

TRANSFERRED
DATE _____
CONVEYANCE _____
FEE \$ _____
EXEMPT _____

Roger Reynolds, Butler Co. Auditor
This conveyance has been examined and the grantor
has complied with section 319.202 of the revised code.



Image ID: 000007972418 Type: OFF
Recorded: 11/09/2011 at 02:21:57 PM
Fee Amt: \$60.00 Page 1 of 6
Workflow# 0000113232-0001
Butler County, Ohio
Dan Crank COUNTY RECORDER
File# 2011-00045839

BK **8386** PG **347**

WARRANTY DEED

Ronald Salerno and Linda M. Salerno, husband and wife, of Butler County, Ohio for valuable consideration paid, grants with general warranty covenants, to City of Fairfield, Ohio an Ohio municipal corporation, not-for-profit, whose tax mailing address is 5350 Pleasant Avenue, Fairfield, Ohio 45014, the following REAL PROPERTY:

Entire Lot Number 5499 as the same is known and designated on the Butler County Recorder's list of lots in the City of Fairfield, Butler County, Ohio, subject to easements, conditions and restrictions of record.

Property Address: 5373 Crystal Drive, Fairfield, OH

Parcel Number: A0700-121-000-033

Subject to the Restrictions set forth in Exhibit "A" and the Declaration of Restrictions shown in Exhibit "B" attached hereto and incorporated herein by reference.

Prior Instrument Reference: Volume 1751, Page 240 of the Official Records of Butler County, Ohio.
Signed this 8th day of November, 2011.

Ronald Salerno

Linda M. Salerno

City of Fairfield, Ohio

By: Arthur E. Pizzano, City Manager

STATE OF OHIO,
COUNTY OF BUTLER, SS.

The foregoing instrument was acknowledged before me this 8th day of November, 2011, by Ronald Salerno and Linda M. Salerno.

Notary Public, State of Ohio

STATE OF OHIO,
COUNTY OF BUTLER, SS.



JOHN H. CLEMMONS, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My Commission has no Expiration Date
O.R.C. Section 147.03

The foregoing instrument was acknowledged before me this 8th day of November, 2011, by Arthur E. Pizzano the City Manager of the City of Fairfield, Ohio, on behalf of the municipal corporation.

Notary Public, State of Ohio

Exhibit "A"

In reference to the property or properties ("Property") conveyed by the Deed between **Ronald Salerno and Linda M. Salerno** participating in the federally-assisted acquisition project ("the Grantor") and the **City of Fairfield, Ohio**, ("the Grantee"), its successors and assigns:

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 ("HMGP")**, including the acquisition and relocation of structures in the floodplain;

WHEREAS, the 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, **Department of Public Safety, Ohio EMA** 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 29, 2008** with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

WHEREAS, the Property is located in the **City of Fairfield, Butler County** and the **City of Fairfield, Butler County** 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 Fairfield**, acting by and through the City Council, has applied for and been awarded federal funds pursuant to an agreement with the **Ohio EMA** dated **August 2, 2011** ("State-Local Agreement") and herein incorporated by reference, making it a 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 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, the grant is made subject to the following terms and conditions:

1. **Terms.** Pursuant to the terms of the **Hazard Mitigation Grant Program ("HMGP")** 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 attached 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, 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

- 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 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.
 - 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 section, 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 (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 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 Grantee 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 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 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.
- 2. Inspection. FEMA, its representatives and assigns including the State or Tribe 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 part the Property conveyance and of the grant award.
 - 3. Monitoring and Reporting. Every three years on **August 2**, 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

- 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 or Tribe, and 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 Tribe, the local community, and their respective successors.
- 5. Amendment. This agreement may be amended upon signatures of FEMA, the State, and the Grantee 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 grant 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 grant and their application shall not be affected and shall remain valid and enforceable.

EXHIBIT "B"

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions (this "Declaration") is made on this 8th day of November, 2011 by City of Fairfield, Ohio, an Ohio municipal corporation (the "Declarant").

Recitals:

A. Declarant owns certain property located in City of Fairfield, Butler County, Ohio as more particularly described as follows:

Entire Lot Number 5499 as the same is known and designated on the Butler County Recorder's list of lots in the City of Fairfield, Butler County, Ohio, subject to easements, conditions and restrictions of record.

Property Address: 5373 Crystal Drive, Fairfield, OH

Parcel Number: A0700-121-000-033

B. Declarant applied for and has received a grant from the State of Ohio, acting by and through the Director of the Ohio Public Works Commission ("OPWC"), pursuant to Ohio Revised Code §164.20 et seq. (the "Grant"). In connection with Declarant's application for the Grant, Declarant proposed to use the Grant funds either for open space acquisition and related development or to protect and enhance riparian corridors, as set forth more specifically in its application.

C. As a condition to Declarant's receipt of the Grant, Declarant has agreed to restrict the use of the Property as set forth in this Declaration, with the intent that such restrictions run with the land.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant, for itself and its successors and assigns as owners of the Property, hereby agrees as follows:

1. **Use and Development Restrictions.** Declarant hereby agrees, for itself and its successors and assigns as owners of the Property, that the Property shall be subject to the following:

(a.) As part of the City of Fairfield Parks System, the Property will serve as protection to the urban stream, floodplain and riparian corridor of the Pleasant Run Creek within the 10 and 100 year floodplains of the Great Miami River watershed. The Property will be part of the larger existing preservation area which includes grasslands, woodland areas, and portions of the Pleasant Run Creek. Water quality will be improved by reducing nonpoint source pollution within the watershed.

(b.) In addition, the City plans on implementing a series of riparian corridor improvements to the preservation area including:

1. **Riparian Setback:** A 50 foot corridor will be preserved on both sides of the Creek for reestablishment of the riparian forest.

2. **Smart Mowing:** In addition to the riparian corridor setback, the Parks Department will implement a smart mowing program that will allow for the establishment of floodplain prairie habitat for numerous species.

3. **Invasive Species Management:** The City Parks Department will maintain the properties and limit the growth and establishment of invasive species, such as honeysuckle.

4. **Pleasant Run Creek Trail:** The Property's purchase will allow for

3. **Enforcement.** If Declarant, or its successors or assigns as owner of the Property, should fail to observe the covenants and restrictions set forth herein, the Declarant or its successors or assigns, as the case may be, shall pay to OPWC upon demand, as liquidated damages, an amount equal to the greater of (a) two hundred percent (200%) of the amount of the Grant received by Declarant, together with interest accruing at the rate of six percent (6%) per annum from the date of Declarant's receipt of the Grant, or (b) two hundred percent (200%) of the fair market value of the Property as of the date of demand by OPWC. Declarant acknowledges that such sum is not intended as, and shall not be deemed, a penalty, but is intended to compensate for damages suffered in the event a breach or violation of the covenants and restrictions set forth herein, the determination of which is not readily ascertainable. OPWC shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions and covenants set forth herein. Failure by OPWC to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation.

4. **Restriction on Transfer of the Property.** Declarant acknowledges that the Grant is specific to Declarant and that OPWC's approval of Declarant's application for the Grant was made in reliance on Declarant's continued ownership and control of the Property. Accordingly, Declarant shall not voluntarily or involuntarily sell, assign, transfer, lease, exchange, convey or otherwise encumber the Property without the prior written consent of OPWC, which consent may be withheld in its sole and absolute discretion.

5. **Separability.** Each provision of this Declaration and the application thereof to the Property are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration.

6. **Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the parties are as follows:

Declarant: City of Fairfield, Ohio
5350 Pleasant Avenue
Fairfield, OH 45014
ATTN: City Manager

OPWC: Ohio Public Works Commission
65 East State Street
Suite 312
Columbus, Ohio 43215
Attn: Director

7. **Governing Law.** This Declaration shall be governed by, and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictions to be executed this 8th day of November, 2011.

DECLARANT: City of Fairfield, Ohio

By: 

Name: Arthur E. Pizzano

Title: City Manager