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**BUILDING AND USE DEED RESTRICTIONS
FOR
721 N. MAIN FLOODWAY**

The City of Ann Arbor, a Michigan municipal corporation (the "City"), being the owner of the real estate commonly known as 721 N. Main, Ann Arbor, MI 48104, situated in the City of Ann Arbor, County of Washtenaw, and State of Michigan, described on the attached Exhibit A (the "Property"), effective 12 day of September, 2013, do hereby place the following Building and Use Restrictions upon the floodway portion of the Property described on the attached Exhibit B and illustrated by the drawing attached as Exhibit C (the "Restricted Property") in accordance with and authorized by a certain Resolution of the Ann Arbor City Council known as R 13-155, approved March 4, 2013, and declare them to be a covenant running with the Restricted Property as stated here below.

RECITALS:

Whereas, the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("The Stafford Act"), Pub. L. No. 93-288 (1974), 42 U.S.C. §et seq., identifies the use of funds under Section 404 of the Act, 42 U.S.C. §5170c, for hazard mitigation grants to assist States and local governments in implementing cost-effective hazard mitigation measures to reduce the risk of future damages, hardship, loss or suffering in any area affected by a major disaster;

Whereas, the mitigation grant program provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to demolish and/or remove structures, and to maintain the use of the Property as open space in perpetuity;

Time Submitted for Recording
Date 9-13-2013 Time 1:28 pm
Lawrence Kestenbaum
Washtenaw County Clerk/Register

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Whereas, the State of Michigan has applied for and been awarded such funding, from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA") and has entered into a mitigation grant program Grant Agreement dated October 5, 2012 with FEMA and herein incorporated by reference;

Whereas, pursuant to the Hazard Mitigation Grant Agreement between FEMA and the State, the State of Michigan is the mitigation grant program Grantee;

Whereas, the Restricted Property is located in the City of Ann Arbor, Washtenaw County, Michigan; and the City of Ann Arbor and the Township of Ann Arbor participate in the National Flood Insurance Program ("NFIP") and are in good standing with NFIP as of the date of this instrument;

Whereas, the City of Ann Arbor, acting by and through the Ann Arbor City Council, has applied for and been awarded federal hazard mitigation grant funds pursuant to an agreement with the State of Michigan dated April 1, 2013 ("State-Local Agreement"), and herein incorporated by reference;

Whereas, pursuant to the State-Local Agreement, the City of Ann Arbor is the mitigation grant program Subgrantee;

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 the Grantee and Subgrantee agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values.

RESTRICTION:

Section 1. Terms. The City of Ann Arbor, owner of the Restricted Property identified as Parcel No. 09-09-20-409-006, has obtained a federal hazard mitigation grant, through the State of Michigan, to permanently remove structures located within the floodway portion of the Property. 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 maintain as open space, consistent with FEMA program requirements concerning the acquisition of property for open space, the Floodway Portion of Property (hereinafter referred to as the "Restricted Property") specifically identified by metes and bounds legal description in attached Exhibit B:

- a. Compatible uses. The Restricted 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 and unpaved parking lots, permeable parking lots, buffer zones, and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, and Requirements for Property Acquisition and Relocation for Open Space.

- b. **Structures.** No new structures or improvements shall be erected on the Restricted 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 Restricted Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be floodproofed or elevated to at least the base flood level plus one (1) foot of freeboard, or greater, if required by FEMA, or if required by any State, Tribal, 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 Restricted Property, nor may any application for such assistance be made to any Federal entity or source. The Restricted 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 City, including successors in interest, shall convey any interest in the Restricted Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.
- i. The request by the City, 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 section, and documentation of its status as a qualified conservation organization if applicable.
 - ii. The City may convey a property interest only to a public entity or to a qualified conservation organization. However, the City may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph 1.a of this section, 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 section.
- iii. If title to the Restricted 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 section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
 - a) The City shall convey, in accordance with this paragraph, 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 City 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 section and must incorporate a provision for the property interest to revert to the State, Tribe, or local government in the event that the transferee ceases to exist or loses its eligible status under this section.

Section 2. Inspection. FEMA, its representatives, and assigns including the State of Michigan shall have the right to enter upon the Restricted Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Restricted Property to ensure compliance with the terms of this part, the Restricted Property conveyance and of the grant award.

Section 3. Monitoring and Reporting. Every three years on September 1st, the City (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 City has inspected the subject Restricted Property within the month preceding the report, and that the Restricted Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

Section 4. Enforcement. The City (mitigation grant program Subgrantee), the State, FEMA and their respective representatives, successors and assigns, are responsible for taking measures to bring the Restricted Property back into compliance if the Restricted 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 City, and subsequent holders of the property interest at the time of enforcement, shall include the following:

- a. The State will notify the City 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 City 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 assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:
 - a) Withholding FEMA mitigation awards or assistance from the State or Tribe, the City (mitigation grant program Subgrantee), and the current holder of the property interest.
 - b) Requiring transfer of title. The City or the current holder of the property interest shall bear the costs of bringing the Restricted Property back into compliance with the terms of the grant.
 - c) Bringing an action at law or in equity in a court of competent jurisdiction against any and all of the following parties: the State, the Tribe, the local community, and their respective successors.

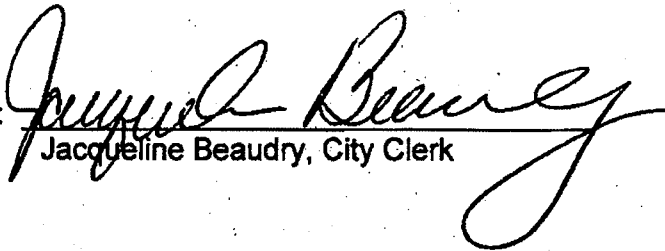
Section 5. Amendment. These restrictions shall be deemed covenants running with the land and shall be binding upon any and all persons hereinafter accepting a deed or other conveyance of the Restricted Property unless amended upon signatures of FEMA, the State, and the City only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the federal hazard mitigation grant agreement entered into by the City referenced above.

Section 6. Severability. Should any provision of the federal hazard mitigation grant referenced above or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of the grant and their application shall not be affected and shall remain valid and enforceable.

CITY OF ANN ARBOR, a Michigan municipal
Corporation

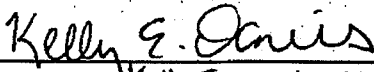
BY: _____


John Hieftje, Mayor

BY: 
Jacqueline Beaudry, City Clerk

STATE OF MICHIGAN
COUNTY OF WASHTENAW

The foregoing document was acknowledged before me this 12 day of September, 2013, by John Hieftje, Mayor and Jacqueline Beaudry, City Clerk of the City of Ann Arbor, Michigan, on behalf of the City of Ann Arbor.


Kelly E. Davis, Notary Public
Washtenaw County, Michigan
Acting in Washtenaw County, Michigan
My commission expires: 03-18-2020

This document prepared by and
when recorded return to:
Mary Joan Fales (P37142)
City of Ann Arbor City Attorney's Office
301 E. Huron St.
Ann Arbor, Michigan 48104

Tax Parcel No. 09-09-20-409-006 (portion of)

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

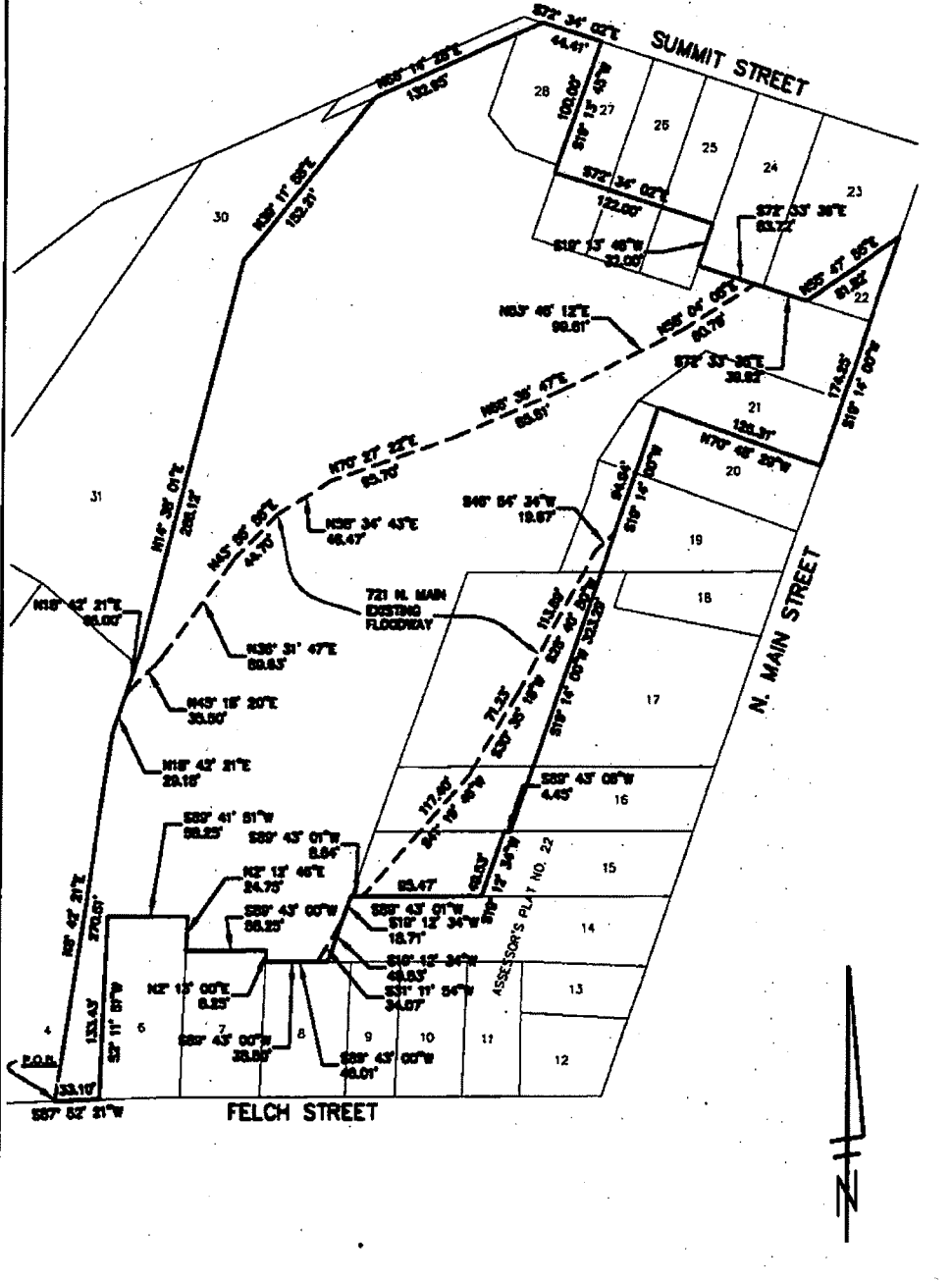
Beginning at the S.E. corner of Lot 4, Assessor's Plat No. 22 located in the City of Ann Arbor and recorded in Liber 9 of plats, Page 6, Washtenaw County records, Washtenaw County, Michigan; thence the following two courses along the Easterly line of said Lot 4, N 08°42'21" E, 270.51 feet and N 18°42'21" E 66.00 feet; thence along the Easterly line of Lot 31 of said plat N 14°38'01" E 286.12 feet; thence along the Easterly line of Lot 30 of said plat N 39°11'58" E 152.21 feet; thence along the Southeasterly line of Lot 29 N 66°14'28" E 132.95 feet; thence along the Southerly right of way of Summit Street S 72°34'02" E 44.41 feet (recorded as S 72°33'30" E); thence along the Westerly line of Lot 27 of said plat S 19°13'45" W 100.00 feet; thence S 72°34'02" E 122.00 feet; thence along the Westerly line of Lot 24 of said plat S 19°13'46" W 32.00 feet; thence along the Southerly line of Lots 24 & 23 of said plat S 72°33'36" E 83.72 feet; thence along the Southeasterly line of said Lot 23 N 55°47'55" E 81.82 feet; thence along the Westerly right of way of N. Main Street S 19°14'00" W 174.25 feet; thence along the Northerly line of Lot 20 of said plat N 70°48'29" W 126.31 feet; thence S 19°14'00" W 323.29 feet; thence along the Northerly line of Lot 15 of said plat S 89°43'06" W 4.45 feet; thence S 19°12'34" W 49.53 feet; thence along the North line of Lot 14 of said plat S 89°43'01" W 95.47 feet; thence along the Westerly line of said Lot 14 S 19°12'34" W 49.53 feet; thence the following six courses along Lots 8, 7, & 6, of said plat S 89°43'00" W 46.01 feet, N 02°13'00" E 8.25 feet, S 89°43'00" W 58.25 feet, N 02°12'46" E 24.75 feet; S 89°41'51" W 58.25 feet, and S 02°11'51" W 133.43 feet; thence along the Northerly right of way of Felch Street S 87°52'21" W 33.10 feet to the Point of Beginning. Being a part of said Assessor's Plat No. 22 and containing 4.625 acres of land, more or less. Subject to easements of record.

**EXHIBIT B
RESTRICTED PROPERTY LEGAL DESCRIPTION**

Beginning at the S.E. corner of Lot 4, Assessor's Plat No. 22 located in the City of Ann Arbor and recorded in Liber 9 of plats, Page 6, Washtenaw County records, Washtenaw County, Michigan; thence the following two courses along the Easterly line of said Lot 4, N 08°42'21" E, 270.51 feet and N 18°42'21" E 29.18 feet; thence N 45°18'20" E 35.50 feet; thence N 36°31'47" E 89.63 feet; thence N 43°56'56" E 44.70 feet; thence N 58°34'43" E 46.47 feet; thence N 70°27'22" E 95.70 feet; thence N 66°36'47" E 85.51 feet; thence N 63°46'12" E 99.81 feet; thence N 58°04'08" E 60.79 feet; thence along the Southerly line of Lot 23 & 24 of said plat S 72°33'36" E 39.92 feet; thence along the Southeasterly line of said Lot 23 N 55°47'55" E 81.82 feet; thence along the Westerly right of way line of N. Main Street S 19°14'00" W 174.25 feet; thence along the Southerly line of Lot 21 of said plat N 70°48'29" W 126.31 feet; thence S 19°14'00" W 94.94 feet; thence S 46°54'34" W 19.67 feet; thence S 28°40'50" W 113.89 feet; thence S 30°35'18" W 71.23 feet; thence S 41°19'46" W 117.40 feet; thence along the Southerly line of Lot 15 of said plat S 89°43'01" W 8.64 feet; thence along the Westerly line of Lot 14 of said plat S 19°12'34" W 18.71 feet; thence S 31°11'54" W 34.07 feet; thence the following six courses along Lots 8, 7, & 6, of said plat S 89°43'00" W 38.50 feet, N 02°13'00" E 8.25 feet, S 89°43'00" W 58.25 feet, N 02°12'46" E 24.75 feet; S 89°41'51" W 58.25 feet, and S 02°11'51" W 133.43 feet; thence along the Northerly right of way of Felch Street S 87°52'21" W 33.10 feet to the Point of Beginning. Being a part of said Assessor's Plat No. 22 and containing 2.56 acres of land, more or less. Subject to easements of record.

721 N. MAIN /FLOODWAY

EXHIBIT C



FLOODWAY DESCRIPTION
721 N. MAIN
CITY OF ANN ARBOR

SCALE: 1"=100'

09 SEPT 2013

CITY OF ANN ARBOR

SHEET No. 1 of 2