

MODEL DEED RESTRICTION

Exhibit A is a Model Deed Restrictions that support CDBG-DR requirements, and HUD alternative requirements and waivers as posted in Federal Register notices covering this Appropriation. Applications requesting mitigation assistance to acquire properties for open space purposes must include a copy of the deed restriction language proposed to meet these requirements.

The deed conveying the property to the locality must reference and incorporate Exhibit A (or equivalent name). Any variation from the model deed restriction can only be made with prior approval from the Pennsylvania Emergency Management Agency (PEMA) and the Department of Community and Economic Development (DCED). Exhibit A shall be attached to the deed when recorded.

Exhibit A

In reference to the property or properties ("Property") conveyed by the Deed between _____
_____ participating in the federally-assisted acquisition project ("the Grantor"/"Grantors") and
_____, ("the Grantee"), its successors and assigns:

WHEREAS, the CDBD-DR Buyout program provides a process for a local government, through the State, to apply for federal funds 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, the Commonwealth of Pennsylvania, Department of Community and Economic Development (DCED) has applied for and been awarded such funding from the Department of Housing and Urban Development (HUD) and has entered into a CDBG-DR funded Buyout program Grant Agreement dated _____ with the Pennsylvania Emergency Management Agency (PEMA) and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in _____, and
_____ participates in
the National Flood Insurance Program and is in good standing with NFIP as of the date of the Deed;

Whereas, the _____, acting by and through the
_____ Board, has applied for and been
awarded federal funds pursuant to an agreement with PEMA dated _____, and herein incorporated by
reference, making it a mitigation grant program sub-grantee;

WHEREAS, the terms of the buyer program statutory authorities, Federal program requirements, 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 CDBG-DR Buyout Program statutory authorities, Federal program requirements, 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 CDBG-DR 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 CDBG-DR guidance for open space acquisition.
 - 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 PEMA Grant 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 flood proofed 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 HUD.

- 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 HUD, through the State (PEMA), gives prior written approval of the transferee in accordance with this paragraph.
 - i. The request by the Grantee, through PEMA, to HUD 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 HUD, 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.
- e. Transfer. The subrecipient, including successors in interest, shall convey any interest in the Property only if PEMA gives prior written approval of the transferee in accordance with this paragraph.
 - i. The request by the subrecipient 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 subrecipient may convey a property interest only to a public entity or to a qualified conservation organization. However, the subrecipient may convey an easement or lease to a private individual or entity with the prior approval of the State, 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 subrecipient 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 subrecipient 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. HUD, 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 commencing on June 30, 2017, the subrecipient, in coordination with any current successor in interest, shall submit through PEMA to DCED 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 the property conveyance, and the grant award.
4. Enforcement. The Grantee (mitigation grant program sub-grantee), the state, HUD, 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 the property conveyance, and the grant award. The relative rights and responsibilities of HUD, 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. HUD, 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 HUD 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 HUD, the state, and the subrecipient 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.

[Signed by Grantor(s) and Grantee, witnesses and notarization in accordance with local law.] Grantor(s):

(Name)	(Signature)	(Date)

Grantee: _____
(Municipality Name)

(Municipal Official Name)	(Title)	(Signature)	(Date)
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