

CITY CLERK

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**CITY OF FORT LAUDERDALE  
REHABILITATION / REPLACEMENT HOUSING PROGRAM  
PARTICIPATION AGREEMENT**

THIS AGREEMENT, entered into this 29<sup>th</sup> day of April, 2015  
by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida,  
hereinafter referred to as "City"

and

**John Burgess and Deborah Burgess**, a married couple, hereinafter referred to as  
"Property Owner"

WHEREAS, the City Commission of City, at its meeting of June 15, 2010, approved  
PH-03, the 2010-2015 HUD Consolidated Plan which includes the policies and guidelines for the  
City of Fort Lauderdale Substantial Rehabilitation / Replacement Program; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained  
herein, and other good and valuable consideration, the receipt and adequacy of which are  
acknowledged, the parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to establish the requirements for  
the City to loan money to Property Owner for the purpose of owner-occupied substantial  
rehabilitation / replacement construction of a house on Owner's Property. The construction loan  
financing and this Agreement are subject to compliance with the existing City of Fort Lauderdale  
Housing Program Policy and Guidelines "Program" and applicable **HOME** program rules.

2. SCOPE. The loan proceeds obtained in conjunction with this Agreement shall be  
used solely in connection with the rehabilitation/replacement construction and related soft costs  
for the house on Owner's Property ("Project") having the address of:

John Burgess and Deborah Burgess  
1408 SW 33<sup>rd</sup> Court  
Fort Lauderdale, Florida, and

legally described as:

Lot11, of PICKET LANE, according to the Plat thereof, as recorded in Plat Book  
22, Page 12, of the Public Records of Broward County, Florida; said lands situate,  
lying and being in Broward County, Florida.  
(hereinafter "Property")

3. FORM OF ASSISTANCE. The amount of the loan shall not exceed **\$160,000.00**. Upon execution of this Participation Agreement, the Program Maximum amount of the loan shall be earmarked and set aside for the Owner to be used solely for the Owner's Project. The monies provided shall be withdrawn and used on behalf of the Owner by City solely to pay for the costs. Payments shall be made in accordance with the procedures provided in the form Contractor Agreement and Construction Contract Addendum used by and on file with the City's administrator of the Program ("Construction Contract").

Participant shall execute a promissory note in the full amount of the loan as provided in this Paragraph 3, that will be secured by the mortgage as provided in paragraph 6 of this Agreement, recorded in the public records of Broward County in the maximum amount of the loan provided in this Paragraph.

This Agreement may be modified by the parties during construction to increase the loan to cover additional costs of construction if additional funds become available. Upon completion of the Project, or if this Agreement is terminated for any reason prior to completion of the Project and funds remain in Owner's Project account that are unencumbered, a modification of the mortgage reducing the amount secured by the Mortgage will be executed by the City and recorded in the public records of Broward County.

Upon execution of this Agreement, Participant agrees to execute the note in the full amount of the loan as provided in this Paragraph covering all costs to be incurred in order to secure and implement the Construction Contract and the mortgage securing the maximum loan amount, which Mortgage will be recorded in the public records of Broward County and constitute a lien against the Property.

(a) Interest Rate. The interest rate on the Principal amount of the loan shall be zero percent (0%) per annum, except in any event of default as described in Paragraph 7.

(b) Term of Repayment. Payment on the principal amount of the loan shall be deferred, so long as the property is occupied as the principal residence of the Property Owner, for a fifteen (15) year period. The fifteen year period shall commence on the date the City issues a final certificate of occupancy or final inspection, whichever is applicable evidencing the house may be occupied by Participant. Repayment of the full loan amount will become due and payable upon sale, lease, or transfer of the Property during the fifteen (15) year period. If no sale, lease, transfer, or other event of default occurs during the fifteen (15) year period, the terms of this encumbrance shall be satisfied and the Property Owner shall be issued a Satisfaction of Mortgage.

4. OCCUPANCY. Property Owner must provide annual certification to the City which confirms that the Property is the principal residence of Property Owner.

5. INSPECTION. Property Owner shall permit reasonable inspection of the Property by inspectors of the City or its agents, for determining compliance with all applicable governmental regulations.

6. SECURITY. City shall secure the loan for this Agreement with a Mortgage on the Property.

7. DEFAULT. The Property Owner acknowledges and understands that the provisions as specified below constitute events of default under this Agreement:

(a) Nonperformance by Property Owner of any covenant, agreement, term or condition of this Agreement or of any other agreement heretofore, herewith, or hereinafter made by the Property Owner with the City in connection with this Program, after the Property Owner has been given due notice by the City of such nonperformance.

(b) Failure of the Property Owner to perform any covenant, agreement, term or condition in any instrument creating a lien upon the Property.

(c) The City's discovery of Property Owner's failure in the Application to the City to disclose any fact, or the City's subsequent discovery of any fact, deemed by the City to be material, and one upon which the City relied in order to enter into this Agreement, or any other agreements entered into by the City with Property Owner (including, but not limited to, any other agreements arising in connection with this Agreement and entered into by the Property Owner), or City's discovery of any misrepresentation by, on behalf of, or for the benefit of the Property Owner.

(d) Property Owner's non-residential use, or disposition of the Property without the prior written consent of the City.

(e) Property Owner's failure to maintain the Property in a standard, habitable condition.

(f) Property Owner acquiring additional indebtedness upon the Property without the specific prior written consent by the City.

(g) The transfer of the Property to another, other than Property Owner's legal heirs, as more fully described in paragraph 10.

In the event of default, the entire sum due is payable immediately and interest may be charged at the maximum rate allowed by law. Participant acknowledges that if the Project is terminated before completion, either voluntarily or otherwise, it will constitute an ineligible activity and any funds invested in the Project must be repaid by the Owner to the City.

8. CLOSING. The closing on this loan shall occur within thirty (30) days after the date of execution of this Agreement. The closing shall be conducted at the City of Fort Lauderdale, Housing and Community Development Division, 700 NW 19 Avenue, Fort Lauderdale, Florida, or such other place as may be selected and designated by the City.

9. ADMINISTRATION. As an administrative function, the City shall serve in the capacity of an escrow agent for Property Owner in the event that the Property Owner selects a contractor whose costs otherwise exceed the policies and guidelines on determining the maximum reasonable costs for this Program, or for contract items or additional work which are at the sole cost of the Property Owner. In such case, the deposit from the Property Owner shall be provided to the City at the closing on the loan for the additional funds or the cost differential plus contingency reserve necessary to fully fund the work being undertaken in connection with this Agreement. Any escrowed funds shall be promptly deposited by the City and the Property Owner shall not be entitled to receipt of any interest on any such required sum deposited and held in escrow. The City shall return to the Property Owner any unused portion of the contingency reserve within ten (10) business days from the date of completion and acceptance of the work, which shall be the date of the Certificate of Completion for the Project.

10. ASSUMPTION. This Agreement may be assumed only by the legal heirs of Property Owner, under the same terms and conditions of the original agreement. Assumption is only valid after written notice is given to the City and only after execution of such assumption documents as deemed necessary by the City.

11. DISBURSEMENTS. Charges incurred in connection with closing the loan made pursuant to this Agreement shall be paid directly to the charging party, and the Property Owner shall receive a written record of these charges on the disclosure statement provided at the closing.

Disbursements for hard costs to the General Contractor shall be made payable to the General Contractor, requiring the Property Owner's signature authorizing release of the check for payment(s) to the General Contractor. The Property Owner shall not unreasonably withhold approval of any partial or final payments to General Contractor, subject to the requirements set forth or referred to in the City's Program Guidelines.

12. CONDITIONS PRECEDENT. The City's administrative obligations under this Agreement to disburse funds shall be conditioned upon, and no portion of any of the loan proceeds shall be disbursed until, the Property Owner delivers the following documents to the City:

- (a) Copies of insurance policies or certificates or insurance evidencing Standard Fire and Extended Coverage Insurance and Flood Insurance with coverage in the Maximum loan amount specified in Paragraph 3 for the Property plus the remaining principal balance of any existing mortgages, unless a lesser amount is otherwise determined acceptable at the sole discretion of the City. Such policies shall be issued by a company, or companies of such financial responsibility acceptable to the City, and the policies shall be endorsed to reflect the City's legal interest in the Property.
- (i) In the event any sum of money becomes payable under such policy or policies, City shall have the option to receive and apply the same on account of the indebtedness hereby secured, after satisfaction of the Property Owner's similar

obligation to superior mortgages, if any, or else the City may permit the Property Owner to receive and use the same or any part thereof for other purposes, without thereby waiving or impairing any equity, lien or right under or by virtue of this Agreement and the Mortgage.

- (ii) Policies issued pursuant to this Paragraph of the Agreement shall initially be for at least a one (1) year term for Standard Fire and Extended Coverage Insurance and for Flood Insurance, which shall be prepaid in full upon the Closing of this loan as a condition precedent to the disbursement of any loan proceeds; said insurance coverage shall be maintained by the Property Owner in full force and effect during the term of this Agreement.

13. INSURANCE. The City shall obtain a title insurance policy in an American Land Title Association (ALTA) form in the amount of the loan as it appears in Paragraph 3 of this Agreement and as it appears on the Note and the Mortgage used to secure the loan that secures this Agreement, unless the City determines that a lesser amount is acceptable. Such policy shall insure that the Mortgage will be a valid lien on the premises, free and clear of all code defects and encumbrances not approved by the City, and shall contain no survey exceptions unless waived at the sole discretion of the City.

14. TERMINATION. This Agreement may be terminated by the Property Owner by providing written notice to the City within three (3) business days from the date of closing.

15. COMMUNICATIONS. Any and all communications arising under this Agreement shall be transmitted as follows:

(a) All notices, demands, requests, instructions, approvals, proposals, and claims shall be in writing.

(b) Notice by either party under this Agreement should be deemed sufficient if given in writing and hand delivered and return receipt requested or sent by registered or certified mail, postage prepaid and return receipt requested, to the appropriate parties indicated below:

AS TO THE CITY:  
City Manager  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

AS TO THE PROPERTY OWNER:

**John and Deborah Burgess**  
**1408 SW 33<sup>rd</sup> Court**  
**Fort Lauderdale, FL 33315**

(c) Any such notices shall be deemed to have been given as of the time of actual delivery or, in the case of mailing, when the same has been deposited in the mail.

16. SEVERABILITY. If any section, subsection, clause, sentence, or provision of this Agreement shall be held invalid for any reason, the remainder of the Agreement shall not be affected thereby.

17. INTEGRATION. This Agreement and all exhibits attached hereto, specifically referenced within, shall constitute the entire agreement between City and Participant; no prior written, prior, or contemporaneous oral promises or representations shall be binding. This Agreement shall not be amended except by written instrument signed by both parties.

18. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County for the purpose of any litigation that may arise out of this Agreement.

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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

THE CITY OF FORT LAUDERDALE

Avis A. Wilkinson  
Avis A. Wilkinson  
Witness Name - Printed or Typed

By: [Signature]  
JONATHAN BROWN, HCD Manager

[Signature]  
LAURA MALDONADO  
Witness Name - Printed or Typed

By: [Signature]  
LEE R. FELDMAN, City Manager

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 29 day of April, 2015, by Jonathan Brown, HCD Manager, of the City of Fort Lauderdale, who is personally known to me and did not take an oath.

(SEAL)



[Signature]  
Notary Public, State of Florida  
Signature - Notary taking Acknowledgment

Angela J. Mahecha  
Name of Notary  
Typed, Printed or Stamped

WITNESSES:

Anna A. Wilkins  
Signature

Anna A. Wilkins  
[Witness-Print or Type Name]

[Signature]  
Signature

Laura Maldonado  
[Witness-Print or Type Name]

STATE OF: FLORIDA  
COUNTY OF: BROWARD

The foregoing instrument was acknowledged before me this 29 day of April, 2015, by John Burgess and Deborah Burgess AKA Debbie Burgess, who has produced Photo ID / Florida Driver's License (I.D. number on file in Community Development Division Office) as identification.

(NOTARIAL SEAL)



PROPERTY OWNER:

By John Burgess  
John Burgess

By Deborah Burgess  
Deborah Burgess AKA Debbie Burgess

[Signature]  
Notary Public, State of Florida  
(Signature of Notary taking Acknowledgment)

Angela J. Mahecha  
Name of Notary  
Typed, Printed or Stamped

My Commission Expires: 12/10/2017

Commission Number: FFD72586

APPROVED AS TO FORM:

[Signature]  
Assistant City Attorney