




Tom Leatherwood
Shelby County Register / Archives

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.

	
17129758	
12/21/2017	08:19 AM
6 PGS	
TAMMY 1684279-17129758	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	30.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	\$2.00
TOM LEATHERWOOD REGISTER OF DEEDS SHELBY COUNTY TENNESSEE	



Health Science

**THIS INSTRUMENT PREPARED
BY AND RETURN TO:
Glankler Brown, PLLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119
Attn: R. Hunter Humphreys**

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (the "Agreement"), is made this 20th day of December, 2017, by and between the City of Memphis, a municipal corporation (the "City") and Memphis Greenspace, Inc., a Tennessee not for profit public benefit corporation ("Greenspace").

WITNESSETH:

WHEREAS, by Special Warranty Deed of even date herewith and recorded in the Register's Office of Shelby County, Tennessee (the "Register's Office"), the City has conveyed to Greenspace fee simple title to certain real property in Memphis, Tennessee, such property being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Burdened Property");

WHEREAS, the City, for the general welfare of its citizens, desires to preserve the scenic, natural, physical, ecological, hydrological, biological and environmental features of the Burdened Property; and

WHEREAS, as a condition to the conveyance of the Burdened Property, the City has required Greenspace to enter into this Agreement, and Greenspace has agreed to join herein.

NOW, THEREFORE, for good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Purposes. The purposes of this Agreement are to conserve and restrict the development of the Burdened Property; to preserve, maintain and enhance the present condition, use and beauty of the Burdened Property, to preserve and enhance the open space value and scenic value of the Burdened Property, and to reserve, maintain and enhance the biological, hydrological, ecological, cultural and scenic resources of the Burdened Property.

Section 2. Covenants, Conditions and Restrictions. The Burdened Property shall be held, transferred, sold, conveyed, encumbered, rented, used, occupied and improved subject to the following covenants, conditions and restrictions (collectively, the "Restrictions"):

- A. The Burdened Property, including the landscaping and improvements which are a part thereof, shall be maintained in good, safe and scenic condition. Except as otherwise provided herein, there shall be no removal, destruction or cutting of trees, shrubs or other vegetation except as may be necessary for the maintenance of walkways, utility lines, or as may be necessary for restoring, protecting, managing, maintaining and enhancing the Burdened Property for scenic open space, aesthetics and environmental purposes.
- B. No activities, actions or uses of the Burdened Property shall be permitted that would be detrimental or adverse to erosion control, soil conservation or wildlife habitat preservation.
- C. No industrial, office, retail, residential or commercial activities shall be permitted or carried-on, on the Burdened Property.
- D. Without the prior written approval of the City, which approval will not be unreasonably withheld, or as otherwise provided herein, there shall be no excavation, dredging or removal of dirt, gravel, soil, rock, sand or any other material nor any building of roads or other topographical changes, except as may be necessary for reasonable preservation, management or restoration purposes or to maintain presently existing walkways or service entrances.
- E. No storage, dumping, burial, burning or injection of trash, garbage, rubbish or any other waste materials or any unsightly or offensive materials shall be permitted.
- F. There shall be no commercial advertising of any description permitted on the Burdened Property. No signs, billboards, or advertisements shall be displayed or placed on the Burdened Property except (a) such signs, plaques or other markers as are appropriate for commemorating or identifying the historic, natural or scenic importance or significance of the Burdened Property; (b) such interpretive signs, plaques or markers that serve an educational or informational purpose; (c) such signs, plaques or markers as are necessary to direct and restrict the passage of persons or the parking of vehicles upon the Burdened Property or to notify persons of any restricted activities; (d) a sign or signs stating solely the title or address of the Burdened Property; (e) memorial or commemorative signs, plaques, markers or monuments; or (f) recognition, appreciation, or donor signs, plaques, markers or monuments. No signs, plaques, markers or monuments shall be placed on the Burdened Property without the written approval of the City, which approval may be granted or withheld in the City's sole discretion.
- G. Except where necessary to facilitate the preservation, maintenance or restoration of the Burdened Property, or an emergency, no motorized vehicles shall be operated on the Burdened Property.
- H. Except as otherwise provided herein, there shall be no erection of buildings, or other structures or improvements on the Burdened Property without the written approval of the City, which approval may be granted or withheld in the City's sole discretion.

- I. There shall be no erection of utilities on the Burdened Property except for replacement of existing utilities without the written approval of the City which approval may be granted or withheld in the City's sole discretion.
- J. The Burdened Property shall be available for public recreational use from dawn to dusk, and no fees shall be charged for such public use.
- K. The Burdened Property shall be maintained in a good, clean, attractive and secure condition, which shall include, but not be limited to, the following actions by Greenspace:
 - i. Mowing, aerating, reseeding, edging and weed control with respect to the grassy areas of the Burdened Property;
 - ii. Fertilization of turf, trees, and shrubs and routine maintenance of the same (i.e. pruning);
 - iii. Insect Control - Monitoring, preventing, correcting and managing insects or disease in turf, trees, shrubs either by cultural or chemical methods;
 - iv. Hardscape Surfaces - Sweeping, blowing and power washing of walkways, parking lots and other hardscape surfaces in the Burdened Property;
 - v. Repair of the facilities and Burdened Property amenities;
 - vi. Inspection - Visual and physical examination of the facility, equipment and amenities to ensure compliance, safety and proper operation;
 - vii. Removal of graffiti or other vandalism in the Burdened Property;
 - viii. Cleaning, sweeping, sanitizing the restrooms and other Burdened Property facilities;
 - ix. Litter pick-up and emptying of trashcans throughout the Burdened Property;
 - x. Maintaining all electrical and plumbing systems; and
 - xi. Providing adequate premises security on the Burdened Property.

Section 3. Binding Effect/Term: The Restrictions shall be deemed a covenant running with the land and shall be binding upon Greenspace, its successors and assigns, and upon all parties having or acquiring any right, title or interest whatsoever in or to any part of the Burdened Property, and shall inure to the benefit of the City for a term of ninety nine (99) years from the date on which this Agreement is initially recorded in the Register's Office of Shelby County, Tennessee.

Section 4. Enforcement. In the event of a violation or breach of any of the Restrictions by Greenspace which is not cured within thirty (30) days of receipt by Greenspace of written notice thereof from the City, the City shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of the Restrictions, to sue for and recover damages, or to take all such courses of action at the same time, or such other legal remedy such party may deem appropriate.

No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver by that party or an estoppel of that party or of any other party to assert any right available to such party upon the recurrence or continuation of the violation or the occurrence of a difference violation.

Although this Agreement is intended to provide for and enhance the general welfare of all citizens of the City, the parties agree that this Agreement may only be enforced by action of the City.

Section 5. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective while this Agreement is in effect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 6. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to principles of conflict of laws.

Section 7. Amendment. The Restrictions may be extended, amended or terminated only by the execution of an instrument signed by Greenspace and the City. Such instrument shall be filed for recording in the Register's Office of Shelby County, Tennessee or in such other place of recording as may be required at the time of the execution of such instrument. Each party whose signature is required on an instrument which proposes an extension, amendment or termination of the Restrictions shall make a prompt determination on whether or not to approve and execute such instrument.

Section 8. Successors And Assigns. References herein to the City shall include any successor. References to Greenspace shall include any successors in title to all or any portions of Burdened Property.

Section 9. Captions. The captions preceding the various sections of this Agreement are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Agreement. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

Memphis Greenspace, Inc.
a Tennessee not for profit public benefit corporation

City of Memphis
a municipal corporation

By: [Signature]
Name: Van Turner
Title: President

By: [Signature]
Jim Strickland, Mayor

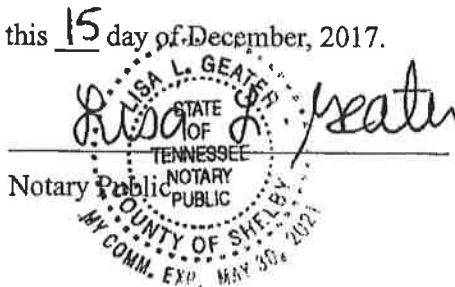
STATE OF TENNESSEE,
COUNTY OF SHELBY:

Before me, the undersigned Notary Public, of the State and County aforesaid, duly commissioned and qualified, personally appeared Jim Strickland, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Mayor of the City of Memphis, Tennessee, the within named bargainer, a municipal corporation, and that he as such Mayor, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Memphis by himself as such Mayor.

Witness my hand and Notarial Seal at office this 15 day of December, 2017.

My Commission Expires:

5-30-2021



STATE OF Tennessee
COUNTY OF Shelby

Before me, the undersigned Notary Public, of the State and County aforesaid, duly commissioned and qualified, personally appeared Van Turner, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be the President of Memphis Greenspace, Inc., the within named bargainer, a not for profit public benefit corporation, and that s/he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the not-for-profit corporation by himself/herself as such President.

Witness my hand and Notarial Seal at office this 15th day of December, 2017.

My Commission Expires:



[Signature]
Notary Public

EXHIBIT "A"

BURDENED PROPERTY

The following described Land in Shelby County, Tennessee:

Lot 9 – Memphis Hospital Lot, as shown on that certain plat of recorded at Book O, Page 325, in the records of the Register's Office of Shelby County, Tennessee

The above property is commonly known as Health Sciences Park and municipally known as 0 S. Manassas Street, Memphis, Tennessee.