

**THE STATE OF LOUISIANA
OFFICE OF COMMUNITY DEVELOPMENT
DISASTER RECOVERY UNIT
HAZARD MITIGATION GRANT PROGRAM
ELEVATION**

**DECLARATION OF COVENANTS RUNNING WITH THE LAND
HURRICANE KATRINA / HURRICANE RITA**

BE IT KNOWN that on this ____ day of _____, 20__ (**"Effective Date"**), before me the undersigned Notaries Public, duly commissioned and qualified, and in the presence of the undersigned competent witnesses, personally came and appeared:

Print Homeowner(s) Name(s)

See **Exhibit "A"** attached hereto and made a part hereof who declared as follows:

RECITALS

THIS DECLARATION OF COVENANTS RUNNING WITH THE LAND ("Covenants") is made by the undersigned homeowner(s) further described on **Exhibit "A"**, all future owners of the Property, and their successors, heirs and assigns, and all other persons and parties claiming by, through or under the present and future owners, their successors and assigns (**collectively, the ("Owner")**).

The Owner is the owner of the immovable property described on **Exhibit "B"** (the "**Property**") attached hereto. The residence located on the Property was damaged or destroyed by either Hurricane Katrina in August, 2005 or Hurricane Rita in September, 2005 (the "**Hurricanes**"). The Owner has been awarded a Hazard Mitigation Grant ("HMGP Grant") from the United States of America under the Department of Homeland Security Federal Emergency Management Agency ("**FEMA**") Hazard Mitigation Program ("HMGP") ("**HMGP Program**"), under a Grant agreement executed by the Owner. The HMGP Program is being administered by the State of Louisiana, Division of Administration, Office of Community Development, Disaster Recovery Unit, Hazard Mitigation Grant Program ("**OCD-DRU**")

AGREEMENTS

NOW, THEREFORE, for and in consideration of receipt of all HMGP Grant proceeds in order to mitigate future damage from hurricanes and similar natural disasters, Owner hereby makes the following Covenants and agreements with respect to the Property, which Covenants and agreements shall constitute covenants and restrictions running with and encumbering the Property. Owner agrees that Owner will be or become, as applicable, fully compliant with all covenant requirements within the time periods specified below.

OWNER AGREES THAT SECTION 4 – COVENANT AS TO FLOOD INSURANCE - SHALL BE IN PERPETUITY.

These Covenants shall begin to run with the Property from and after the Effective Date.

1. **Certification of Ownership of Structure and Land:** The undersigned Owner(s) under oath hereby certifies/affirms that he/she/they own both the immovable property and all improvements located thereon at the aforementioned property address. The affiant(s) acknowledges that he/she/they may be prosecuted by Federal, State and/or local authorities in the event he/she/they makes or files false and/or misleading statements or documents.
2. **Covenant to complete construction and Re-occupy property:** The Owner(s) hereby represents and agrees to execute and complete the elevation activities funded under this agreement in a timely fashion sufficient to satisfy the requirement that the owner re-occupy the property as his/her primary residence within twelve (12) months from the effective date of this Declaration of Covenants. An extension of the period for compliance with this provision may be granted by OCD-DRU to Owner upon request by Owner to extend the compliance period based on good cause and circumstances beyond Owner's control that precluded compliance with the provisions of this section. OCD-DRU may on its own, upon evidence of reasonable efforts made by Owner to occupy the property, grant an extension of the period to comply with this provision. Evidence of such extensions must be in writing, signed by OCD and Owner, and filed into the conveyance records in which these Covenants were filed.

Duties Accessory to Primary Covenants: In order to comply with the covenants set forth in Sections 1 and 2 above ("**Primary Covenants**"), and as duties accessory and incidental to the Primary Covenant set forth in Section 2 above, Owner covenants and agrees as follows:

3. **Covenant as to Compliance with Building Codes, Elevation Standards, Building Permits, Contractors, Lien Waivers and Performance Bonds:** The Owner(s) agrees that:
 - a. All Elevation and other mitigation measures (e.g., Reconstruction or Individual Mitigation Measures (IMMs)) funded through the HMGP Grant provided through this Covenant shall be in conformance with State of Louisiana and Local Parish Mitigation Plans, as provided by 44 CFR, Part 201. Property elevation shall meet or

exceed the Base Flood elevation (BFE) or Advisory Base Flood Elevation (ABFE), whichever is higher, and set forth by FEMA. The Owner(s) shall provide a copy of the **Final Elevation Certificate** for the Property issued by the applicable governing authority. The elevation certificate must be completed by an authorized engineer, architect, land surveyor or community official on the basis of the Flood Insurance Rate Map (FIRM) at the time of certification. Any additional mitigation repairs or replacements to any dwelling on the Property shall conform to the minimum standards set by the 2003 International Residential Building Code, as modified, amended, or replaced from time to time.

b. The elevation construction shall be performed by a Louisiana licensed contractor who shall secure all required building permits from the local governmental authority prior to commencement of elevation construction. The Owner(s) will provide OCD with copies of applicable Building Permits or other municipality documents as requested by OCD. A homeowner or builder affidavit shall not serve as a substitute or exemption from the licensing requirement of the builder.

c. The Owner(s) also hereby acknowledges and agrees to comply with the document submittal requirements and program guidelines as set forth by the OCD-DRU, Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), and FEMA.

d. Owner(s) shall be responsible for ensuring compliance with Louisiana Contractor Licensing Law (see La. R.S. 37: 2150-2192) which states that it is the duty of the awarding authority to ascertain if a contractor is duly licensed under the provisions of R.S. 37:2150-2192 before permitting the contractor to obtain plans and specifications, submit a bid or offer to construct a project involving fifty thousand dollars (\$50,000) or more, one dollar (\$1) or more for hazardous; and \$75,000 or more for Residential. Owner(s) shall also comply with the Louisiana Home Improvement Registration Act (see La. R.S. 37:2167(B)(1), et seq) which includes but is not limited to provisions for the registration of home improvement contractors. Owner(s) can obtain a copy of either document at the following URLs:

Louisiana Contractor Licensing Law:
http://www.lslbc.louisiana.gov/pdf_files/865555_ConLawTxt.pdf

Louisiana Home Improvement Registration Act:
http://www.legis.state.la.us/leg_docs/03RS/CVT4/OUT/0000KTIZ.PDF

4. Covenant as to Flood Insurance for HMGP Elevation Activities:

As a recipient of Federally-funded hazard mitigation assistance under the Hazard Mitigation Grant Program, as authorized by 42 United States Code (U.S.C.) §5170c, the Property Owner accepts the following conditions which shall encumber the property in perpetuity:

a. The Owner shall insure all structures on the Property, that will not be demolished or relocated out of the Special Flood Hazard Area (SFHA), under a Flood Insurance policy, in an amount equivalent to the lesser of the project cost or to the maximum limit of coverage available for the Property, through the National Flood Insurance Program (NFIP), as authorized by 42 U.S.C. §4001 *et seq.* as long as the Property Owner holds title to the property as required by 42 U.S.C. §4012a.

b. The Owner will maintain all structures on the Property in accordance with the flood plain management criteria set forth in Title 44 of the Code of Federal Regulations (C.F.R.) Part 60.3 and City/County/Parish Ordinance. These criteria include, but are not limited to, the following measures:

- i. Enclosed areas below the Base Flood Elevation (BFE) will only be used for parking of vehicles, limited storage, or access to the structure;
- ii. All interior walls and floors below the Base Flood Elevation will be unfinished or constructed of flood resistant materials;
- iii. No mechanical, electrical, or plumbing devices will be installed below the Base Flood Elevation; and
- iv. All enclosed areas below Base Flood Elevation in identified A Zones must be equipped with vents permitting the automatic entry and exit of flood water.

In addition to the criteria above, enclosed areas below the Base Flood Elevation in identified V zones, areas subject to 1.5 foot breaking waves, and A Zones must not exceed 299 square feet and must be constructed with non-supporting breakaway walls. For a complete list of these criteria, please contact your local Floodplain Manager.

c. **Notice to Subsequent Transferees:** To provide notice of these conditions to subsequent purchasers, the property Owner agrees to include in the deed of conveyance to be recorded with the parish or appropriate jurisdiction's land records a notice that includes the name of the current Property Owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of

ownership of such property. Pursuant to 42 U.S.C. §5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the flood plain management criteria of Title 44 of the Code of Federal Regulations Part 60.3 and City/County/Parish Ordinance. In addition to the criteria above enclosed areas below the Base Flood Elevation in identified V Zones, or areas within the limit of 1.5 foot breaking wave inundations must not exceed 299 square feet and must be constructed with non-supporting breakaway walls.”

d. Failure to abide by the above notice provisions required in any subsequent conveyance instrument to subsequent purchaser of the Property (“transferee(s)”) may prohibit the Owner(s) and/or any subsequent purchasers from receiving Federal disaster assistance with respect to this property in the event of any future flood disasters. If the above conditions are not met, FEMA may recoup the amount of the grant award with respect to the subject property, and the owner transferring the Property (“Transferor”) may be liable to repay such amounts.

e. The Transferor(s) may be liable if he or she fails to notify transferee of this requirement. In the event of the transfer of the Property, the Owner(s)/transferor(s) shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to: (i) obtain Flood Insurance in accordance with applicable federal law, if the Property is not so insured as of the date on which the Property is transferred; and (ii) maintain Flood Insurance in accordance with applicable federal law. Such written notification shall be contained in documents evidencing the transfer of ownership of the Property. If the transferor fails to provide notice as described above and, subsequent to the transfer of the Property: (1) the transferee fails to obtain or maintain Flood Insurance, in accordance with federal law and this Agreement; and (2) the Property is damaged by a flood disaster; and (3) federal disaster relief assistance is provided for the repair, replacement, or restoration of the Property, as a result of such damage, then the transferor must reimburse the federal government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the Property.

5. Environmental Review Requirements / Compliance with Environmental Laws and Regulations:

If it can not be documented that Construction started prior to March 16, 2008, in conjunction with any construction, improvements, or repairs on the Property, an environmental report providing an assessment of such construction in accordance with NEPA requirements, must be completed on the Property **before Owner commences any elevation work.** Payment of the HMGP Grant by the OCD-DRU is expressly contingent on the satisfactory completion of such report. The OCD-DRU HMGP shall not be responsible for funding of remediation or other steps should there be an event of discovery of any environmental clearance issue.

The Owner(s) and hired contractor shall follow and comply with Federal, State, and Local laws and requirements set by NEPA and NHPA during execution of mitigation activities and construction of the dwelling on the property. The Owner(s) or its contractor and any subcontractor shall immediately cease construction and further ground disturbing activities should any elements of historical artifact be discovered, and notify the local jurisdictional authority. FEMA shall conduct a Special Considerations Review prior to the Owner(s) recommencing construction.

6. Covenants Running with the Property: These Covenants shall constitute covenants running with the Property and shall be binding upon the Owner, and are intended to create negative predial servitudes, predial servitudes, and restrictions on alienation. To the extent any obligation(s) set forth in the Covenants is(are) construed by a court of competent jurisdiction not to be a negative predial servitude or predial servitude, such provision(s) shall not be severed from these Covenants but shall constitute a personal servitude(s) of and enforceable against the Owner and his assignees, and remaining obligations shall be enforced as negative predial servitudes or predial servitudes.

7. Covenant in Perpetuity Only Section 4 - **Covenant as to Flood Insurance for HMGP Elevation Activities** - listed herein shall run with the Property in perpetuity, or alternatively, for the maximum period permitted by law. The OCD-DRU will not provide a release of this Covenant. Any partial release of remaining covenant sections, with the exception of Section 4, may only be provided by at the discretion of FEMA.

8. Enforcement of Covenants: These Covenants shall be enforceable, at law or in equity, by the State of Louisiana or the United States of America, and Owner hereby agrees that the State of Louisiana or the United States of America may demand repayment of Grant proceeds or compel specific performance by the Owner or claim injunctive relief against the Owner for violation of these Covenants, without posting bond and without the need for demonstrating irreparable harm.

9. **Default Provisions:** If Owner violates the covenants contained in Sections 1 through 5 ("**Defaulting Owner**"), and such violation is not cured within 30 days, the entire amount of the Grant shall become due and payable, without notice or demand, by the Defaulting Owner to OCD immediately upon expiration of the 30-day cure period. The obligation of the Defaulting Owner to pay any amounts owed as a result of a breach of these Covenants by the Default Owner shall not create any privilege, lien, or encumbrance on the Property. Any judgment obtained against the Defaulting Owner for a breach of these Covenants and recorded in the mortgage records where the Property is located, shall act as a judicial mortgage against the Property from and after the date of recordation.

10. **Compliance.** The Grant proceeds will be disbursed to the Owner in accordance with the Grant Agreement between Owner and the OCD-DRU's Hazard Mitigation Grant Program. Evidence acceptable to OCD-DRU shall include without limitation the following:
Signed Voluntary Participation Agreement (VPA)
Signed & Notarized OCD-DRU HMGP Covenant
Building Permit
Power of Attorney documentation (if applicable)
Construction contract (if applicable)
Paid invoices, receipts, cancelled checks, and/or notarized homeowner affidavit documenting work
Insurance and ICC payouts
Final Inspection Photos
Final Elevation Certificate
Building Plans
Proof of Flood Insurance
Certificate of Occupancy or Statement from Local Bldg Inspection Official that the elevation was completed to code
Work in Progress (WIP) documentation (if applicable)

11. **Fraud Acknowledgement.** Owner asserts, certifies and reaffirms that all information on the application, covenant, and documentation for reimbursement provided (e.g., receipts, invoices, bank statements, canceled checks, self certification affidavits, etc) are true to the best of his/her/their knowledge and Owner acknowledges that such have been relied on by OCD-DRU HMGP to make a determination of eligibility for the HMGP Grant Award. Owner certifies that all expenses claimed in connection with the owner's reconstruction application for grant proceeds were a direct result of the declared disaster(s) and for the owner(s) mitigated structure; and that the owner(s) have disclosed to OCD-DRU HMGP all insurance proceeds and other funds received from governmental agencies as compensation for damages and intended mitigation measure (e.g. elevation or reconstruction) as a result of the declared disaster in the application process. Owners acknowledge that owner may be prosecuted by Federal, State and/or local authorities in the event that owner make or file false, misleading and/or incomplete statements and/or documents. Owner agrees to repay the HMGP Grant in the event owner make or file false, misleading and/or incomplete statements and/or documents. Owner acknowledges notice of the danger of fraud and scams perpetrated by unscrupulous individuals, contractors and businesses and that the State has provided an Office of Fraud to address such issues.

12. **Severability/Construction.** These Covenants shall be governed and construed in accordance with the laws of the State of Louisiana. Any provision of these Covenants found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof, or any of the other Covenants contained herein. These Covenants, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Time is of the Essence. These Covenants are 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.

These Covenants shall be recorded in the conveyance records of the Registrar of Conveyances for the applicable Parish, Louisiana, or in the conveyance records of the Office of any Clerk of Court or Recorder for any other parish in which the Property is located.

STATE OF LOUISIANA

PARISH OF _____

THUS DONE AND SIGNED on the _____ day of _____, 200____, in the presence of the undersigned witnesses and Notary Public, after due reading of the whole.

WITNESSES:

OWNER:

Witness Signature

Homeowner Signature

Print Name: _____

Print Name: _____

Witness Signature

Homeowner Signature

Print Name: _____

Print Name: _____

Notary Public

Print Name: _____

Notary No./Bar Roll No. _____

My Commission Expires: _____

STATE OF LOUISIANA

PARISH OF _____

THUS DONE AND SIGNED by OCD or its designee on the _____ day of _____, 200____, in the presence of the undersigned witnesses and Notary Public, after due reading of the whole.

WITNESSES:

**STATE OF LOUISIANA, DIVISION OF ADMINISTRATION,
OFFICE OF COMMUNITY DEVELOPMENT**

Witness Signature

By: _____

Print Name: _____

Sign Name: _____

Name: _____

Witness Signature

Print Name: _____

Print Name: _____

Title: _____

Notary Public

Print Name: _____

Notary No./Bar Roll No. _____

My Commission Expires: _____

