

Finance Office

Telephone: 701-241-5600
Fax: 701-241-5728
SMB-FIN@casscountynd.gov

March 26, 2021

Cass County Commission
Cass County Government
211 9th St S
Fargo, ND 58103

Re: Transfer of FEMA Lots to the City of Briarwood

Dear Commissioners.

This is a project that has been going on for some time. On April 6, 2018 you authorized the County Auditor and the States Attorney to work with the City of Briarwood to transfer eight lots purchased by the county with FEMA funds to the City of Briarwood. The county acquired these lots, recorded the deed and the deed restrictions required when using FEMA funds. Our efforts over the last couple of years has been in getting the necessary approval from FEMA which we received today.

Briarwood will agree to abide by the Stafford Act provisions which basically requires the area to be maintained in its natural state, they will maintain and control the lots, they have already been doing this for a number of years. Our Weed Control Officer has been monitoring the area for any noxious weeds and treat them as necessary. Mr. Wolf will contact the city to see if they want him to continue to do the weed spraying under contract.

Attached are some maps of the lots being transferred, a listing of the lots, the minutes from when you made the motion to work with Briarwood to transfer the lots, and the approval letter to transfer the lots.

Also included are the eight deeds and accompanying documents that will need to be signed by the Chairman of the County Commission and then signed by the Mayor of Briarwood prior to recording the same in the County Recorder's Office.

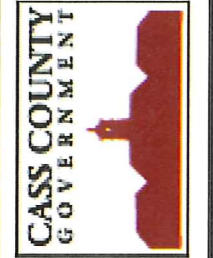
Sincerely,

A handwritten signature in black ink that reads "Michael Montplaisir".

Michael Montplaisir, CPA CPFO
Cass County Finance Director

SUGGESTED MOTION:

Move to authorize the Chairman to sign eight deeds transferring lots 13, 16, 17, 18, 20, 21, and 20 of Briarwood Place to the City of Briarwood.

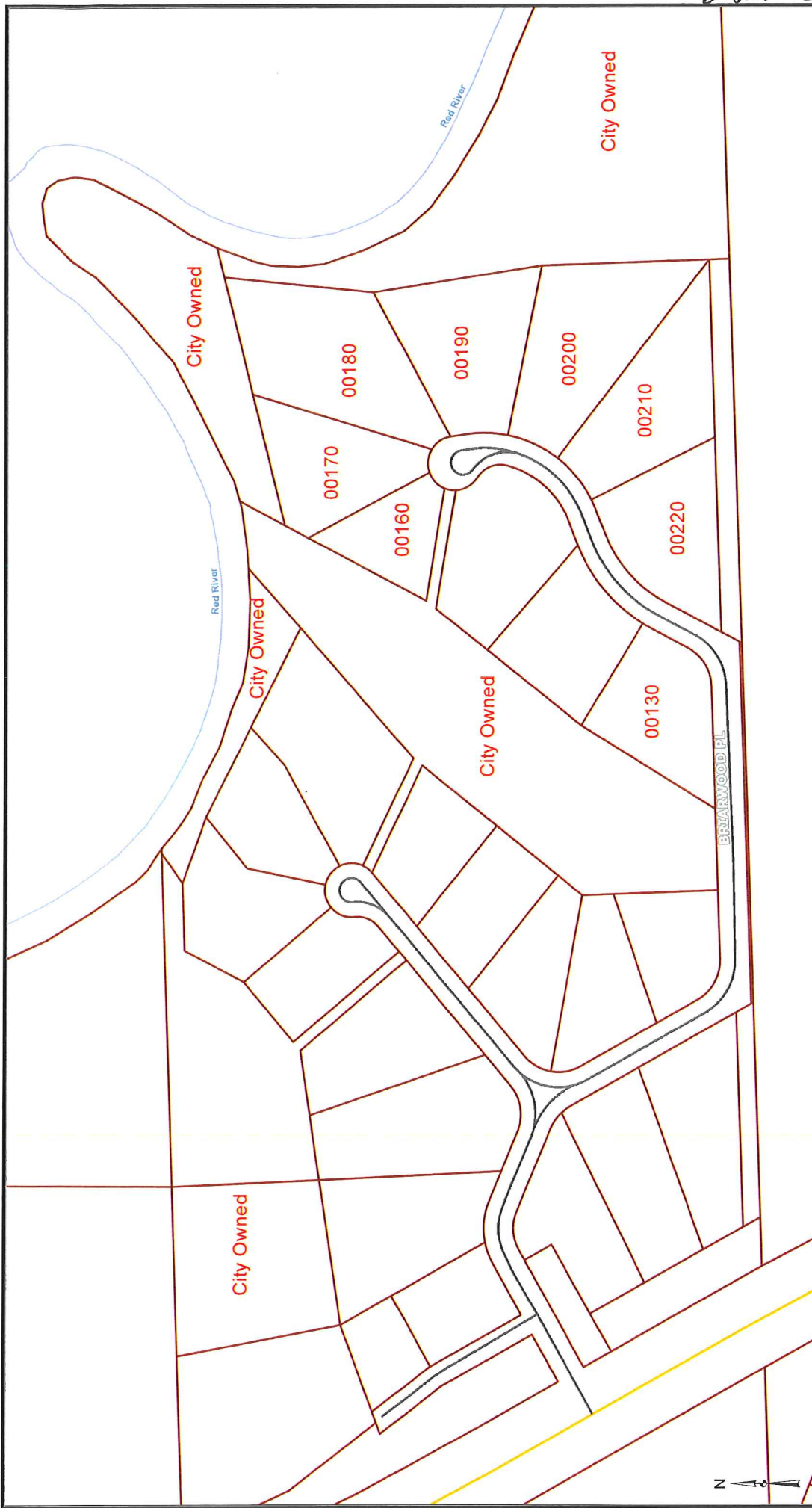


City of Briarwood

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Date: 6/21/2019

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



City of Briarwood

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Date: 7/30/2019

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

Exhibit 2

CURRENT PARCEL	PURCHASE DATE	PROPERTY ADDRESS	PURCHASE PRICE	FUNDING	GRANT	CITY	SUBDIVISION	LOT	DOCUMENT #	X (LONGITUDE - DECIMAL DEGREES)	Y (LATITUDE - DECIMAL DEGREES)
72-0100-00130-000	2/11/2011	13 BRIARWOOD PL	\$ 310,000	FEMA	2009 HMGP DR-1829 2-R	BRIARWOOD	BRIARWOOD PLACE	13	1316696	-96.7946869	46.78572656
72-0100-00160-000	3/23/2010	16 BRIARWOOD PL	\$ 404,682	FEMA	FMA-PJ-2009-002	BRIARWOOD	BRIARWOOD PLACE	16	1290356	-96.79300316	46.78732363
72-0100-00170-000	3/17/2010	17 BRIARWOOD PL	\$ 416,829	FEMA	FMA-PJ-2009-002	BRIARWOOD	BRIARWOOD PLACE	17	1289998	-96.79235665	46.78768254
72-0100-00180-000	3/17/2010	18 BRIARWOOD PL	\$ 176,076	FEMA	FMA-PJ-2009-002	BRIARWOOD	BRIARWOOD PLACE	18	1290002	-96.79140783	46.78765025
72-0100-00190-000	3/24/2010	19 BRIARWOOD PL	\$ 377,500	FEMA	FMA-PJ-2009-002	BRIARWOOD	BRIARWOOD PLACE	19	1290443	-96.79133749	46.78681529
72-0100-00200-000	2/8/2011	20 BRIARWOOD PL	\$ 382,500	FEMA	2009 HMGP DR-1829 2-R	BRIARWOOD	BRIARWOOD PLACE	20	1316062	-96.79135842	46.78607132
72-0100-00210-000	3/7/2011	21 BRIARWOOD PL	\$ 950,000	FEMA	2009 HMGP DR-1829 2-R	BRIARWOOD	BRIARWOOD PLACE	21	1318921	-96.79192496	46.78569109
72-0100-00220-000	2/23/2011	22 BRIARWOOD PL	\$ 430,000	FEMA	2009 HMGP DR-1829 2-R	BRIARWOOD	BRIARWOOD PLACE	22	1318098	-96.79309244	46.78561872

- j. Authorize the chairman to sign a letter of support for the City of Fargo to designate eligible census tract #38017000300 as an Opportunity Zone and to sign a letter of support for the City of West Fargo to designate eligible census tract #38017040400 and #38017010107 as Opportunity Zones, as defined in the Tax Cut and Jobs Act of 2017.
- k. Authorize the publication of a Notice for Bidders for proposals to re-roof the sloped areas of the Cass County Annex Building.
- l. Contract approval
 - Mosquito control agreements for cities, subdivisions and organizations;
 - Kadrmas, Lee & Jackson—traffic count analysis on various county roads;
 - Cass County Weed Control—weed spraying services for the Cass County Park District at Brewer Lake campgrounds in Erie, North Dakota;
 - On the Level Construction, Inc.—box culvert replacement projects in various locations in Cass County;
 - Flood lot lease renewal for 2018.
- m. Approve a special event permit for the Bordertown Bar and Grill to serve alcoholic beverages on May 3, 2018, during the hours of 4:00 PM to midnight for a business event at the Bonanzaville, U.S.A. Event Center in West Fargo, North Dakota.

6. BEER LICENSE, Six-month license approved for 4e Winery

Greg and Lisa Cook, owners of 4 Elements Enterprises, LLC d/b/a 4e Winery were present to discuss their request for a six-month beer license. Mr. and Mrs. Cook opened their winery three years ago in Everest Township, located south of Casselton. They would like the ability to serve beer along with their wine for special events held at their establishment.

MOTION, passed

Mr. Peterson moved and Mr. Rasmussen seconded to approve a six-month beer license for 4 Elements Enterprises, LLC d/b/a 4e Winery from May 1-October 31, 2018. On roll call vote, the motion carried unanimously.

7. BRIARWOOD CITY, Authorized to proceed with the process to transfer county-owned FEMA lots for nature park

Michael Montplaisir, County Auditor, said for consideration today is a request from the City of Briarwood to transfer eight county-owned FEMA flood buyout lots and is similar to the lots transferred to Fargo Park District for nature park usage. The first step would be for the County Auditor and State's Attorney to work with the North Dakota Department of Emergency Services and Briarwood to facilitate the transfer.

Mike Fritz, Briarwood City Auditor, said the city intends to use the lots as a nature park with walking trails.

MOTION, passed

Mr. Bennett moved and Mr. Peterson seconded to authorize the County Auditor and State's Attorney to work with the City of Briarwood and North Dakota Department of Emergency Services to facilitate the transfer of county-owned FEMA lots to the City of Briarwood. Discussion: Mr. Rasmussen asked if the intention is for the public to be able to use the nature park. Mr. Fritz said the plan is to allow the public to use the area, but said parking is limited to the city streets in Briarwood. Mrs. Scherling asked if residents know about the potential increase in activity by the public. Mr. Fritz said the neighborhood is aware of the request to transfer the lots to the city, but not about public access and usage. There was discussion about whether the city could keep the area for private use only by residents. State's Attorney Birch Burdick said he would research state law regarding any legal restrictions regarding the park usage. On roll call vote, the motion carried unanimously.

U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraine Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Thirteen of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00130-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 1ST DAY OF FEBRUARY, 2011, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1316696 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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
 - 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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



1316696

Page: 1 of 8
2/2/2011 8:00 AM
WD \$31.00

FM TITLE

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

2/2/2011 8:00 AM

by Teresa A. Kirby, Dep. 1316696



Exhibit B

WARRANTY DEED

THIS INDENTURE, Made this 1st day of February, 2011, by and between JAMES P. KAPPAHN and MARSHA E. KAPPAHN, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Thirteen, of Briarwood Place Addition to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$310,000.

DATE: 2-1-11
72-0100-0030-000

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT

FM TITLE
K01100034

The legal description was obtained from a previously recorded instrument.

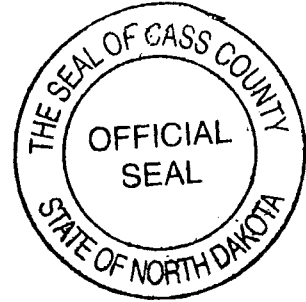
AUDITOR'S OFFICE
COUNTY OF CASS, NORTH DAKOTA

2 February 2011

THIS INSTRUMENT DRAFTED BY: Taxes and Special Assessments paid and transfer entered.

Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

Michael Woodard AUDITOR
MS DEPUTY



1316696

Page: 3 of 8
2/2/2011 8:00 AM
WD \$31.00

FM TITLE

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

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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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass County participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

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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;

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1316696

Page: 4 of 8
2/2/2011 8:00 AM
WD \$31.00

FM TITLE



- 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;
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Any improvements on the 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 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 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.

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

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I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 24th DAY OF FEBRUARY, 2010, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1290356 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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
 - 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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



1290356

Page: 1 of 8
3/23/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFFE LTD

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

3/23/2010 8:00 AM

by Teresa A. Kelly Jap 1290356



EXHIBIT B

WARRANTY DEED

THIS INDENTURE, Made this 24 day of February, 2010, by and between RAYMOND KVALVOG and KATHERINE KVALVOG, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Sixteen, of Briarwood Place Addition to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$602,500.00.

DATE: 2-24-10

72-0100-00160-000

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT



1290356

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WD \$31.00

KENNELLY & O'KEEFFE LTD

The legal description was obtained
from a previously recorded instrument.

THIS INSTRUMENT DRAFTED BY:

Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between RAYMOND KVALVOG and KATHERINE KVALVOG, husband and wife, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:



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WD \$31.00

KENNELLY & O'KEEFFE LTD

- 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
 - 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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:



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WD \$31.00

- 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.



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WD \$31.00

KENNELLY & O'KEEFFE LTD

U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraire Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Seventeen of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00170-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 12th DAY OF FEBRUARY, 2010, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1289998 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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
 - 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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



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3/17/2010 8:00 AM
WD \$28.00

KENNELLY & O'KEEFFE LTD

RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

3/17/2010 8:00 AM

by *Teresa A. Kelly, Dep* 1289998



Exhibit B

WARRANTY DEED

THIS INDENTURE, Made this 12 day of February, 2010, by and between Gery J. Knuttila, single person, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Seventeen, of Briarwood Place Addition to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

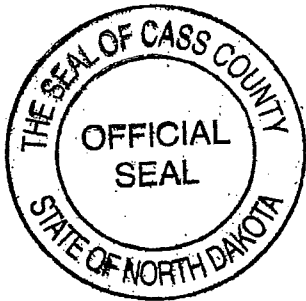
I CERTIFY that the full consideration paid for the property described in the deed is \$632,500.00.

DATE: 2-12-10

72-0100-00170-000

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT

AUDITOR'S OFFICE
COUNTY OF CASS, NORTH DAKOTA
March 17 20 10
Taxes and Special Assessments paid
and transfer entered:
Michael Montplaisir AUDITOR
CS DEPUTY





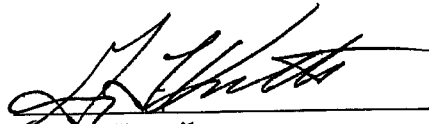
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And the Grantor for his, heirs, executors and administrators, do covenant with the Grantee that he well seized in fee of the land and premises aforesaid and his good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2010 (payable in 2011) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED.

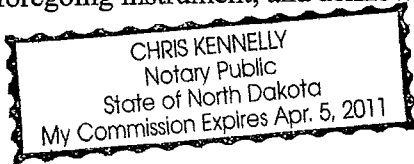
WITNESS, The hand of the Grantor:



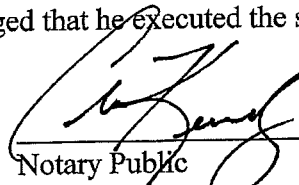
Gery J. Knuttila

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this 12 day of February, 2010, before me, a notary public within and for said county and state, personally appeared Gery J. Knuttila, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same.



(SEAL)



Notary Public
Cass County, North Dakota
My Commission Expires: 4/5/11

The legal description was obtained from a previously recorded instrument.

THIS INSTRUMENT DRAFTED BY:

Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between Gery J. Knuttila, single person, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:



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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
- 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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:



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- 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.



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WD \$28.00

KENNELLY & O'KEEFFE LTD

2-12-10

Date

Gery J. Knuttila

2-12-10

Date

Cass County, North Dakota
By: Irvin D. Rustad
Its: Grant Administrator

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this 12 day of February, 2010, before me, a notary public in and for said county and state, personally appeared Gery J. Knuttila, single person, to me known to be the person described in and that executed the within and foregoing instrument, and acknowledged to me that he executed the same.

{Seal}

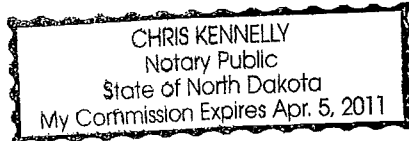


Notary Public
Cass County, North Dakota
My Commission Expires: 4/5/11

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this 12 day of February, 2010, before me, a notary public in and for said county and state, personally appeared IRVIN D. RUSTAD, CASS COUNTY GRAND ADMINISTRATOR, to me known to be the person described in and that executed the within and foregoing instrument, and acknowledged to me that he executed the same.

{Seal}



Notary Public
Cass County, North Dakota
My Commission Expires: 4/5/11

U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraire Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -0700'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Eighteen of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00180-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 19th DAY OF FEBRUARY, 2010, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1290002 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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

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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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, it 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 bring 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 proposes 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 enforceable.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



1290002

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3/17/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFFE LTD

RECORDER'S OFFICE, CASS COUNTY, ND 3/17/2010 8:00 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kirby, Dqs 1290002



Exhibit B

WARRANTY DEED

THIS INDENTURE, Made this 19th day of February, 2010, by and between Thomas Frei and Tracey Frei, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Eighteen, of Briarwood Place Addition to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$530,000.

DATE: 2-19-10

72-0100-00180-000

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT



AUDITOR'S OFFICE
COUNTY OF CASS, NORTH DAKOTA
March 17 20 10
Taxes and Special Assessments paid
and transfer entered:
Michael Montplaisir AUDITOR
CS DEPUTY



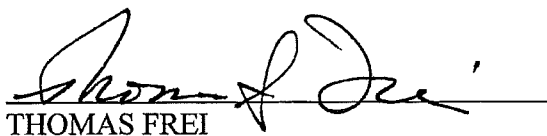
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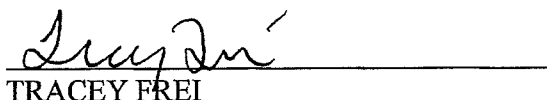
Page: 2 of 8
3/17/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFE LTD

And the Grantor for their, heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2010 (payable in 2011) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED.

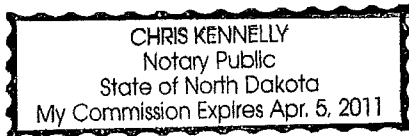
WITNESS, The hand of the Grantor:


THOMAS FREI

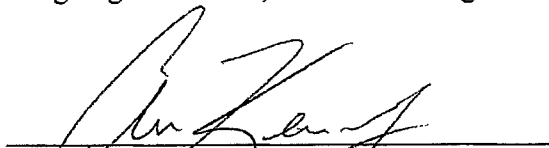

TRACEY FREI

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this 19 day of February, 2010, before me, a notary public within and for said county and state, personally appeared THOMAS FREI and TRACEY FREI, husband and wife, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that they executed the same.



(SEAL)


Notary Public
Cass County, North Dakota
My Commission Expires: 4/5/11



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3/17/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFFE LTD

The legal description was obtained
from a previously recorded instrument.

THIS INSTRUMENT DRAFTED BY:

Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between Thomas and Tracey Frei, husband and wife, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:





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- 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
 - 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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:



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- 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.



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KENNELLY & O'KEEFFE LTD

2-19-10
 Date

2-19-10
 Date

Thomas Frei
 THOMAS FREI

Tracey Frei
 TRACEY FREI

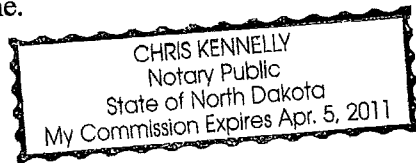
2-19-10
 Date

Irvin D Rustad
 Cass County, North Dakota
 By: Irvin D. Rustad
 Its: Grant Administrator

STATE OF NORTH DAKOTA)
) ss:
 COUNTY OF CASS)

On this 19 day of February 2010, before me, a notary public in and for said county and state, personally appeared THOMAS and TRACEY FREI, husband and wife, to me known to be the persons described in and that executed the within and foregoing instrument, and acknowledged to me that they executed the same.

{Seal}

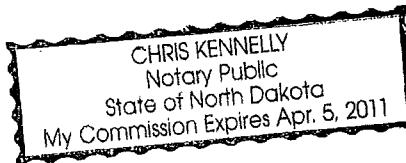


Chris Kennelly
 Notary Public
 Cass County, North Dakota
 My Commission Expires: _____

STATE OF NORTH DAKOTA)
) ss:
 COUNTY OF CASS)

On this 19 day of February, 2010, before me, a notary public in and for said county and state, personally appeared IRVIN D. RUSTAD, CASS COUNTY GRAND ADMINISTRATOR, to me known to be the person described in and that executed the within and foregoing instrument, and acknowledged to me that he executed the same.

{Seal}



Chris Kennelly
 Notary Public
 Cass County, North Dakota
 My Commission Expires: _____

U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraine Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Nineteen of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00190-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 18th DAY OF FEBRUARY, 2010, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1290443 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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

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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



1290443

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3/24/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFFE LTD

RECORDER'S OFFICE, CASS COUNTY, ND 3/24/2010 8:00 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kiley, Dep 1290443



Exhibit B

WARRANTY DEED

THIS INDENTURE, Made this 16 day of March, 2010, by and between Thomas A. Eide and Denise K. Eide, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Nineteen, in Briarwood Place Addition to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$377,500.

DATE: 3-18-10

72-0100-00190-000

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT



1290443

Page: 3 of 8

3/24/2010 8:00 AM

WD \$31.00

KENNELLY & O'KEEFFE LTD

The legal description was obtained
from a previously recorded instrument.

THIS INSTRUMENT DRAFTED BY:

Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between Thomas A. Eide and Denise K. Eide, husband and wife, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:



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WD \$31.00



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3/24/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFFE LTD

- 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
 - 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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:



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WD \$31.00

- 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.



1290443

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3/24/2010 8:00 AM
WD \$31.00

KENNELLY & O'KEEFFE LTD



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraine Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Twenty of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00200-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 24th DAY OF JANUARY, 2011, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1316062 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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

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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



1316062

Page: 1 of 8
1/25/2011 8:00 AM
WD \$31.00

FM TITLE

RECORDER'S OFFICE, CASS COUNTY, ND 1/25/2011 8:00 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kirby, Dep. 1316062



Exhibit B

WARRANTY DEED

THIS INDENTURE, Made this 24th day of January, 2011, by and between MICHAEL F. FALKNER and LAUREN J. FALKNER, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Twenty, in Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$382,500.

DATE: 1-24-11

72-0100-00200-000

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT

FM TITLE
K01100037



1316062

Page: 3 of 8
1/25/2011 8:00 AM
WD \$31.00

FM TITLE

The legal description was obtained
from a previously recorded instrument.

THIS INSTRUMENT DRAFTED BY:

Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between MICHAEL F. FALKNER and LAUREN J. FALKNER, husband and wife, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:



1316062

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1/25/2011 8:00 AM
WD \$31.00

FM TITLE



1316062

Page: 5 of 8

1/25/2011 8:00 AM

WD \$31.00

FM TITLE

- 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
 - 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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:



1316062

Page: 6 of 8

1/25/2011 8:00 AM

WD \$31.00

- 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.



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Page: 7 of 8
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WD \$31.00

FM TITLE

U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraire Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Twenty One of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00210-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 7th DAY OF MARCH, 2011, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1318921 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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

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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



1318921

Page: 1 of 7
3/7/2011 4:05 PM
WD \$28.00

FM TITLE

RECORDER'S OFFICE, CASS COUNTY, ND 3/7/2011 4:05 PM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kiley Dep. 1318921



EXHIBIT B

WARRANTY DEED

THIS INDENTURE, Made this 7th day of March, 2011, by and between BOBBY J. HEGG and JACQUELINE M. HEGG, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Twenty-One, in Briarwood Place Addition, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$950,000.

DATE: 3-7-11

72-0100-00210-000

IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT

And the Grantor for their, heirs, executors and administrators, do covenant with the Grantee

FM TITLE

K011000002

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between BOBBY J. HEGG and JACQUELINE M. HEGG, husband and wife, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:



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3/7/2011 4:05 PM
WD \$28.00

FM TITLE



1318921

Page: 4 of 7
3/7/2011 4:05 PM
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FM TITLE

- 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
 - 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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 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.



FM TITLE

1318921

Page: 6 of 7
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WD \$28.00

U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraire Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services

WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 2021, between CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantor, and CITY OF BRIARWOOD, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 7 Briarwood Place, Fargo, ND 58104.

WITNESSETH, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, Grantor does hereby GRANT, BARGAIN, SELL AND CONVEY to the Grantee, all of the following real property lying and being in the County of Cass, State of North Dakota, and described as follows, to-wit:

Lot Twenty-two of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota. Tax Parcel Number: 72-0100-00220-000

The above legal description was obtained from a previously recorded instrument.

I certify that the requirements for a report or statement of full consideration paid is exempted by NDCC 11-18-02.2(6) (i).

Date

Grantee or Agent

And the Grantor for itself, their heirs, executors and administrators, do covenant with the Grantee that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all encumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2021 (payable in 2022) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" TO THE WARRANTY DEED DATED THE 18TH DAY OF FEBRUARY, 2011, AND RECORDED IN THE OFFICE OF THE CASS COUNTY RECORDER AS DOCUMENT NO. 1318098 AND WHICH IS ATTACHED HERETO AS EXHIBIT B AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED. THE WRITTEN AGREEMENT OF THE FEMA REGIONAL ADMINISTRATOR, THROUGH THE STATE, AUTHORIZING THIS TRANSER IS ATTACHED HERETO AS EXHIBIT C.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name by its duly authorized officers as of the date set forth above.

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)

DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between the County of Cass, participating in the federally-assisted acquisition project ("the Grantor") and the City of Briarwood (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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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 requirement 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

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 greater, if required by FEMA, or if required by the FEMA Administrator in writing before the 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 b. of this section 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, 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 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 assigned 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.

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 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.

i. 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 inspection 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 October 1, 2010, the Grantee (Cass County), 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 provision of 44 C.F.R. Part 80, the property conveyance, and the grand award.
 4. Enforcement. The Grantee (Cass County), 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 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 bring 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.
-

CASS COUNTY, NORTH DAKOTA

By: _____
Chairman, Board of County Commissioners

CITY OF BRIARWOOD, NORTH DAKOTA

By: _____
Mayor, City of Briarwood

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Chad Peterson, the Chairman of the Board of County Commissioners of Cass County, a North Dakota political subdivision, on behalf of the county.

Notary Public

(SEAL)

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the Mayor of the City of Briarwood, a North Dakota political subdivision, on behalf of the city.

Notary Public

(SEAL)



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WD \$28.00

FM TITLE

RECORDER'S OFFICE, CASS COUNTY, ND 2/23/2011 8:00 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kirby, Dep. 1318098



EXHIBIT B

WARRANTY DEED

THIS INDENTURE, Made this 18th day of February, 2011, by and between Matthew H. Engen and Julie A. Sorby, husband and wife, Grantor, whether one or more, and CASS COUNTY, North Dakota, a North Dakota political subdivision, Grantee, whose post office address is 211 9th Street South, Fargo, North Dakota 58103.

WITNESSETH, For and in consideration of the sum of One Dollar (\$1) and other valuable consideration, Grantor do hereby GRANT to the Grantee all of the following real property lying and being in the County of Cass to continue and State of North Dakota to continue, described as follows, to wit:

Lot Twenty-two, of Briarwood Place, to the City of Briarwood, situate in the County of Cass and the State of North Dakota.

I CERTIFY that the full consideration paid for the property described in the deed is \$430,000.

DATE: 2-15-11

Irvin D. Rustad
IRVIN D. RUSTAD
GRANT ADMINISTRATOR
CASS COUNTY
PROPERTY ACQUISITION PROJECT

And the Grantor for their, heirs, executors and administrators, do covenant with the Grantee

72-0100-00220-000

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that they well seized in fee of the land and premises aforesaid and their good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, except installments of special assessments or assessments for special improvements which have not been certified to the County Treasurer for collection; taxes and installments for special assessments for 2010 (payable in 2011) shall be prorated to date of closing; all prior years' taxes shall be paid by Grantor and the above granted lands and premises in the quiet and peaceable possession of the Grantee, against all the persons lawfully claiming or to claim the whole or any part thereof, the Grantor will warrant and defend, SUBJECT TO THE HAZARD MITIGATION GRANT PROGRAM DEED RESTRICTION ATTACHED AS "EXHIBIT A" AND HEREBY INCORPORATED BY REFERENCE TO THIS DEED.

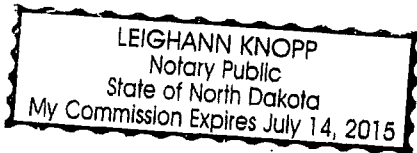
WITNESS, The hand of the Grantor:

MATTHEW H. ENGEN

JULIE A. SORBY

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this 18th day of February, 2011, before me, a notary public within and for said county and state, personally appeared MATTHEW H. ENGEN and JULIE A. SORBY, husband and wife, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that they executed the same.



(SEAL)

Notary Public
Cass County, North Dakota
My Commission Expires: _____

The legal description was obtained from a previously recorded instrument.

THIS INSTRUMENT DRAFTED BY:
Kennelly & O'Keeffe, Ltd.
313 N.P. Ave.
P.O. Box 2105
Fargo, ND 58107-2105
(701) 235-8000

AUDITOR'S OFFICE
COUNTY OF CASS, NORTH DAKOTA
25 February 2011
Taxes and Special Assessments paid
and transfer entered.
Michael Norplasin AUDITOR
DJS DEPUTY



DEED RESTRICTION HAZARD MITIGATION GRANT PROGRAM ("HMGP")

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between Matthew H. Engen and Julie A. Sorby, husband and wife, participating in the federally-assisted acquisition project ("the Grantor") and Cass County North Dakota, ("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, North Dakota 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 March 30, 2009 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in Cass County, and Cass 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 Cass County, acting by and through the Cass County Commission, has applied for and been awarded federal funds pursuant to an agreement with North Dakota dated October 1, 2009 ("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 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:



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- 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
 - 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 b. of this section 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, 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 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 October 1, 2010, the Grantee (Cass County), 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 (Cass County), 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:



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- 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.



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U.S. Department of Homeland Security
FEMA Region VIII
Denver Federal Center, Building 710
P.O. Box 25267
Denver, CO 80225-0267



FEMA

EXHIBIT C

R8-MT

March 11, 2021

Mr. Cody Schulz, Director
North Dakota Department of Emergency Services
Fraire Barracks Road, Building 35
Bismarck, North Dakota 58502-5511

Re: Cass County Conveyance of Property to the City of Briarwood

Dear Mr. Schulz:

This letter is in response to a request from Cass County (County) seeking approval to transfer property interests in parcels acquired with Hazard Mitigation Assistance (HMA) funding to the City of Briarwood (City) for the purpose of creating a natural pathway.

Under Stafford Act § 404(b)(2)(B), any land purchased with hazard mitigation funds must be restricted in perpetuity to uses compatible with open space, recreational, or wetlands management practices. Furthermore, any transfer of the property requires prior approval of the Regional Administrator. Based upon the information provided by the County and City, FEMA has determined that the proposed installation of a natural walkway meets the federal requirements and approves the transfer request.

In accordance with 44 C.F.R. § 13.37(a)(2), the County is responsible for ensuring that the City is aware of the requirements imposed upon it by Federal statute and regulation. The City is required by the terms of the deed to comply with the restrictive covenants therein, including the requirements set forth in 44 C.F.R. part 80. These include a requirement to obtain FEMA approval before building any new structures or improvements on the property that are not expressly allowed by 44 C.F.R. § 80.19(a).

If you have any questions regarding this determination, please contact Mike Hillenburg, Hazard Mitigation Branch Chief, at (303) 235-4875 or email mike.hillenburg@fema.dhs.gov.

Sincerely,

NANCY J DRAGANI

Digitally signed by NANCY J
DRAGANI
Date: 2021.03.11 14:10:55 -07'00'

Nancy J. Dragani
Acting Regional Administrator

cc: Justin Messner, Disaster Recovery Chief, North Dakota Department of Emergency Services