




*Tom Leatherwood*  
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12/21/2017	<b>17129755</b>	08:19 AM
<b>8 PGS</b>		
TAMMY	1684279-17129755	
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		32.00
<b>TOM LEATHERWOOD</b> REGISTER OF DEEDS SHELBY COUNTY TENNESSEE		



Memphis Park – Front

**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”).

**W I T N E S S E T H:**

**WHEREAS**, by Easement Agreement of even date herewith and recorded in the Register’s Office of Shelby County, Tennessee (the “Register’s Office”), the City has assigned and conveyed to Greenspace interests of possession and use and easement to certain real property in Memphis, Tennessee, such property being more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (the “Easement Public Purpose 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 Easement Public Purpose Property; and

**WHEREAS**, as a condition to the assignment and conveyance of the Easement Public Purpose Property, pursuant to the Easement Agreement, 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 Easement Public Purpose Property for public purposes; to preserve, maintain and enhance the present condition, use and beauty of the Easement Public Purpose Property, to preserve and enhance the open space value and scenic value of the Easement Public Purpose Property, and to reserve, maintain and enhance the biological, hydrological, ecological, cultural and scenic resources of the Easement Public Purpose Property.

Section 2. Covenants, Conditions and Restrictions. The Easement Public Purpose Property shall be held, transferred, sold, assigned, conveyed, encumbered, rented, used, occupied and

improved subject to the following covenants, conditions and restrictions (collectively, the "Restrictions"):

- A. The Easement Public Purpose 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 Easement Public Purpose Property for scenic open space, aesthetics and environmental purposes.
- B. No activities, actions or uses of the Easement Public Purpose 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 other commercial activities shall be permitted or carried-on, on the Easement Public Purpose 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 Easement Public Purpose Property. No signs, billboards, or advertisements shall be displayed or placed on the Easement Public Purpose 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 Easement Public Purpose 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 Easement Public Purpose Property or to notify persons of any restricted activities; (d) a sign or signs stating solely the title or address of the Easement Public Purpose 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 Easement Public Purpose 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 Easement Public Purpose Property, or an emergency, no motorized vehicles shall be operated on the Easement Public Purpose Property.

- H. Except as otherwise provided herein, there shall be no erection of buildings, or other structures or improvements on the Easement Public Purpose 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 Easement Public Purpose 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 Easement Public Purpose Property shall be available for public recreational use from dawn to dusk, and no fees shall be charged for such public use.
- K. The Easement Public Purpose 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:
  - a. Mowing, aerating, reseeding, edging and weed control with respect to the grassy areas of the Easement Public Purpose Property;
  - b. Fertilization of turf, trees, and shrubs and routine maintenance of the same (i.e. pruning);
  - c. Insect Control - Monitoring, preventing, correcting and managing insects or disease in turf, trees, shrubs either by cultural or chemical methods;
  - d. Hardscape Surfaces - Sweeping, blowing and power washing of walkways, parking lots and other hardscape surfaces in the Easement Public Purpose Property;
  - e. Repair of the facilities and Easement Public Purpose Property amenities;
  - f. Inspection - Visual and physical examination of the facility, equipment and amenities to ensure compliance, safety and proper operation;
  - g. Removal of graffiti or other vandalism in the Easement Public Purpose Property;
  - h. Cleaning, sweeping, sanitizing the restrooms and other Easement Public Purpose Property facilities;
  - i. Litter pick-up and emptying of trashcans throughout the Easement Public Purpose Property;
  - j. Maintaining all electrical and plumbing systems; and
  - k. Providing adequate premises security on the Easement Public Purpose 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 Easement Public Purpose 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 Easement Public Purpose 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, Greenspace and the City have hereunto executed and delivered this Agreement as of the date first above written.

GREENSPACE:

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

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

CITY:

City of Memphis,  
a municipal corporation

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



[Signature]

Notary Public

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 Tennessee 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 15<sup>th</sup> day of December, 2017.

My Commission Expires:



[Signature]  
Notary Public

**EXHIBIT "A"**

**EASEMENT PUBLIC PURPOSE PROPERTY**

The following described Land in Shelby County, Tennessee:

Real property located at 0 North Front Street, Memphis, Shelby County, Tennessee and bounded on the north by Jefferson Avenue (225 feet right of way), on the east by Front Street (457 feet right of way), on the South by Court Avenue (300 feet right of way) and on the west by Riverside Drive (465 feet right of way) containing 2.75 acres, more or less.

Tax Parcel 002-004-00001

**SUBSTITUTE ORDINANCE NO.5665**

**ORDINANCE RELATIVE TO THE IMMEDIATE REMOVAL OF THE FORREST  
EQUESTRIAN STATUE AND THE JEFFERSON DAVIS STATUE AND OTHER  
SIMILAR PROPERTY FROM CITY OWNED PROPERTY**

**WHEREAS**, the Council adopted Ordinance No. 5661 on October 17, 2017;

**WHEREAS**, Ordinance No. 5661 directed its attorney to work cooperatively with the City administration, consistent with the intent of Ordinance 5661, to develop and submit to the Council not later than November 21, 2017 a plan for the removal and/or relocation of all Confederate statues and artifacts, like the Forrest equestrian statue and the Jefferson Davis statue, from City owned property for review and approval by the Council;

**WHEREAS**, the Mayor and his designees have presented the Council with a plan as requested by the Council and the Council desires to adopt one or more aspects of said plan for immediate implementation.

**NOW THEREFORE BE IT ORDAINED BY THE MEMPHIS CITY COUNCIL AS  
FOLLOWS:**

**Section 1. Adoption of Plan for Removal of Statues of Nathan Bedford Forrest and/or Jefferson Davis and Other Similar Monuments.** That the Council does hereby adopt the Plan presented to the Council, a copy of which is attached to this Ordinance,



for the removal and/or relocation of all Confederate statues and artifacts, like the Forrest equestrian statue and the Jefferson Davis statue, from any property that the City currently has a real property interest ("Implementation Plan"); the Council does also expressly find that the future use of the referenced City property in accordance with the Implementation Plan will be for the benefit of the community.

**Section 2. Authority and Direction To Implement City Policy in Ordinance 5661.** The Council does hereby authorize and direct the City administration to execute and perform it's designated responsibilities under the Implementation Plan, attached hereto and incorporated herein by reference as if set out verbatim, in the furtherance of the City Policy adopted in Ordinance 5661 with all deliberate speed as the public's interest requires it. Specifically, the Council does hereby authorize and approve pursuant to City Code § 2-291 as follows:

- 1) the sale and/or conveyance, at reduced or no cost, of Health Sciences Park and the Forrest Monument to Memphis Greenspace, Inc., a 501(c)(3) non-profit corporation, in fee simple absolute;
- 2) the sale and/or conveyance, at reduced or no cost, of such portions of the City's easement in Memphis Park on which

the Jefferson Davis statue and other confederate artifacts are located to Memphis Greenspace, Inc., a 501(c)(3) non-profit corporation;

3) the application in the name of the City or jointly with Memphis Greenspace, Inc., for Health Sciences and Memphis Parks to be rezoned parkland or open spaces to insure their use by the general public for recreational purposes;

4) the execution of deeds, bills of sale and other documents necessary to effectuate the City's designated responsibilities under the Implementation Plan adopted by this ordinance without the need for any further authorizations or approvals by this Council. To this end the Council does hereby ratify, confirm and approval the actions of the administration in negotiating or in anyway preparing for the implementation of the Policies adopted in Ordinance 5692.

**Section 3. Severability.** The provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**Section 4. Effective Date.** This Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Sponsors:  
PER CURIAM

BERLIN BOYD  
CHAIRMAN

THE FOREGOING ORDINANCE  
# 5665 PASSED  
1st Reading \_\_\_\_\_  
2nd Reading \_\_\_\_\_  
3rd Reading \_\_\_\_\_  
Approved: [Signature]  
Chairman of Council

Date Signed: 12/20/2017

**APPROVED:**  
[Signature]  
Mayor, City of Memphis

Date Signed: 12/20/17

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.  
Valerie Cook Sripes  
Comptroller

## EXHIBIT "A"

### IMPLEMENTATION PLAN FOR REMOVAL OF FORREST MONUMENT IN HEALTH SCIENCES PARK AND JEFFERSON DAVIS MONUMENT IN MEMPHIS PARK AND RELATED ARTIFACTS AND THINGS

With the advent of MLK 50 Commemoration on April 4, 2018, the eyes of the world will be focused on the City. The Council adopted Ordinance No. 5592, which provided, *inter alia*, for the immediate removal of the equestrian statue from Health Sciences Park, subject only to the requirements of state law, if any. However, the Mayor and his designees have been stymied from implementing the mandates of Ordinance 5592 by the Tennessee Historical Commission, which delayed any action on the City's Waiver request under the Tennessee Heritage Protection Act for more than a year. The City's application before the Tennessee Historical Commission (the "Commission") for a waiver under the 2013 Tennessee Heritage Protection Act to relocate the Forest Monument was denied on October 13, 2017, thereby clearing the way for judicial review.

Administrative Review of the Commission' October 13, 2017 denial has been stalled by dilatory tactics of the Sons of Confederate Veterans and descendants of Nathan B. Forrest. The Secretary of State's Administrative Procedures Division has allowed Sons of Confederate Veterans and descendants of Nathan B. Forrest to hijack the administrative review proceedings such that preliminary procedural decisions of the ALJ have effectively denied the City a prompt administrative review. At the request of the State of Tennessee, the City agreed to mediate with the Sons of Confederate Veterans and descendants of Nathan B.

Forrest the issue of an appropriate location for relocation of the statues. Consistent with past practices, the Sons of Confederate Veterans and descendants of Nathan B. Forrest have not been willing to mediate the controversy.

Despite the City's reasonable and diligent efforts to exhaust all legal processes, it has been effectively denied any relief. The City is informed that Sons of Confederate Veterans and descendants of Nathan B. Forrest have been actively seeking a permanent solution for the General Assembly that would tie the City's hands in perpetuity.

On August 28, 2017, Governor Haslam requested the Commission to grant the City of Memphis' request for the Commission to make a final determination on the Waiver Petition at the October 13, 2017 meeting. Governor Haslam noted that a "refusal to act on the petition in October will only prolong the issue and result in criticism of both the established process and the Commission itself, as this process can work effectively only if the responsible entities act in a timely manner."

As the April 4, 2018 Commemoration of MLK 50 nears, the City cannot delay implementation of the policies adopted by the Council in Ordinance 5692 any longer. The Forrest statue at issue in the City's Waiver Petition has been the subject of multiple public protests and vandalism. The Forrest statue is located in the City's medical district and is surrounded by multiple state educational institutions including the University of Tennessee Health Sciences Campus and the Southwest Tennessee Community College. It is also located near Sun Studios, a popular

tourist attraction as well as the Regional One Medical Center. Various activists groups have publicly criticized the City's refusal to simply remove the statue and have called for "radical" action by citizen groups. During a recent protest, seven (7) people were arrested. The City has been required to expend considerable public funds to police and protect the Forrest monument from damage and destruction and to police violent protests at the public park at which the monument is situated. The City has been informed that the protestors intend to increase the frequency and severity of their protests. As a result of actual and threatened violent protests, the City's legislative body has declared the site a public nuisance, because it can no longer be used by the general public.

The National Civil Rights Museum and many civic groups have planned a major commemoration of the 50<sup>th</sup> anniversary of the assassination of Martin Luther King, to be held in Memphis on April 4, 2018. Petitioners anticipate that the planned events will be covered by national and international media. The City also believes the continued presence of the Forrest statue will attract protestors for and against removal of the statue with the potential for violent conflict similar to what occurred recently in Charlottesville, Virginia.

The City has determined that it is in the public's interest that a private entity should be allowed to repurpose Health Sciences Park and Memphis Park using private resources free from the unreasonable restrictions imposed by the Tennessee General Assembly on public entities, like the City, on the uses of public property.



The City administration does hereby recommend that Health Sciences Park be sold and/or conveyed by the City to Memphis Greenspace, Inc., a 501(c)(3) non-profit corporation ("Greenspace") for a reduced or no cost pursuant to existing ordinances and that a portion of the City's easement in Memphis Park be also sold and/or conveyed to Memphis Greenspace for a reduced or no cost. Greenspace has provided the City Administration with its vision for repurposing both Health Sciences Park and Memphis Park and has already raised substantial private donations for partial implementation of its plan. Moreover, Greenspace's plans are compatible with privately funded efforts to repurpose Memphis Park as the Fourth Bluff.

The City Administration concurs in the Findings of the City Council that the Forrest and Jefferson Davis statues are public nuisances and are unfit for service or use by the City since their continued presence is inconsistent with the purpose, intent and future land uses of the Medical Overlay District and with the Riverfront Development Plans, which is to support the development and investment efforts of the State and other institutions in the medical district and surrounding neighborhoods and the efforts of the University of Memphis Law School's efforts to be recognized nationally as a first tier institution of legal training and scholarship open to all races, creeds and persons irrespective of national origins.

Also, all statues and artifacts honoring Confederate protagonists, like the Forrest equestrian statue and the Jefferson Davis statue located on City owned property,

constitute a public nuisance under Tennessee law and also potentially infringe upon the civil rights of the significant majority of the population of the City. For these reasons, all statues and artifacts honoring Confederate protagonists, like the Forrest equestrian statue and the Jefferson Davis statue, should be removed from City owned property. The City's continued ownership of these assets is an impediment to their immediate removal and/or relocation. This recommendation is also consistent with the City's arrangements with other private non-profit organizations to manage and/or control public parkland using private funds.

This Implementation Report has been developed jointly in consultation with the Council's attorney. It is the considered option of the authors of this report and recommendation that the recommendations in this report are the only reasonable options that are immediately available to the City to abate public nuisances and to end the expenditure of precious the public funds to protect the Forrest and Jefferson Davis statues and related monuments/memorials. The recommendations will accomplish several goals of the City, namely:

- 1) Facilitate the removal and relocation of Forrest and Jefferson Davis statues before the April 4, 2018 Commemoration of MLK 50;
- 2) Avoid violent demonstrations and protests during MLK 50 and the resulting stain on the City's image to the world;
- 3) Permit repurposing of Health Sciences and Memphis Parks as inviting destinations for all Memphians without using City resources;
- 4) Insure that Health Sciences and Memphis Parks will remain open spaces for use and enjoyment of citizens and visitors of the City.