



MEMORANDUM

To: Mayor James R. Bowlin and City Council Members

From: Rick C. Brown, Director of Public Works / City Engineer

Date: January 10, 2019

Re: Deed Restrictions for 212 Valley Drive

Background:

As you may recall, last year, the City executed a Flood Mitigation Assistance (FMA) Grant Program Agreement with the State Emergency Management Agency (SEMA), to obtain funds to acquire the property located at 212 Valley Road in the Glencoe area. The property at 212 Valley Drive is in the Meramec River 100-year floodplain and was substantially damaged in flooding during 2015 and again in 2017. (See **Exhibit B** for the property location.) The FMA agreement grants us a maximum reimbursement of \$26,895 for acquisition of the property and removal of the home. The agreement requires a local match of 25%. It should be noted that the property, once acquired, must be preserved in perpetuity as greenspace.

Last year, we were able to acquire the property from the Federal Home Loan Mortgage Corporation, after it was foreclosed upon. The home was removed last fall. The costs were as follows:

Purchase Amount=	\$18,834.82
Demolition Amount=	\$7,482.98
Total =	\$26,317.80
Reimbursement Amount=	\$19,738.35 (75% of Total)

In order to obtain reimbursement for these costs from SEMA, we need to complete one final step, which is deed restricting the property, to ensure that the City will only utilize the property as greenspace in the future.

Recommendation:

The Department is recommending the execution of an agreement between the City of Wildwood and SEMA to implement deed restrictions on the flood buyout property located at 212 Valley Drive in Glencoe.

Reasons for Recommendation:

- The deed restrictions preserve the property as greenspace as required by our grant agreement.
- The deed restrictions are necessary in order to obtain reimbursement of our costs.

Therefore, Bill #2434, which authorizes the Mayor to execute the agreement with SEMA to enable the deed restrictions on the property has been prepared for the consideration of the City Council. (Bill #2434 has been attached for your reference.)

I will be available for discussion of this item at the January 14, 2019 meeting of the City Council.

RCB

AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A HAZARD MITIGATION DEED RESTRICTION AGREEMENT ON BEHALF OF THE CITY OF WILDWOOD WITH THE MISSOURI STATE EMERGENCY MANAGEMENT AGENCY, IMPOSING CERTAIN RESTRICTIONS ON THE USE OF PROPERTY LOCATED AT 212 VALLEY DRIVE.

WHEREAS, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.*, identifies the use of disaster relief funds under § 5170c, Hazard Mitigation Grant Program, including the acquisition and relocation of structures in the floodplain; and

WHEREAS, the Hazard Mitigation Grant Program provides a process for the City, through the State of Missouri, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity; and

WHEREAS, the City of Wildwood purchased certain real property located at 212 Valley Drive, Glencoe, Missouri 63038 (the “Property”); and

WHEREAS, the City desires to use funds from the Hazard Mitigation Grant Program to maintain the Property as open space in perpetuity; and

WHEREAS, the Council of the City of Wildwood finds and determines that it promotes the health and general welfare of the residents of the City to enter into the Hazard Mitigation Deed Restriction Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:

Section One. That the form, terms, and provisions of the Hazard Mitigation Deed Restriction Agreement by and between the City of Wildwood, Missouri, and Missouri State Emergency Management Agency, attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “Agreement”), be and are hereby approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

Section Two. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or

the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Section Three. Severability. If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Four. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

This Bill was passed and approved this ____ day of _____, 2019, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two (2) times prior to its passage.

Presiding Officer

James R. Bowlin, Mayor

ATTEST:

ATTEST:

City Clerk

City Clerk

Exhibit A
[attach Agreement]

HAZARD MITIGATION DEED RESTRICTION AGREEMENT

This Hazard Mitigation Deed Restriction Agreement (“Agreement”) is made and entered into as of the ____ day of _____, 201____, by between the Missouri State Emergency Management Agency, a political subdivision of the State of Missouri, participating in the federally-assisted acquisition project (the “Grantor”), and the City of Wildwood, Missouri, a charter city (the “Grantee”), its successors and assigns.

WHEREAS, the Grantee purchased from the Federal Home Loan Mortgage Corporation, a corporation organized and existing under the law of the United States, certain real property located at 212 Valley Drive, Glencoe, Missouri 63038 (the “Property”), by that certain Special Warranty Deed, dated May ____, 2018, and recorded in Book _____, Page _____ of the St. Louis County Records (the “Deed”);

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 *et seq.*, identifies the use of disaster relief funds under § 5170c, Hazard Mitigation Grant Program, including the acquisition and relocation of structures in the floodplain;

WHEREAS, the Hazard Mitigation Grant Program provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, The State of Missouri has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency and has entered into a mitigation grant program Grant Agreement dated August 28, 2017, with FEMA and herein incorporated by reference (the “Grant Agreement”), making it a mitigation grant program grantee;

WHEREAS, the Property is located in the City of Wildwood, Missouri, and the City of Wildwood participates in the National Flood Insurance Program (“NFIP”) and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the City of Wildwood, acting by and through its City Council, has applied for and been awarded federal funds pursuant to an agreement with the State of Missouri, dated August 28, 2017 (the “State-Local Agreement”), and herein incorporated by reference, making it a mitigation grant program subgrantee; and

WHEREAS, the terms of the mitigation grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-Local Agreement require that the Grantee agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values.

NOW, THEREFORE, for and in consideration of the mutual covenants described herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee hereby agree as follows:

1. Terms. Pursuant to the terms of the Hazard Mitigation Grant Program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-Local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the Deed and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:
 - a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, including Hazard Mitigation Assistance Requirements for Property Acquisition and Relocation for Open Space.
 - b. Structures. No new structures or improvements shall be erected on the Property other than:
 - i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
 - ii. A public rest room; or
 - iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator in writing before construction of the structure begins.

Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to Paragraph 1.b. shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State law or local ordinance, and in accordance with criteria established by the FEMA Administrator.

- c. Disaster Assistance and Flood Insurance. No Federal entity or source may provide disaster assistance for any purpose with respect to the Property, nor may any application for such assistance be made to any Federal entity or source. The Property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

- d. Transfer. The Grantee, including its successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this Paragraph 1.d.
 - i. The request by the Grantee, through the State, to the FEMA Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this Paragraph 1.d., and documentation of its status as a qualified conservation organization, if applicable.
 - ii. The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1.a., with the prior approval of the FEMA Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this Paragraph 1.
 - iii. If title to the Property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this Paragraph 1, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
 - a) The Grantee shall convey, in accordance with this Paragraph 1.d.ii., a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or
 - b) At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.
 - iv. Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this Paragraph 1. and must incorporate a provision for the property interest to revert to the State or local government in the event that the transferee ceases to exist or loses its eligible status under this Paragraph 1.
2. Inspection. FEMA, its representatives and assigns, including the State of Missouri, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of this Agreement, the Property conveyance, and of the grant award for the Property.
3. Monitoring and Reporting. Every three years on June 30, the Grantee (mitigation grant program subgrantee), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

4. Enforcement. The Grantee (mitigation grant program subgrantee), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:
 - a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.
 - i. If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
 - ii. FEMA, its representatives and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:
 - a) Withholding FEMA mitigation awards or assistance from the State, Grantee, and current holder of the property interest;
 - b) Requiring transfer of title. The Grantee or the current holder of the property interest shall bear the costs of bringing the Property back into compliance with the terms of the grant; or
 - c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the local community, and their respective successors.
5. Amendment. This Agreement may be amended upon signatures of FEMA, the State, and the Grantee or the current holder of the property interest, only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the Agreement.
6. Severability. Should any provision of this Agreement or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this Agreement and their application shall not be affected and shall remain valid and enforceable.

In Witness Whereof, the Grantor and Grantee have set their hands the day and year listed below.

[The remainder of this page is intentionally left blank. Signature page to follow.]

GRANTOR:

Missouri State Emergency Management Agency,
a political subdivision of the State of Missouri

By: _____

Printed Name: _____
Authorized Signatory

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On this ____ day of _____, in the year 20__, before me, _____, a Notary Public in and for said state, personally appeared _____, _____ of the Missouri State Emergency Management Agency, known to me to be the person who executed the within Hazard Mitigation Deed Restriction Agreement in behalf of said Missouri State Emergency Management Agency and acknowledged to me that he/she executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Notary Public

My Commission Expires: _____

