and the amount of, Program assistance to be awarded; and

WHEREAS, funding for this Project is provided pursuant to HUD’s CDBG-DR Homeowner Recovery Program that is being implemented by NCORR. Participant(s) are not

required to pay fees or provide any type of payment to any contractors or other third parties in order to participate in this Program, except for any escrow payments that the State may require as outlined below; and

WHEREAS, subject to the execution of this Grant Agreement, the terms and conditions set forth herein, the continuing availability of Program funding and all Program policies and procedures which are incorporated herein by reference, the Participant(s) shall be eligible to receive the Award (as defined below) in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the Grant Award, and other good and valuable consideration, the receipt and sufficiency of which the Participant(s) hereby acknowledge, the Participant(s) make the following continuing representations, agreements, and promises:

Participants/Homeowners receiving disaster assistance that requires flood insurance to be purchased and maintained have the responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing. Participants/Homeowners must maintain such written notification in the documents evidencing the transfer of the property, and the transferring owner may be liable if he or she fails to do so.

Initials Required

- 1) **Term.** This Grant Agreement, except for provisions set forth below that expressly survive the termination thereof, shall begin on the effective date and terminate upon NCORR's receipt and approval of all closeout documentation. Before closeout, the damaged property must be rehabilitated, pass final inspection meeting Program requirements, damaged property or debris must be removed from the Project site, and all other closeout paperwork must be submitted to NCORR for approval.
- 2) **Award Amount.** NCORR has offered a Grant (the "Award") (see Exhibit A "*Award Calculation Table*") for rehabilitation of the damaged home, pursuant to the Program policies and procedures. This amount was determined based on the information the Participant(s) provided in the Program application, in accordance with Program policies and procedures and all applicable federal, state and local rules and regulations governing the Program. The Participant(s) understand that the scope may be modified by approved Change Orders not contemplated on the effective date of this Agreement. Any changes to the Grant amount will be addressed in an amendment to this Agreement .

[IF ESCROW REQUIRED] Owner tendered to NCORR a cashier's check or money order in the amount of \$ _____ to pay for part of the construction.

- 3) **Award Calculation.** Participant(s) have selected and been deemed eligible for assistance for rehabilitation from the CDBG-DR Program. NCORR will manage the assistance Participant(s) receive from the Program. Based on the information provided by the Participant(s) and reviewed by NCORR and/or its contractor, the Participant(s) are eligible for the Award to pay an authorized Contractor for the rehabilitation services deemed necessary by Program inspectors to

bring the property in alignment with U.S. Department of Housing and Urban Development Housing Quality Standards. The necessary rehabilitation is based on a Scope of Work determined by a damage inspection made by the Program and using economy/standard grade building materials determined by industry software prices and not the price of replacing the damaged property or its components with like or similar materials. The work to be conducted on the damaged property is set out in the rehabilitation estimate attached as *Exhibit A "Award Calculation Details,"* and any Change Order(s) approved by NCORR. Participant(s) have received and consent to NCORR's calculation of the value of the Scope of Work, and the calculation of the Grant Amount, including any reduction to the applicable eligible percentage as shown on *Exhibit A*.

The Grant Amount may be limited to less than the total cost of the Scope of Work based on Program eligibility policies. The Grant Amount is subject to adjustment based on approved Change Order(s) and any Duplication of Benefits ("DOB") received by the Participant(s) (as further described below), regardless of when those benefits are received. Participants (s) must deposit the amount determined to be a DOB into a bank account controlled by the State in a non-interest-bearing account ("Escrow Account") or contribute the escrow amount in accordance with program policies. Participant(s) have received and consented to NCORR's calculation of the value of the rehabilitation of the home, less any DOB and the calculation of the Grant Amount, as shown on *Exhibit A ("Award Calculation Details")* attached hereto. Participant(s) are responsible for providing gap financing if the amount to rehabilitate the home exceeds the Grant Amount.

Participant(s) are advised and agree that additional information may be required by NCORR to determine that the Grant Amount was properly calculated. Participant(s) should maintain all records, receipts, invoices and other documentation related to any demolition, repairs, or construction of the Damaged Home for no less than five (5) years from project closeout. Participant will provide the documentation to NCORR upon request.

- 4) Contractor Agreement.** Participant(s) agree that NCORR will select and contract with a prequalified and authorized Contractor to complete the work on the Participant(s)' damaged property. Participant(s) acknowledge and understand that they are an intended beneficiary of that contract between NCORR and the Contractor. The Program requires that: (a) NCORR and the Construction Manager ("CM") oversee the construction process and inspection(s); and (b) once final inspection is approved by NCORR, NCORR will authorize disbursement of final payment to the Contractor. Neither this Grant Agreement nor any other Program documents govern, authorize or contemplate any separate agreements between the Participant(s), Contractor, or Subcontractors outside the Scope of Work or approved Change Order(s), if any.

- (a) Vacating Home. Owner shall vacate the Home and remove all personal property, fixtures and appliances from Home on or before the date established during construction.
- (b) Abandoned Personal Property, Fixtures and Appliances. As required in the Notice to Proceed, Contractor and Owner, along with NCORR and/or CM, if warranted, shall have a preconstruction meeting at the Home. As part of the preconstruction meeting, all attendees shall, subject to any safety protocols, inspect each room of the Home including attics and crawl spaces to verify that all personal property, fixtures and appliances that

Owner desires to keep have been removed from the Home. Owner shall execute a form that shall: acknowledge Contractor's right to access the Property and Home; acknowledge removal of all personal property, fixtures, and appliances; and release Contractor from liability for disposing of all remaining personal property, fixtures and appliances in the area of the Home to be rehabilitated..

If Owner does not attend the preconstruction meeting, Contractor and/or CM shall, subject to any safety protocols, inspect and videotape each room of the home including attics and crawl spaces to verify that all personal property, fixtures and appliances that Owner desires to keep have been removed from the Home. If NCORR, CM and Contractor find personal property of value which is not obviously damaged, functional fixtures of value which are not obviously damaged, and/or functional appliances in the Home, CM/Contractor shall attempt to contact Owner to confirm Owner's intent to abandon such property, fixtures or appliances and to ascertain whether Owner plans to remove the subject property, fixtures or appliances prior to the commencement of work.

If Owner is unavailable, and CM and Contractor determine that construction can proceed, then Contractor shall, subject to safety protocols with respect to firearms, ammunition or other household hazardous materials, remove personal property from the Home to an area on the Property protected from the elements, to the extent possible, or take such reasonable measures to protect the property until Owner is contacted and can take possession of the property and/or securely store it on the Property.

- 5) Participant(s) Continuing Representations and Warranties.** As a condition of receipt of this Award, Participant(s) hereby expressly make the following representations and warranties:

Please provide an initial signature for 5(a) through 5(l) and (m), if required. In this section.

- a) I/we provided true and accurate information in connection with my/our Program application(s) and to Program staff and have not misrepresented or omitted any information relevant to my/our eligibility for Program assistance.

_____ **Initials Required**

- b) I/we attest that my/our property (1) was damaged or destroyed by Hurricane Matthew and/or Florence; (2) is located in an eligible county; (3) and was owned and occupied as my/our primary residence prior to October 8, 2016 (Hurricane Matthew) or September 14, 2018 (Hurricane Florence), or I have since inherited or come into possession of the property through a program-eligible means of ownership transfer, and the property is still owned by me/us as of the Effective date.

_____ **Initials Required**

- c) I/we attest that my/our property has not received notices of default or seizure related to taxes, mortgage or title.

_____ **Initials Required**

- d) I/we are of the age of majority and of sound mind (including an undersigned

Representative, if any) and have full power, authority, and legal right to execute this Grant Agreement;

_____ **Initials Required**

- e) I/we will not sell, rent or transfer the property for the term of this Agreement and any extensions thereof, or until after closeout documentation is approved by NCORR;

_____ **Initials Required**

- f) I/we will not convert the property to an ineligible use or structure type as explained in the Homeowner Recovery Program Policy Manual which can be found on the ReBuildNC website;

_____ **Initials Required**

- g) If applicable, I/we will stop working on the damaged home and commit to allowing the Program to rehabilitate the home to address storm related damages, environmental remediation and local code requirements in order to achieve, at a minimum, Housing Quality Standards (HQS);

_____ **Initials Required**

- h) I/we have reported all assistance received in my/our initial application and any monies received since the initial application;

_____ **Initials Required**

- i) I/we certify that I/we have provided complete, accurate, and current information regarding household income to demonstrate eligibility to receive CDBG-DR Program funds;

_____ **Initials Required**

- j) I/we confirm that all occupants and every owner of the damaged property have been notified of the terms of this Agreement. I/we certify by executing this Agreement to have the authority to act on behalf of any occupants of the damaged property and any others who may seek to claim any interest in the damaged property. I/we acknowledge that any interference by any person(s) who claims to have an interest in the damaged property may result in my/our repaying the Grant Amount or otherwise being liable for costs related to those claims;

_____ **Initials Required**

- k) I/we have had an opportunity to read, understand and agree to the Program policies and procedures and the scope of work for the rehabilitation of my damaged home.

_____ **Initials Required**

- l) I/we understand the Scope of Work performed pursuant to this Grant Agreement may result in an increase in property taxes and similar costs of home ownership like utilities.

_____ **Initials Required**

- m) This clause is _____ required, _____ NOT required (ReBuild NC will check correct option). I/we will obtain flood insurance with building coverage amounts equal to or greater than the Award amount as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001 (the “Flood Disaster Act”) and all other applicable State and Federal regulations once the rehabilitation of the damaged property is complete. I/we understand that I/we have a continuing obligation to notify the Program of any changes to my/our flood insurance policy, and that proof of flood insurance will be required at closeout. Relevant changes include, but are not limited to, changes in insurance carrier, coverage limits and maximums, claims made to the insurance policy, renewal and cancellation notices.

_____ **Initials Required**

- 6) **Default.** The Participant(s) will be in default of this Agreement if the Participant(s) made a false certification in the immediately preceding Paragraph or otherwise fails to comply with any of the obligations set forth in this Agreement or applicable Program policies and procedures. Before NCORR may exercise the right to declare the Participant(s) in default, NCORR shall give the Participant(s) an opportunity to be heard upon not less than five (5) calendar days’ written notice that sets forth the grounds for declaring a default. NCORR’s decision shall be binding. Upon declaring a default, at its discretion, NCORR may take any or all of the following actions up to and including termination of this Agreement:

- a) If Participant(s) are under the CDBG-DR Homeowner Recovery Program, NCORR may direct any Contractor to stop work on the Property, either temporarily or permanently, or issue a change order to the construction and/or abatement contract;
- b) Demand recapture for all or a portion of the Award that was paid and/or is due to a third party under this Agreement;
- c) Require recapture for reasonable attorney’s fees and/or collection costs;
- d) Waive, forgive, and/or provide an opportunity to cure the default; and/or
- e) Sue Participant(s) for damages or injunctive or equitable relief.

- 7) **Flood Insurance.** If the damaged or destroyed property is located within a Special Flood Hazard Area (SFHA), the following provisions apply.

- a) Participant(s) understand and acknowledge that **failure to maintain required flood insurance shall result in ineligibility from future federal disaster relief**, including but

- b) If flood insurance is required for any property that is the subject of this Agreement, the insurable structure shall, at all times, be under a flood insurance policy in an amount of the lesser of (1) the full insurable value of the project cost as determined by the grant award, or (2) the maximum amount available for the structure under the National Flood Insurance Program, or a successor program.
- c) If the Participant(s) cannot afford flood insurance or a flood insurance rider, the NCORR Housing Recovery Program may assist in payment of the premium for flood insurance, up to \$2,000 per household for low-to-moderate (LMI) income households located within an SFHA. The Participant(s) are responsible for the payment of excess flood insurance premiums that may exist after assistance from NCORR, and for premiums every year thereafter. Participants who receive CDBG-DR assistance and reside in an SFHA must purchase and maintain flood insurance on the property for the life of the property, unless and until FEMA Flood Insurance Rate Maps change and no longer include the damaged property in an SFHA. If the Participant(s) relocate to another primary residence during the term in which NCORR is assisting in the payment of flood insurance premiums, Participant(s) are required to notify NCORR and repay an amount calculated based on the portion of the insurance policy paid for while the residence is not the Participant(s)'s primary residence.
- d) If the Participant(s) are required to maintain flood insurance on the property and the property is leased, sold, assigned, or inherited by any person or entity not a party to this Agreement, **Participant(s) shall notify all transferees in writing of the continuing obligation to maintain flood insurance on the property**, and that the transferee may be liable if he/she/they fail to do so. If Participant(s) fail to provide such notice, Participant(s) may be liable to the United States for repayment of previous disaster assistance related to the property and may not be eligible for future federal disaster assistance.

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representative(s) and contractors; and any authorized inspectors, whether for NCORR, authorized contractors, or governmental entities with appropriate legal authority, as may be required to make inspections and to complete the Project. Authorized persons must try to give Homeowner(s) at least 24-hour notice of intent to gain access to the interior of the property. Homeowner(s) agrees to cooperate with all such parties and their designees; and not to unreasonably interfere with work on the Project or inspections of the property. In the event Homeowner(s) unreasonably interferes with the work or inspections of the property, authorized Program designees shall deliver written notice to NCORR. If Homeowner(s) do not cease the activities specified in the notice within three (3) calendar days, Homeowner(s) may be prohibited from participating in the CDBD-DR Program and may be required to reimburse NCORR for the work completed on the property by any Contractor, subcontractor or other designees. NCORR shall determine if Homeowner(s) have violated this provision of the Agreement, and impose a resolution for the violation. Homeowner(s) shall be given written notice of the remedy imposed for violation, and given the opportunity to file a grievance regarding the decision within five (5) business days. Homeowner(s) will cooperate with Contractor to ensure that all utilities, including water, sewer and electrical service, are available and supplied to the property for the duration of the Project.

Owner shall: (i) remove all pets from the Home; properly and lawfully remove all firearms and ammunition from the Home; and properly and lawfully remove and/or dispose of hazardous household materials prior to the start of Construction.

- 10) Prohibition Against Duplication of Benefits (“DOB”).** Any funds already received by Participant(s) for damage to the Damaged Property for the Qualifying Event from FEMA, SBA, insurance companies, nonprofits or any other source must be deducted from Participant’s grant amount as a DOB. Participant(s) agree that if Participant(s) receive insurance proceeds, or federal benefits from FEMA, SBA, or any other program for the rehabilitation to the residence which is the subject of this Agreement, Participant(s) will report receiving benefits by emailing or calling within one (1) month of receipt of additional proceeds and/or benefits. If Participant(s) fail to report additional insurance proceeds and/or federal benefits, NCORR may require immediate repayment in full of the entire grant amount provided by NCORR.
- 11) Disbursement of Funds.** The funds in the Participant’s Escrow Account will be disbursed first by NCORR. When the funds in the Escrow Account have been fully disbursed, the Grant Amount will be disbursed. All funds will be paid by NCORR to the designated Contractor during the rehabilitation of the damaged home in accordance with the Program Policies and Procedures. Participant(s) will not receive any disbursement of program funds. NCORR has the right to issue payment to the Contractor where it has been determined that work has been completed in accordance with the Scope of Work and any approved Change Order(s), regardless of an assertion by Participant(s) that the Project has not been completed.
- 12) Closeout Certification.** Upon completion of the Participant’s project under the Program, Participant(s) must submit a Compliance Form to NCORR. The Compliance Form will require Participant to certify that the CDBG-DR-assisted property is their primary residence, the property has up to date flood insurance (if applicable), and that no additional funds have been received for disaster related activities. In addition, the Participant(s) must submit documentation of ownership, insurance, and DOB from other sources. NCORR will then perform a final DOB check and reconciliation of funding to determine if the Participant(s) are required to repay Program funding prior to closeout. Failure to return the Compliance Form with all required

documentation will result in default of the Grant Agreement. NCORR will monitor Participant(s) compliance with the Program. NCORR will be responsible for the collection of all overpayments of Program funding and remittance of overpayments to NCORR upon receipt by the Participant(s).

13) Subrogation and Assignment.

a) Assignment relating to funds received under the Program.

- i) In consideration of Participant's receipt of CDBG-DR Program benefits and/or the commitment by NCORR to provide benefits to the Participant under the Program, Participant hereby assigns to NCORR all of the Participant's rights to future payment 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 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 FEMA, SBA, and/or under any reimbursement or relief program administered by any other organization that are the basis of the calculation of Participant's award to be paid to or on behalf of the Participant under the Program using CDBG-DR funds and that are determined to be a Duplication of Benefits ("DOB") in accordance with the Stafford Act as provided in the Agreement. These Subrogation and Assignment provisions apply only to payments the Participant may receive for damage that this Agreement is intended to address, not apply to payments received for damages from other unrelated disasters or other unrelated insurable events.
- ii) 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 NCORR, Participant agrees to immediately notify NCORR of such additional amounts. If some or all of the proceeds are determined to be a DOB, the portion that is a DOB shall be retained by NCORR and deposited into an Escrow Account as described herein and in the Escrow Agreement incorporated herein by reference.

b) Cooperation and Further Documentation.

- i) Participant agrees to assist and cooperate with NCORR should the State elect to pursue, or participate in the Participant's pursuit of, any of the claims Participant has against the insurers for reimbursement of DOB Proceeds under any such policies. Participant's assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Participant'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 NCORR. Participant further agrees to assist and cooperate in the attainment and collection of any DOB Proceeds that the Participant would be entitled to under any applicable Disaster Program.
- ii) If requested by NCORR, Participant agrees to execute such further and additional documents and instruments as may be requested to further and better assign to

NCORR, to the extent of the Award and the Policies and Procedures, any amounts received for disaster recovery assistance 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 NCORR to consummate and make effective the purposes of this Agreement.

c) Authorization of NCORR to Contact Third Parties.

Participant expressly allows NCORR to request of any company or entity with which the Participant held insurance policies, or FEMA, or the SBA, or any other entity from which Participant has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by NCORR to monitor and/or enforce its interest in the rights assigned to it under this Agreement and gives Participant's consent to such company or entity to release said information to NCORR. Participant agrees to execute any third-party verification forms or other documentation required for NCORR or its designees to access Participant information to enforce this provision of the Agreement.

d) Agreement to Turn over Proceeds; Future Reassignment.

- i) If Participant (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, Participant agrees to promptly pay such amounts to NCORR, if Participant received an award under the Program in an amount greater than the amount Participant would have received if such DOB Proceeds had been considered in the calculation of Participant's award.
- ii) In the event that the Participant received, receives or is scheduled to receive any Proceeds not previously disclosed to NCORR ("Subsequent Proceeds"), Participant shall notify NCORR of such Subsequent Proceeds, and NCORR will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds") in accordance with the Stafford Act. Subsequent DOB Proceeds shall be disbursed as follows:
 - (1) If the Award has been fully expended by NCORR, any subsequent DOB Proceeds shall be paid by Participant to NCORR up to the amount of the Award.
 - (2) If no portion of the Award has been expended by NCORR, any Subsequent DOB Proceeds shall be paid by Participant to NCORR 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 Participant to NCORR shall be returned to the Participant, and this Agreement shall terminate.
 - (3) If some portion of the Award has been expended by NCORR, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order:
 - (1) Subsequent DOB Proceeds shall first be paid by Participant to NCORR 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 NCORR; (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 Participant, and this Agreement shall terminate.

- (4) If NCORR makes the determination that the Participant(s) does not qualify to participate in any of the Homeowner Recovery Programs or the Participant decides not to participate in the Homeowner Recovery Programs, the Subsequent DOB Proceeds and any funds previously paid by the Participant to NCORR that have not been used or obligated by the Program shall be returned to the Participant and this Agreement shall terminate.

- iii) Once NCORR has recovered an amount equal to the Award, NCORR will reassign to Participant any rights assigned to NCORR pursuant to this Agreement.

14) Changes. This Agreement completely integrates all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect unless part of this Agreement. No later renewal, addition, deletion, or other amendment shall have any force or effect except in a written supplemental document the parties sign. Except as specifically stated in this Agreement, no representations, agreements, covenants, warranties, or certifications, express or implied, exist between the parties.

15) Non-Waiver by NCORR. No waiver of any breach or default shall constitute or be construed as a waiver by NCORR of any subsequent breach or default or of any breach or default of any other provision.

16) Grant Proceeds Contingent. NCORR's Grant Award under this Agreement is contingent upon appropriation, budgeting, and availability of specific funds to discharge those proceeds. Nothing in this Agreement constitutes a debt, direct or indirect multiple fiscal year financial obligation, a pledge of NCORR's credit, or a payment guarantee by NCORR to the Participant or any Contractor.

17) Environmental Conditions. Recipients, to include Program Participants, of CDBG-DR funds are required to comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) found at 24 C.F.R., Part 58 and complete an Environmental Review Record (ERR). NCORR may require additional environmental reviews for projects that receive these funds. No funds may be obligated or expended by NCORR until the environment review procedures outlined in Part 58 have been executed. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

18) Lead-Based Paint Prohibitions. Any rehabilitation and/or elevation of residential housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 C.F.R. § 570.608, 24 C.F.R. § 35, Subpart B, and Chapter 130A of the North Carolina General Statutes, Article 19A (Lead-Based Paint Hazard Management Program). Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-

based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted. Failure to complete lead hazard reduction or abatement activities in accordance with HUD's Lead Safe Housing Rule (LSHR) will result in repayment of all program funding, to include reimbursement for any previous work completed on the Property to NCORR.

- i) If claimant or respondent elects to file a grievance regarding CM's decision, then the party making the grievance shall, in writing, explain the parts of CM's decision that are at issue. The grievance to NCORR shall be heard by Grant Manager within ten (10) calendar days of receipt of the grievance in an effort to settle the dispute. If the claimant and respondent cannot settle the dispute at this hearing, then Grant Manager shall render a summary decision.

19) Construction Dispute Resolution.

- a) Dispute Resolution Goals and Scope. The primary goal of dispute resolution for the CDBG-DR Homeowner Recovery Program is to proactively avoid or mitigate claims and disputes of all parties to the construction of a Project in an effort to maximize the use of the CDBG-DR funding allocation to the State for housing recovery and construction instead of administrative costs associated with the disposition of costly construction claims and litigation. Accordingly, the CDBG-DR dispute resolution process will achieve the foregoing goals by fairly and timely addressing: changes in work or rejection of proposed change orders; delays and requests for time extensions; CDBG-DR compliance issues; performance issues of Contractor and/or subcontractors; non-conforming or deficient work issues (quality control/quality assurance); payment and nonpayment issues; warranty issues within the first year (to the extent NCORR is still implementing a CDBG-DR Homeowner Recovery Program); NCORR and/or CM enforcement of grant requirements; action on or disposition of audit findings; Owner complaints relating and/or arising out of the construction of the Project; and/or any other disputes or claims that arise from or relates to the Project that are not otherwise excluded below.

Unless otherwise stated, "timely" means that the entity responsible for any step in the dispute resolution process shall perform its duty within 5 business days of being tasked to resolve the subject claim(s), dispute(s) or issue(s), unless the issue(s) involve architectural, engineering, or additional testing/inspections that require more time to complete/analyze. The foregoing time period shall run 5 business days after receipt of the professional opinion or test/inspection results by Contractor, Owner, and CM. Even if a longer period of time is specified, all employees of CM and/or State shall, to the extent practicable, try to perform their dispute resolution tasks and duties assigned to

them within 5 business days. If the date for any act stated in the dispute resolution process falls on a Saturday, Sunday or state holiday, then the act shall be performed on the following business day.

The claims, disputes, or issues that may be submitted under this dispute resolution process shall be limited to: Contractor-Owner disputes or claims; Contractor and/or subcontractor/supplier claims, disputes and issues related to quality of work, performance, proposed change orders, proposed requests for time extensions (i.e., delay claims), and/or payment issues; issues pertaining to construction documents or inspections between the Design Team and Contractor or Owner; grant eligibility issues relating to proposed change orders between NCORR and Owner or Contractor; any audit issue, proposed disposition of any audit finding, and/or CDBG-DR compliance action to be enforced against Contractor (including any subcontractor or supplier) by NCORR and/or any other claim, dispute, or issue as deemed necessary by and at the sole discretion of NCORR.

During such time as any dispute, issue or claim is being presented, heard, and/or considered pursuant to this Section, this Agreement shall remain in full force and effect and Contractor shall continue to perform work as directed in the Agreement.

- b) Informal Dispute Resolution Process. All non-monetary matters and monetary claims, disputes or issues involving less than \$50,000.00 shall be disposed of in the following manner:
- i) The claimant must first comply with all contractual procedures, requirements, and deadlines before seeking any dispute resolution under this provision. If the claimant fails to comply with any contractual procedure or requirement and any applicable deadline has not passed, then CM shall advise claimant to comply with the contractual procedure(s) or requirement(s). If claimant has complied with the contractual procedure(s) and/or requirement(s) but was untimely in seeking dispute resolution under this provision, CM or NCORR, at its discretion, may waive the untimely submission for good cause shown by claimant and/or a determination that it is in the best interest to consider the submission if doing so will progress the Project to completion. If a claimant fails to comply with the contract requirements and an applicable deadline, then the submission shall be automatically rejected absent good cause shown and a showing that the claimant's failure to comply with the contract requirements and deadline were caused by events or persons outside claimant's control (negligence of claimant's employees or representatives shall constitute good cause). Owner will be afforded greater leniency when considering issues of noncompliance with contract requirements and deadlines than Contractor.
 - ii) The claimant shall submit to CM a short written statement of the claim(s), dispute(s) or issue(s) and/or attach the document(s) reflecting or containing the claim(s), dispute(s) or issue(s) (e.g., rejected change order request, rejected request for time

extension and a schedule narrative/time impact analysis supporting a delay claim, notice of deficiency or non-conforming work, request for information, unpaid invoice or payment application, audit finding, etc.).

- iii) CM shall investigate the claim, dispute or issue within ten (10) calendar days and the investigation may include but is not limited to: requesting a written response from any party to the claim, dispute or issue within this time period; requesting a conference call or meeting with all parties to the claim, dispute or issue; and/or consult with NCORR on issues involving CDBG-DR compliance.
 - iv) After the investigation, CM shall issue a summary decision disposing of the claim, dispute or issue with a notice informing the claimant and respondent(s) regarding how to file a grievance regarding CM's decision to NCORR.
 - v) If claimant or respondent elects to file a grievance regarding CM's decision, then the party making the grievance shall, in writing, explain the parts of CM's decision that are at issue. The grievance to NCORR shall be heard by an NCORR Program Delivery employee, or a designee within NCORR or other management employee of another State agency with subject matter expertise (hereinafter "Grant Manager") within ten (10) calendars days of receipt of the grievance in an effort to settle the dispute. If the claimant and respondent cannot settle the dispute at this hearing, then Grant Manager shall render a final summary decision that will be binding on claimant and respondent with no further rights of appeal.
 - vi) None of the process described above shall be construed as a contested case, proceeding, or formal administrative hearing under the North Carolina Administrative Procedures Act in Chapter 150B of the General Statutes. All parties to the Contract and CDBG-DR Homeowner Recovery Program grant award to Owner understand and acknowledge that the foregoing dispute resolution process is intended to be an informal settlement process of claims, disputes and issues.
- c) Formal Dispute Resolution Process. All monetary claims, disputes or issues involving more than \$50,000.00 shall be disposed of in the following manner:
- (i) to (iv) The claimant and respondent must first comply with and exhaust steps 1 through 4 of the Informal Dispute Process set forth in Section 21(b) and complete the process below prior to commencing any civil action in the Superior Court in the county where the Project is located.
 - v) If claimant or respondent elects to file a grievance regarding CM's decision, then the party making the grievance shall, in writing, explain the parts of CM's decision that are at issue. The grievance to NCORR shall be heard by Grant Manager within ten (10) calendar days of receipt of the grievance in an effort to settle the dispute. If

the claimant and respondent cannot settle the dispute at this hearing, then Grant Manager shall render a summary decision.

- vi) The claimant and respondent may agree to the final summary decision of Grant Manager and shall proceed to implement the decision, including executing a change order. If the claimant or respondent disagree with Grant Manager's decision, that party may request non-binding mediation of the dispute and the mediator's fees shall be equally split between the parties, but NCORR, at its discretion, may pay Owner's share of the mediator's fee if NCORR finds the issues to be mediated in favor of Owner.
 - vii) If the mediation results in an impasse, then the parties may commence a civil action in Superior Court to resolve the dispute within 60 days. The failure of the parties to commence a civil action within 60 days after mediation shall render Grant Manager's summary decision final and binding on the parties, thereby barring any civil action. If the parties reach a settlement agreement at mediation, then CM shall implement that agreement through a change order, subject to any grant limitations and/or caps.
 - viii) The parties are cautioned that NCORR reserves the right to withhold funding if the claimed proposed change order, proposed request for time extension/delay claim, and/or alleged damages for breach of contract will exceed any allocated contingency for the Project and/or CDBG-DR Housing Recovery Program funding cap for Owner's Project type. Therefore, all parties are strongly encouraged to resolve all disputes, claims or issues as quickly as possible to avoid funding being withdrawn.
- d) Exclusions. Owner shall not use this dispute resolution process to seek rescission or modification of the original grant award and Scope of Work. The dispute resolution process shall not affect, impact or delay any claims submitted under any insurance policy, payment bond, performance bond and/or negligence claim against any State agency or employee under the State Tort Claims Act, N.C. Gen. Stat. §§ 143-291 *et seq.* This dispute resolution process shall not apply to any state or federal administrative proceeding, civil action and/or criminal prosecution relating to any violation of state or federal law arising out of or related to the Project (e.g., enforcement of environment laws, false claim act violations or other waste of public funds, administrative investigation by a licensing board, etc.) This dispute resolution process shall not apply to claims or disputes that did not arise out of or relate to the construction of the Project, this Agreement, the grant agreement between NCORR and Owner, and/or the CDBG-DR funding for this Project (e.g., claims to foreclose deeds of trust, tax liens, property distribution order by family or probate courts, etc.).

22) Enforcement. The Participant(s) acknowledge that NCORR has the right and responsibility to enforce this Agreement.

23) Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue for any action or proceeding arising under this Agreement shall be in the courts of the State of North Carolina.

- 24) Severability/Construction.** Any provision of this Agreement found to be prohibited by law or unenforceable will be ineffective only to the extent of such prohibition or unenforceability without invalidating any other part hereof, or any of the other documents referenced herein. This Agreement, to the extent possible, will be construed or reformed to give validity to its provisions. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto except for the United States of America as set forth herein.
- 25) Indemnification Agreement.** Participant agrees to indemnify and hold harmless the State, NCORR, and/or contractors, and each of their respective officers, directors, agents, designated representatives, employees and affiliates (“Indemnified Parties”) from any and all claims, losses, damages or liability (including attorney’s fees) arising out of, or in any way related to, the CDBG-DR Award, or any other act or failure to act under this Agreement, any receipt of or eligibility for any DOB, and/or all other documents executed in furtherance of the CDBG-DR Award and/or this Agreement. If Participant(s) attempt to take legal action against the Indemnified Parties, the Indemnified Parties will have the right to recover from Participant attorney fees and other expenses incurred in connection with such action in the event of an adverse determination or judgment against Participant(s). The obligations under this provision are independent of all other rights or obligations set forth herein. This indemnification provision shall survive the disbursement of the Award funds, as well as any termination of this Agreement.
- 26) Consent to Electronic Transaction.** Participant(s) acknowledge that electronic records are being collected, maintained, stored and utilized for the Program and that automated agents have been used to determine identification and eligibility for the Program. Participant(s) consent to the use of electronic records in accordance with the State’s security policy and procedure for such records. In order to verify the Participant(s)’ identity and eligibility for the Program, NCORR requires that certain personal information be provided. By accepting the Grant Award, Participant(s) authorize NCORR to store and use the information provided by Participant(s) for such purposes, including information from third-party reports needed to process the application and Grant Amount.
- 27) Notification of Changes.** Participant(s) have a continuing obligation to notify NCORR if any of the information contained in Participant(s)’ application or this Agreement becomes incomplete or incorrect at any time prior to the commencement of rehabilitation of Participant(s)’ residence that is the subject of this Agreement. To update any information, Participant(s) shall contact their case manager.
- 28) Change Orders.** Participant(s) understand and acknowledge that any and all change orders made subsequent to this Grant Agreement shall be incorporated herein by reference into this original Grant Agreement. Subsequent Change Orders, if signed, shall represent the entire Grant Agreement between the parties for the reconstruction of their damaged home under the CDBG-DR Homeowner Recovery Program.
- 29) Asbestos Change Orders.** All changes that include subsequent asbestos testing/surveying fee, asbestos abatement fee and asbestos clearance fee that will adjust Homeowners award are hereby incorporated into this Agreement.
- 30) Entire Agreement.** Participant(s) understand and acknowledge that this Grant Agreement and any other agreements or Program policies and procedures that have been incorporated herein by reference, represent the entire agreement between the parties for the rehabilitation of their

damaged home under the CDBG-DR Homeowner Recovery Program. Neither NCORR, nor any of their sub recipients, agents or designees are legally responsible for the actions or omissions of any Contractor, subcontractor or their designees in the rehabilitation of Participant(s)' damaged property outside the Scope of Work incorporated herein, unless approved by a Change Order or by an amendment to the Grant Agreement.

31) Fraud Acknowledgment of Receipt of Documents. As part of the application process under the CDBG-DR Program, Participant(s) executed required documents. Participant(s) hereby reaffirm all information provided by those documents, and agree to all provisions as set forth thereunder. Participant(s) assert, certify, and reaffirm that all information in the above documents provided and documents executed on the Grant Agreement execution date are true to the best of Participant(s)' knowledge, and Participant(s)' acknowledge that these documents have been relied on by NCORR to provide disaster assistance. Participant(s) certify that all damages claimed in connection with Participant(s)' application for Grant proceeds were a direct result of Hurricane Matthew and/or Florence, unless subsequent damages to the residence were also incurred as a result of another qualifying disaster. In addition, the Participant has disclosed to NCORR in the application process all financial assistance received under any other program or from insurance or any other sources due to damages resulting from Hurricane Matthew and/or Florence and subsequent damages from another qualifying disaster (if applicable) during the application and award acceptance. Participant(s) agree to repay the entire Grant amount in the event Participant(s) make or file false, misleading and/or incomplete statements and/or documents. Participant(s) acknowledge notice of the danger of fraud and scams perpetuated by unscrupulous individuals, contractors, and businesses, and that the North Carolina Attorney General's Office may address such issues.

32) Warranties, Instruction Manuals and Subcontractor/Supplier Releases of Claims and Liens. With final inspection or final acceptance of the Project by the local building department or issuance of a certificate of occupancy, whichever is later, Contractor shall provide Owner with certificates of warranty, instruction manuals, and other documents specified in the Scope of Work and approved change orders. If not already done through progress payments, Contractor, through final payment, shall: (i) obtain release(s) of claims or liens from subcontractors and/suppliers that acknowledge full payment of amounts due them including any retainage (the subject release may contain conditional language that the release shall become effective when full payment is received by subcontractor or supplier) and obtain all required warranties from subcontractors and suppliers; or (ii) Contractor shall comply with sub-part (i) to the extent possible and Contractor shall provide CM with an affidavit identifying the subcontractors/suppliers from whom Contractor was unable to obtain releases of claims/liens notwithstanding Contractor's full payments to those subcontractors/suppliers; the warranties from these subcontractors/suppliers that Contractor was unable to obtain, and an affirmation that Contractor will obtain the warranties or provide alternative warranties/guarantees, and that Contractor will hold harmless and indemnify Owner, NCORR and/or CM from any claims from the subcontractors and suppliers identified in the affidavit to the extent Contractor has been paid for the subject work through federal grant funds and/or Owner's funds.

Contractor warrants that all materials, equipment furnished, completed systems, and work performed shall be free from defects due to faulty materials or workmanship for a period of one (1) year, and any structural work shall be similarly guaranteed for a period of ten (10) years from the date of final inspection by CM or upon issuance of a certificate of occupancy by the authority

having jurisdiction, whichever is later. Where items of equipment or material(s) carry a manufacturer's warranty for any period in excess of one (1) year, Contractor shall deliver the manufacturer's original warranty to Owner prior to or contemporaneously with receipt of final payment from NCORR. Contractor or manufacturer shall replace such defective equipment or materials, without cost to Owner, within the applicable warranty period. Additionally, Owner may bring an action for latent defects caused by the negligence of Contractor that are hidden or not readily apparent to Owner and/or CM, in accordance with applicable law.

Contractor shall provide notice of the expiration of the one-year warranty to Owner six months after completion of the Project, and one month prior to the end of the one-year warranty.

Owner must give notice of observed defects within thirty (30) days of discovery. In the event that Contractor should fail to make repairs, adjustments, or other work that may be made necessary by any defects, Owner may, after giving thirty (30) days' notice to Contractor, make such repairs, adjustments or other work and charge Contractor the costs thereby incurred.

Contractor shall promptly make corrections to any such defects, including the repair of any damage to other parts of the system resulting from such defects. Owner shall have no recourse against NCORR, any other State agency or HUD to recover the costs of correcting defects subject to a warranty from Contractor and/or manufacturer. However, NCORR may assist Owner in resolving any warranty dispute under the Dispute Resolution Process in Section 21 so long as the dispute is an eligible item under the Rebuild CDBG-DR Program.

Note This Grant Agreement will not be considered fully executed unless Participant/Homeowner Agreement **UNLESS Page 3, pages 4-6 Section 5(a) – 5(l) and 5(m), if required, and Page 7, Section 7(d.)** are initialed by Participant/Homeowner.

PARTICIPANT(S):

Printed Name

Signature

Date

Printed Name

Signature

Date

Exhibit A

AWARD CALCULATION DETAIL