

This instrument prepared by:
City of Jacksonville
Office of General Counsel
Kealey A. West, Esq.
117 West Duval Street, Suite 480
Jacksonville, FL 32202

## **DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is made by the City of Jacksonville, a Florida municipal corporation ("Grantor") and the Florida Department of Environmental Protection (FDEP).

### **RECITALS**

- A. Grantor is the fee simple owner of that certain real property located at 505 Alfred Dupont Place, City of Jacksonville, in the County of Duval, State of Florida, which is a portion of RE# 090116-0000 as more particularly described in **Exhibit A** attached hereto and made a part hereof (the "Property");
- B. The FDEP Compliance Enforcement Tracking Site Identification Number for the Property is COM\_222962. The site name at the time of this Declaration is the former Gefen Property site. This Declaration addresses the site condition initially reported to FDEP in November 2003 related to hydrocarbon and metal impacts detected during site assessment activities in August 2003. Those initial site conditions have been altered by soil removal and sampling activities since 2003.

- C. The discharge of contaminants on the Property is documented in the following reports that are incorporated by reference:
  - 1. Site Assessment report, dated November 11, 2003
  - 2. Letter Report, dated December 30, 2003
  - 3. Letter Report, dated January 5, 2004
  - 4. Groundwater Sampling Report, dated June 1, 2004
  - 5. Site Assessment Report, dated march 29, 2013
  - 6. Limited Scope Remedial Action Plan, dated July 8, 2013
  - 7. Tank Closure Assessment Report, dated May 4, 205
  - 8. Source Removal Report, dated May 4, 2015
- D. The reports noted in Recital C set forth the nature and extent of the contamination that is located on the Property. These reports confirm that contaminated soil, as defined by Chapter 62-780 of the Florida Administrative Code, exists on the Property. The criteria for potential direct exposure of contamination in the soil were based on Residential Direct Exposure Limits of 2.1 milligrams per kilogram (mg/kg) for Arsenic and 0.1 mg/kg for Benzo(a)pyrene Equivalents, as established in Chapter 62-777, F.A.C. Therefore, the Property may not be subdivided into parcels without prior written approval of FDEP's Division of Waste management (DWM).
- E. It is the intent that the restrictions in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Property and the environment to the contaminants and to reduce or eliminate the threat or migration of the contaminants.
- F. FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter "Order") upon recordation of this Declaration. FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of contaminants of concern increase above the levels approved in the Order, or if a subsequent discharge of substances regulated by FDEP occurs at the Property, FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. COM\_222962 can be obtained by contacting the appropriate FDEP district office or Tallahassee program area.
- G. Grantor deems it desirable and in the best interest of all present and future owners of the Property that an Order be obtained and that the Property be held subject to certain restrictions and engineering controls, all of which are more particularly hereinafter set forth.
- **NOW, THEREFORE**, to induce FDEP to issue the Order and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, Grantor agrees as follows:
- 1. The foregoing recitals are true and correct and are incorporated herein by reference.

- 2. Grantor hereby imposes the following restrictions and requirements:
- a. SOIL RESTRICTIONS AND ENGINEERING CONTROLS
  - i. The area of soil contamination as located on the Property and more particularly described and depicted in <a href="Exhibit B">Exhibit B</a>, attached hereto and made a part hereof, shall be permanently covered and maintained with an impervious surface, such as concrete foundation or a building that prevents human exposure and water infiltration or a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure (hereinafter referred to as the "Engineering Control"). An Engineering Control Maintenance Plan (ECMP) has been approved by FDEP. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of FDEP. The ECMP, relating to FDEP Facility No. COM\_222962 can be obtained by contacting the appropriate FDEP district office or Tallahassee program area.
  - ii. Excavation and construction beneath the Engineering Control is not prohibited in the area of soil contamination provided that any contaminated soil that is excavated is removed and properly disposed of pursuant to Chapter 62-780 of the Florida Administrative Code and any other applicable local, state, and/or federal requirements. Nothing herein shall limit any other legal requirements requiring construction methods and precautions that must be taken to minimize risk of exposure while conducting work in the contaminated area. For any dewatering activities, a plan pre-approved by FDEP's Division of Waste Management must be in place to address and ensure the appropriate handling, treatment, and disposal of any extratcted groundwater that may be contaminated. Nothing in this Declaration shall prevent, limit, or restrict any excavation or construction at or below the surface outside the boundary of the Engineering Control Area.
- 3. In the remaining paragraphs, all references to Grantor and FDEP shall also mean and refer to their respective successors and assigns.
- 4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon, over and through and access to the Property at reasonable times and with reasonable notice to Grantor.
- 5. It is the intention of Grantor that this Declaration shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of Grantor and FDEP, and to any and all parties

hereafter having any right, title or interest in the Property or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of Grantor to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by Grantor and FDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions. If Grantor does not or will not be able to comply with any or all of the provisions of this Declaration, Grantor shall notify FDEP in writing within three (3) calendar days. Additionally, Grantor shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

- 6. In order to ensure the perpetual nature of this Declaration, Grantor shall record this declaration, and reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Property, Grantor agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration of Restrictive Covenant.
- 7. This Declaration is binding until a release of covenant is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both Grantor and FDEP and be recorded by Grantor as an amendment hereto.
- 8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.
- 9. Grantor covenants and represents that on the date of execution of this Declaration that Grantor is seized of the Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. Grantor also covenants and warrants that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair Grantor's rights to impose the restrictive covenant described in this Declaration.

## Remainder of page intentionally left blank

IN WITNESS WHEREOF, the City of Ja day of 2019.	acksonville has executed this instrument, this
ATTESTED:	CITY OF JACKSONVILLE
By:	Ву:
SIGNATURE	SIGNATURE
PRINT NAME	PRINT NAME
TITLE	TITLE
Form approved:	
Assistant General Counsel	
STATE OF FLORIDA COUNTY OF DUVAL	
The foregoing instrument was acknowled, 2019, by	of the corporate, on behalf of the City. Such person is
as identification.	
•	Print Name:
	Notary Public, State of Florida  My Commission Expires:

General Counsel	Department of Environmental Protection, Office of
IN WITNESS WHEREOF, the Florid executed this instrument, this	da Department of Environmental Protection has day of, 2019.
	FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
	Gregory J. Strong Director Northeast District Office Program Administrator 8800 Baymeadows Way West, Suite 100 Jacksonville, FL 32256
	Date:
Signed, sealed and delivered in the Witness:	Date:
Witness:Print Name:	Date:
STATE OF FLORIDA COUNTY OF	
by as Department of Environmental Prote	owledged before me this day of, 2019 for the Florida ction, personally known to me or has produced is identification.
	Print Name:  Notary Public, State of Florida  My Commission Expires:

# **EXHIBIT A**

# PROPERTY LEGAL DESCRIPTION

#### LEGAL DESCRIPTION OF THE PROPERTY TO BE RESTRICTED

A PARCEL OF FILLED FORMERLY SUBMERGED SOVEREIGNTY LAND LYING ON THE WESTERLY SIDE OF THE ST JOHNS RIVER IN SECTION 56 TOWNSHIP 2 SOUTH RANGE 26 EAST DUVAL COUNTY AND BEING A PART OF LOT 1. BLOCK 1. SUPPLEMENTAL PLAT OF RIVERSIDE, RECORDED IN DEED BOOK "O", PAGE 434, TOGETHER WITH PART OF LOTS 1, 2, 3, AND 4 OF BLOCK 1, RIVERSIDE, PLAT BOOK 1, PAGE 109, ALL RECORDED IN THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF RIVERSIDE AVENUE (A 60 FOOT RIGHT-OF-WAY) WITH THE SOUTHWESTERLY RIGHT-OF-WAY OF DORA STREET (A 40 FOOT RIGHT-OF-WAY); THENCE SOUTH 54° 37' 17" WEST ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF RIVERSIDE AVENUE, A DISTANCE OF 293.84 FEET TO THE POINT OF CURVATURE OF A CURVE. CONCAVE SOUTHEASTERLY. HAVING Α RADIUS OF 468.22 FEET: SOUTHWESTERLY CONTINUING ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 30.51 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING OF SOUTH 52° 45' 18" WEST AND A CHORD DISTANCE OF 30.50 FEET TO A POINT ON SAID CURVE; THENCE SOUTH 43° 08'26" EAST CONTINUE ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 10.02 FEET TO A POINT ON A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 458.22 FEET; THENCE SOUTHWESTERLY CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE, AN ARC DISTANCE OF 72.76 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING OF SOUTH 46° 25' 37" WEST AND A CHORD DISTANCE OF 72.69 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF FOREST STREET (A 25 FOOT RIGHT-OF-WAY BY DEED BOOK 160, PAGE 126 OF SAID FORMER RECORDS): THENCE SOUTH 45° 39' 09" EAST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND ITS SOUTHEASTERLY EXTENSION THEREOF, A DISTANCE OF 400.99 FEET TO THE POINT OF BEGINNING; THENCE NORTH 47° 33'55" EAST, A DISTANCE OF 118.73 FEET; THENCE SOUTH 42° 26'05" EAST, A DISTANCE OF 221.62 FEET TO THE BULKHEAD LINE: THENCE SOUTH 47' 33" 55" WEST ALONG SAID BULKHEAD LINE, A DISTANCE OF 65.00 FEET: THENCE SOUTH 42° 26' 05" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 47° 33" 55" WEST, A DISTANCE OF 50.29 FEET: THENCE NORTH 42° 12' 09" WEST. A DISTANCE OF 196.38 FEET; THENCE NORTH 45° 39' 21" WEST, A DISTANCE OF 75.36 FEET TO THE POINT OF BEGINNING. CONTAINING 0.645 ACRES MORE OR LESS.

**EXHIBIT B** 

SURVEY



