

R 352-2015

Fayette County Clerk Recording  
Related Documents

From 260 R-352-2015  
To 261 Deed # 7782

**DECLARATION OF RESTRICTIONS**  
**1514 CLARKSDALE COURT**

This DECLARATION OF RESTRICTIONS, is made this 9th day of December, 2015 by LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, 200 East Main Street, Lexington, Kentucky 40515, (hereinafter referred to as ("Declarant").

**WITNESSETH:**

WHEREAS, the Declarant is the owner of the real property being known and designated as 1514 Clarksdale Court, Lexington, Kentucky, 40505 which property is more particularly described as follows:

Being all of Lot No. 1, Block "H", of the Dixie Plantation Subdivision, Unit No. 1-J, a subdivision in the City of Lexington, as shown by plat of record in Plat Cabinet C, Slide 347 (formerly Plat Book 9, Page 54), in the Fayette County Clerk's Office; and,

Being the same property conveyed to the Lexington-Fayette Urban County Government, by deed dated December 9th, 2015 of record in Deed Book 3362, Page 714 Hsw, in the Fayette County Clerk's Office.

WHEREAS, the Flood Mitigation Assistance Program ("FMAP"), as authorized in the National Flood Insurance Reform Act of 1994, Sections 1366 and 1367, (42 USC §4104c, 4104d identifies the use of FMA funds for planning and carrying out activities designed to reduce the risk of flood damage to structures insurable under the National Flood Insurance Program ("NFIP");

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, Government 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 May 14, 2014 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

WHEREAS, the Property is located in **Fayette County**, and Lexington, Kentucky participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT,

mail to: preparer

acting by and through the LEXINGTON-FAYETTE URBAN COUNTY COUNCIL, has applied for and been awarded federal funds pursuant to an agreement with Kentucky dated May 27, 2014 ("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 Declarant desires to impose certain restrictions upon the land made subject to FEMA Flood Mitigation Assistance Program (FMA) and these restrictions run with the land and shall be binding on all purchasers, owners, heirs, successors and assigns of the subject property in accordance with the terms and conditions set forth herein, as follows:

1. Terms. Pursuant to the terms of the 2010 FEMA HMGP-Lafayette 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 herein and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:

- a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.
- b. Structures. No new structures or improvements shall be erected on the Property other than:
  - i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
  - ii. A public rest room; or

- iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph I.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 FEMIA, 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, the Grantee (mitigation grant program subgrantee), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

4. Enforcement. The Grantee (mitigation grant program subgrantee), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

i. If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the

grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

ii. FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

a) Withholding FEMA mitigation awards or assistance from the State 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

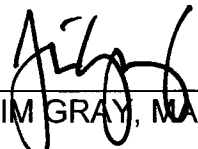
c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the Tribe, the local community, and their respective successors.

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.

IN WITNESS WHEREOF, the Declarant has hereto signed this Declaration of Restrictions this day and year first above written.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY:  \_\_\_\_\_  
JIM GRAY, MAYOR

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

The foregoing was subscribed, sworn to and acknowledged before me by Jim Gray, as Mayor of the Lexington-Fayette Urban County Government, for and on behalf of the Government, on this the 9<sup>th</sup> day of December, 2015.

My commission expires: 2/26/17


Cynthia A. Cannon-Ferguson  
Notary Public, Kentucky, State-at-Large



PREPARED BY:

Charles E. Edwards, III  
Charles E. Edwards, III,  
Attorney  
Lexington-Fayette Urban  
County Government  
Department of Law  
200 East Main Street, 11<sup>th</sup> Floor  
Lexington, Kentucky 40507  
(859) 258-3500

I, Donald W Blevins Jr, County Court Clerk  
of Fayette County, Kentucky, hereby  
certify that the foregoing instrument  
has been duly recorded in my office.



By: PATTY DAVIS ,dc

201512090261

December 9, 2015                      14:33:11    PM

Fees	\$22.00	Tax	\$ .00
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Total Paid	\$22.00
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7 Pages

718 - 724



Lexington-Fayette Urban County Government  
DEPARTMENT OF LAW

Jim Gray  
Mayor

Janet M. Graham  
Commissioner

To: Martha Allen, Council Clerk  
Council Clerk's Office

From: Department of Law

Date: December 15, 2015

Re: General Warranty Deed and Asset Acquisition Form  
1514 Clarksdale Court

Enclosed is the original, recorded General Warranty Deed and Declaration of Restrictions for the above property, transferring the property from Donald Baster Sowders and Anna G. Sowders, his wife, to the Urban County Government for the Pre-Disaster Mitigation Assistance Program. Please file the Deed and Restrictions with the authorizing legislation, Resolution No. 352-2015.

Also enclosed is the completed Asset Acquisition form for this property. After you have signed and dated the form, please forward it to the Department of Finance.

If you have any questions, please let me know.

Sincerely,

Charles Edwards III  
Attorney

Enclosures

cc: Kim Bryan, Department of Finance  
Beth Florence, Department of Finance