**TEXAS GENERAL LAND OFFICE**

**HURRICANE HARVEY HOMEOWNER ASSISTANCE PROGRAM**

**Community Development Block Grant Disaster Recovery (CDBG-DR) Funds Appropriated Under the Supplemental Appropriations for Disaster Relief Requirements, 2017 Public Law 115-56.**

**DECLARATION OF RESTRICTIVE COVENANT FOR HURRICANE HOMEOWNER ASSISTANCE PROGRAM**

THE STATE OF TEXAS §

§

COUNTY OF COUNTY §

THIS DECLARATION OF RESTRICTIVE COVENANT (“Declaration”), dated this DAY of MONTH, YEAR (the “Effective Date”) by «CompanyName» (“Contractor”).

**RECITALS**

**Whereas**, Homeowner is the Owner of certain improvements (“Improvements”) situated on real property (“Project”) located at PHYSICAL ADDRESS in the City of CITY, County of COUNTY, State of Texas, more particularly described in **Exhibit A – Legal Description of Property**, attached hereto and incorporated herein by reference. The land and Improvements are hereinafter collectively referred to as the “Property”; and

**Whereas**, a portion of the Property, more particularly described in **Exhibit B – Legal Description of Floodway**, is located within a regulatory floodway and requires compliance with 24 C.F.R. 55.12(c)(3) and hereinafter referred to as “Floodway”; and

**Whereas**, pursuant to CDBG Regulations, the Owner must agree to comply with the Federal Floodplain Management and Protection of Wetlands laws found at 24 C.F.R. Part 55;

**NOW THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration in the form of CDBG-DR funds by and through the Hurricane Harvey Homeowner Assistance Program administered by the Texas General Land Office, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

1. **RESTRICTIVE COVENANT**

This Declaration and the covenants, reservations, and restrictions contained herein shall be deemed covenants running with the land and shall pass to and be binding on Owner’s heirs, assigns, and successors in title to the Floodway, or if the Floodway shall not include title to land, but shall include a leasehold interest in the land, this Declaration and the covenants, reservations, and restrictions shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns, and successors to such interest. Each and every contract, deed, or other instrument hereafter executed covering the conveying the Property or any portion thereof shall conclusively be held to be executed, delivered, and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument. If a portion of the Floodway is conveyed, all of such covenants, reservations, or restrictions shall run to each portion of the Floodway. Owner, at its own cost and expense, shall cause this Declaration to be duly recorded or filed and re-recorded or re-filed in the Real Property Records of the county in which the Property is located, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve, and protect the enforcement of this Declaration.

Any and all requirements of the laws of the State to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that the restrictions contained herein run with the land.

1. **USE OF THE PROPERTY**

From and after the Effective Date contained herein:

1. All structures and above-ground improvements must be removed from the Floodway;
2. The Floodway shall be permanently dedicated for flood control, wetland protection, and/or open space as described in 55.12(c)(3);
3. No new structure, paving, or other improvements shall be constructed on, and no new modifications or landscaping activities (except minor grubbing clearing of debris, pruning, sodding or seeding, or other similar activities) shall be carried out within the Floodway;
4. The homeowner may rebuild within the 100-year floodplain. The project must still comply with Part 55, including the 8-Step Process. When completing Step 5, Responsible Entities must ensure that the location of the new structure is as safe as practicable within the property; and

No new construction activities, including building of residential structures, draining, dredging, channelizing, filling, diking, impounding, flowing, releasing wastes, and related activities that impact the Floodway shall be performed.

**3. SUPERIORITY**

The charges and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made effecting the Property or Wetlands, or any parts thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, shall remain in full force and effect, but are subordinate to the security interests of record on the Effective Date. Provided, however, that a breach of any of the restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The charges and burdens of this Declaration are not intended to either create a lien upon the Property or Wetland, or grant any right of foreclosure, to any person or party.

**4. ENFORCEMENT**

In the event of a breach or a threatened breach of this Declaration, any party adversely affected by such breach shall be entitled to institute proceedings at law or in equity for relief from the consequences of such breach, including injunctive relief to prevent violation thereof.

**5. NOTICES**

All notices required or permitted to be given under this Declaration must be in writing. Notice will be deemed effective upon deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For correspondence regarding this Declaration, the name, address, and other information of the then-current owner, as maintained in the official real property tax records with respect to the Floodway, shall be sufficient.

**6. COOPERATION**

Should any claims, demands, suits, or other legal proceedings be made or instituted by any person against GLO, its officers, agents, or employees, the State of Texas, the GLO, or the State of Texas’ and the GLO’s officers, agents, or employees which arise out of any of the matters relating to this Agreement, Contractor/Owner shall fully cooperate by providing all pertinent information and reasonable assistance in the defense or other disposition thereof.

**7. CHOICE OF LAW**

In the event the enforceability or validity of any provision of this Declaration is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable.

**8. SEVERABILITY**

This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinance, rules, and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**Signature Pages Follow**

**Signature Page for Attachment A to Homeowner Agreement .**

**Homeowner Assistance Program**

**General Land Office**  **Owner Name**

Mark A. Havens, Chief Clerk/ Print Name:

Deputy Land Commissioner Title:

Date of execution: Date of execution:

**OGC\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DD\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SDD\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**DGC\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**GC \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Exhibits To This Declaration:**

**Exhibit A: Legal Description of Project**

EXECUTED

THE STATE OF TEXAS §

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COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited liability company, and that he executed the same as the act of such limited liability company for the purposes and consideration therein expressed and in the capacity herein stated.

GIVEN UNDER MY HAND AND SEAL OF THIS OFFICE this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_.

Notary Public, State of Texas

NOTE TO COUNTY CLERK: PROPERTY CODE §12.006, COMBINED WITH GOVERNMENT CODE 2051.001, AUTHORIZES THE RECORDATION OF THIS INSTRUMENT WITHOUT ACKNOWLEDGMENT OR FURTHER PROOF OF THE SIGNATURE OF THE COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE.

**EXHIBIT A - LEGAL DESCRIPTION OF PROJECT**

LEGAL DESCRIPTION

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**EXHIBIT B - LEGAL DESCRIPTION OF FLOODWAY**

LEGAL DESCRIPTION

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