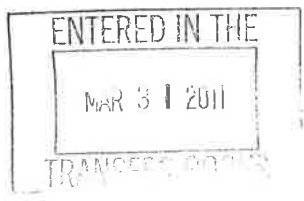


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Doc. #: 2011-2291
Type: DWD
Date: 03/30/2011
R: \$30.00 - Tf: \$5.00 - M: \$1.00 - Tc: \$3 - N: \$0
Rev. Stamp: \$236.80
Rev. Stamp # 65
Colleen Pearce, Cerro Gordo County Recorder

Pages: 6
Time: 11:14 AM
Pymt: Check
City DOV # 113



Prepared by: Jacquelyn K. Arthur, Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., 11 Fourth Street N.E., P.O. Box 1567, Mason City, Iowa 50402-1567 (641-423-5154)

Send Tax Statements to: City of Mason City, Iowa, 10 1st Street N.W., Mason City, Iowa 50401

Return to: Diana Black, Deputy City Clerk, City of Mason City, 10 1st Street N.W., Mason City, Iowa 50401 *39002*

WARRANTY DEED

For the consideration of One (\$1.00) Dollar(s) and other valuable consideration,

Carl M. Bothwell and Amy E. Bothwell, husband and wife,

do hereby Convey to

City of Mason City, Iowa, an Iowa municipal corporation

the following described real estate in Cerro Gordo County, Iowa:

LOT TEN (10) IN BLOCK FIVE (5) IN MEADOWBROOK SECOND ADDITION TO MASON CITY, IOWA.
(Locally described as 1206 Meadowbrook Drive, Mason City, Iowa 50401; Parcel No. 07-08-479-~~004~~⁰¹⁰-00)

THIS DEED IS SUBJECT TO THE COVENANTS AND RESTRICTIONS CONTAINED IN EXHIBIT "A" ATTACHED HERETO.

Grantor does Hereby Covenant with grantee, and successors in interest, that grantor holds the real estate by title in fee simple; that she has good and lawful authority to sell and convey the real estate; that the real estate is Free and Clear of all Liens and Encumbrances except as may be above stated; and grantor Covenant to Warrant and Defend the real estate against the lawful claims of all persons except as may be above stated. The undersigned hereby relinquish all rights of dower, homestead and distributive share in and to the real estate.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Carl M. Bothwell
Dated: *3/30/11*
Carl M. Bothwell

Amy E. Bothwell
Dated: *3/30/11*
Amy E. Bothwell

STATE OF IOWA, CERRO GORDO COUNTY, ss:

On this *10th* day of *March*, 2011, before me the undersigned, a Notary Public in and for said State, personally appeared **Carl M. Bothwell and Amy E. Bothwell, husband and wife**, to me known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.



Susan A. Mertes
Notary Public in and for said State

EXHIBIT "A"
TO
WARRANTY DEED
AGREEMENT FOR COVENANTS AND RESTRICTIONS
(CDBG Disaster Recover Property Acquisition)

The Parties to this AGREEMENT FOR COVENANTS AND RESTRICTIONS (the "Agreement"), dated as of (closing date), are:

"Grantor": Carl M. Bothwell and Amy E. Bothwell, husband and wife; and

"Grantee" City of Mason City, Iowa, an Iowa municipal corporation

WITNESSETH:

WHEREAS, the Grantee has entered into Community Development Block Grant Program Disaster Recovery Property Acquisition Contract No. 08-DRHB-226 dated November 4, 2009 (the "CDBG Contract") with the Iowa Department of Economic Development, which is incorporated herein by reference; and

WHEREAS, the Grantee received funding (the "Funding") from the Program (defined herein) pursuant to the CDBG Contract in order to assist in disaster recovery, including the purchase of properties affected by the Disaster Event (defined herein), including properties located in Special Flood Hazard Areas (defined herein), and

WHEREAS, as a condition of the Funding, the Grantee has agreed to acquire interests in property, including the acquisition of property located in Special Flood Hazard Areas, including the purchase of structures, to demolish and remove the structures, and to convert the land use into perpetual open space; and

WHEREAS, the terms of the CDBG Contract require that the Grantee agree to conditions which are intended to restrict the use of the land described in the Warranty Deed (the "Land") to open space in perpetuity in order to protect and preserve natural floodplain values; and

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

"Community Development Block Program" or "CDBG Program" means the grant program authorized under Title I of the Housing and Community Development Act of 1974, as amended.

"Disaster Event" means the federally declared disaster, which occurred between May 25 and August 13, 2008, and designated by the Federal Emergency Management Administration as FEMA-1763-DR-IA.

"FEMA" means the Federal Emergency Management Administration, its successors and assigns.

"IDED" means the Iowa Department of Economic Development, its successors and assigns.

"Program" means Community Development Block Program for Disaster Recover authorized pursuant to the Program Rules.

"Program Rules" means Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. § 5301 et seq.) and the regulations now or hereafter promulgated thereunder and the guidance now or hereafter disseminated with respect thereto, as modified by the Consolidated, Disaster Assistance, and Continuing Appropriations Act of 2009 (Pub.L. 110-329), and the regulations now or hereafter promulgated thereunder and the guidance now or hereafter disseminated with respect thereto including but not limited to HUD Notices published in the Federal Register on September 11, 2008, December 19, 2008, February 13, 2009 and August 14, 2009, and any additional HUD Notices or other guidance that may be disseminated.

"Special Flood Hazard Area" means an area designed as a Special Flood Hazard Area on the most recent National Flood Insurance Program map.

"State" means the State of Iowa.

2. **TERMS.** Pursuant to the Program Rules, the CDBG Contract and 44 CFR Part 80 (other than 44 CFR Part 80.17), the following conditions and restrictions shall apply in perpetuity to the Land and any improvements thereon (collectively, the "Property"):

(a) The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Permissible uses 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 Acquisitions and Relocation for Open Space promulgated by FEMA. Any other use of the Property shall be subject to the prior written consent of the Grantee.

(b) 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 restroom; or

(iii) a structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in subsection 2(a), and approved by IDED 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 subsection 2(b) shall be floodproofed or elevated to at least the base flood level plus one (1) foot of freeboard, or greater, if required by the Grantee, or if required by any State or local statute, rule or ordinance, and in accordance with criteria established by FEMA with respect to its Hazard Mitigation Grant Program, and IDED.

(c) The Grantee, including successors in interest, shall convey any interest in the Property only if IDED gives prior written approval of the transfer in accordance with this Section 2.

(i) The request by the Grantee must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this Agreement, 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 a qualified conservation organization; provided, however, that the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in Subsection 2(a), with the prior approval of IDED, 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 subsection 2(c), 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) If title to the Property is transferred the instrument of conveyance shall provide that any transferee is expressly subject to the terms and restrictions of this Agreement, and that any subsequent transfers of the Property shall be expressly subject to the terms and restrictions of this Agreement.

3. **MONITORING AND REPORTING**. Every three (3) years on November 4, commencing November 4, 2013, the Grantee in coordination with any then current successors in interest, shall submit to IDDED 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 this Agreement.

4. **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 National Flood Insurance Program for damage to structures located on the Property occurring after the date hereof, except for pre-existing structures being relocated off the Property as a result of the Funding.

5. **COVENANTS TO RUN WITH THE LAND**. The Grantee hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the Property and shall pass to and be binding upon the Grantee's successors in title including any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument, and any grantee, successor, assignee, transferee or other person or entity acquiring any interest in the Property or any portion thereof shall conclusively be held to have acquired such interest in the Property or any portion thereof subject to the obligations of such covenants, regardless of whether or not such covenants and restrictions are set forth or referred to, or specifically agreed to be performed by any such transferee, in any such contract, lease, conveyance, agreement or other such instrument.

6. **BURDEN AND BENEFIT**. The Grantor and the Grantee hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Property in that the Grantee's legal interest in the Property may be rendered less valuable thereby. The Grantor and the Grantee further declare their understanding and intent, however, that the covenants, reservations and restrictions set forth herein directly benefit the Property (i) by enhancing and increasing the enjoyment and use of the Property by members of the public, (ii) by making possible the use of the Property consistent with the uses of property located in a Special Flood Hazard Area, and (iii) by furthering the public purposes for which the Grant was made.

7. **EVENTS OF DEFAULT; REMEDIES**. If the Grantee or any subsequent owner of the Property defaults in the performance or observance of any covenant, agreement or obligation of the Grantee set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by IDDED to the Grantee (or for a period of sixty (60) days after such notice if such default is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 30-day period, and if the Grantee commences same within such 30-day period and thereafter diligently and continuously pursues the same to completion within such 60-day period), then IDDED may declare that the Grantee or subsequent owner of the Property is in default hereunder and may take any one or more of the following steps, at its option:

(a) by mandamus or other suit, action or proceeding at law or in equity, require the Grantee or subsequent owner of the Property to perform its respective obligations and covenants hereunder and under the CDBG Contract, or enjoin any acts or things which may be unlawful or in violation of the rights of IDDED hereunder, or obtain damages caused to IDDED by any such default;

(b) have access to and inspect, examine and make copies of all of the books and records of the Grantee or any subsequent owner of the Property pertaining to the Property;

(c) require repayment by the Grantee of the Funding related to the Property;

(d) take whatever other action at law or in equity may appear necessary or desirable to enforce the obligations, covenants and agreements of the Grantee hereunder and under the CDBG Contract.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of IDED to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

8. **RECORDING.** The Grantee shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in such manner and in such places as IDED may reasonably request, and shall pay all fees and charges incurred in connection therewith. The Grantee shall return a copy of this Agreement containing all recording information to IDED after it has been recorded.

9. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Iowa.

10. **NOTICES.** Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

IDED: Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Attn: Patrick Roberts

Grantee: City of Mason City
10 First Street NW
Mason City, Iowa 50401
Attn: Tricia Sandahl

Grantor: Carl M. Bothwell
Amy E. Bothwell
1206 Meadowbrook Drive
Mason City, Iowa 50401

11. **SEVERABILITY.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

12. **MULTIPLE COUNTERPARTS.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

13. **SUCCESSORS AND ASSIGNS.** All of the rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. **AMENDMENT.** This Agreement may be amended only by an amendment in writing executed by the Grantee with the prior written consent of IDED and properly recorded in the County Recorder's office of the County in which the Property is located. The Grantor acknowledges and agrees to any amendment to this Agreement that conforms to this Section 14.

15. **RIGHTS OF IDED.** This Agreement shall constitute a third party beneficiary contract for the benefit of IDED. IDED shall be entitled to enforce performance and observance by the Grantor and the Grantee of the respective covenants and restrictions contained herein as fully and completely as if IDED were a party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Covenants and Restrictions to be executed by their duly authorized officers, all as of the date first above written.

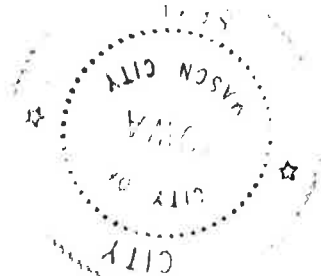
“GRANTOR”

“GRANTEE”
City of Mason City, Iowa

Carl M. Bothwell
Carl M. Bothwell

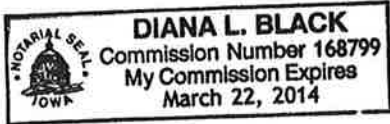
By: *E. Bookmeyer*
Eric Bookmeyer, Mayor

Amy E. Bothwell
Amy E. Bothwell



STATE OF IOWA)
) SS:
COUNTY OF CERRO GORDO)

This instrument was acknowledged before me this 16 day of March, 2011, by Eric Bookmeyer as the Mayor of the Grantee.



Diana Black
Notary Public in and for the State of Iowa

STATE OF IOWA)
) SS:
COUNTY OF CERRO GORDO)

This instrument was acknowledged before me this 10th day of March, 2011, by Carl M. Bothwell and Amy E. Bothwell, husband and wife, the Grantor.



Susan A. Mertes
Notary Public in and for the State of Iowa