

Prepared By and Return To:  
City of Chattanooga  
Department of Public Works  
Stormwater Resources Division  
1250 Market Street, Suite 2100  
Chattanooga, TN 37402

## DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (the “Declaration”) is dated and made effective on \_\_\_\_\_, 202\_\_ by \_\_\_\_\_. (the “Declarant”), whose address is \_\_\_\_\_. As used herein, the term “Declarant” shall include any and all heirs, successors, and assigns of the Declarant and all subsequent owners of the Property (as hereinafter defined).

### WITNESSETH:

**WHEREAS**, the Declarant is the owner in fee simple of certain real property located in Hamilton County, Tennessee, bearing Tax Parcel No. \_\_\_\_\_ (the “Property”) as evidenced by deed recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Register’s Office of Hamilton County, Tennessee, and as more particularly described in the legal description attached as **Exhibit A** and incorporated herein by reference; and

**WHEREAS**, the City of Chattanooga (“City”) has been issued a National Pollutant Discharge Elimination System permit (“Permit”) that authorizes certain activities which could affect Waters of the State of Tennessee;

**WHEREAS**, the Property possesses natural resources with significant aquatic, ecological and habitat values (“Conservation Values”). These Conservation Values include Waters of the State as defined in T.C.A. § 69-3-101, *et seq.*, including streams, wetlands and the adjacent uplands, and other native vegetation and wildlife. These natural resources are of great importance to the City and the Declarant;

**WHEREAS**, this Declaration is being made to satisfy the Water Quality Buffer Mitigation requirements associated with Land Disturbing Permit No. \_\_\_\_\_, Stormwater Variance No. \_\_\_\_\_, or solely for the protection of the Conservation Values by the Declarant;

**WHEREAS**, in accordance with the requirements set forth in City of Chattanooga City Code Section 31-324, the City and Declarant have agreed upon the Water Quality Buffer Zone on the Property as depicted on **Exhibit B**, attached hereto, and incorporated by reference (the “Water Quality Buffer Zone”).

**WHEREAS**, the purpose of this Declaration is to ensure that the Water Quality Buffer Zone will be retained forever in an undeveloped, vegetated condition and to prevent

any use of the Water Quality Buffer Zone that will impair or interfere with the Conservation Values. Declarant intends that this Declaration will assure that the Water Quality Buffer Zone will be used for such activities that are consistent with the terms contained in this Declaration and shall be implemented consistent with the Permit and City Code.

**NOW THEREFORE**, in consideration of the foregoing, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following land use restrictions. The land use restrictions shall run with the land and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and to the City and the respective successors and assigns of such parties:

## **SECTION I. LAND USE RESTRICTIONS**

Any activity on or use of the Water Quality Buffer Zone inconsistent with the purpose of this Declaration is prohibited. Without limiting the generality of the foregoing, except as specifically provided in the Mitigation Plan (Exhibit C) or as approved by the City of Chattanooga, the following activities and uses are expressly prohibited in, on, over, or under the Water Quality Buffer Zone.

### **A. LIST ALL PROHIBITED ACTIVITIES**

- a. Commercial, industrial, residential, or institutional structures, uses, or activities.
- b. Construction, reconstruction, expansion, location, relocation, alteration, installation or placement of any building, roads, utility lines or facilities, trails, walkways, pavement, benches, equipment storage, billboard or advertising sign, or any other structure or improvement of any kind, or any additions or improvements to existing structures.
- c. Filling, dumping, excavating, mining, drilling, grading, leveling, disturbing, removing, exploring or extracting minerals, loam, soil, peat, sand, gravel, rocks, gas, oil, or other material on or below the surface of the Water Quality Buffer Zone, or any alteration to the surface or general topography of the Water Quality Buffer Zone or any portion of the Water Quality Buffer Zone, including any discharges of dredged or fill material, or granting or authorizing surface entry to the Water Quality Buffer Zone for any of these purposes.
- d. Draining, ditching, diking, dredging, channelizing, changing the grade or elevation, water withdrawals, underground injection wells, manipulating, impounding, or altering of any natural water course, body of water, or water circulation on the Water Quality Buffer Zone, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

- e. The transfer, encumbrance, sale, lease, or other conveyance of the mineral, air or water rights for the Water Quality Buffer Zone and any portion thereof separate from the surface rights, changing the place or purpose of use of the water rights, abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Water Quality Buffer Zone, including, but not limited to, (i) riparian water rights, (ii) appropriative water rights, (iii) rights to waters secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Water Quality Buffer Zone, and (iv) any water from wells that exist or may be constructed in the future on the Water Quality Buffer Zone.
- f. The placement, storage, accumulation, dumping, depositing, abandoning, discharging, disposing or releasing of any gaseous, liquid, solid, or hazardous waste substance, yard waste, soil, ashes, trash, rubbish, refuse, grass clippings, cuttings, bio-solids, waste materials or debris of whatever nature, whether temporarily or permanently, on, in, over, or underground or into surface or ground water.
- g. The planting, introduction, or dispersal of non-native or exotic animal or plant species.
- h. Use of herbicides, insecticides, biocides, fungicides, pesticides, rodenticides, fertilizers or other agricultural chemicals, weed abatement activities, incompatible fire protection activities, or other biological controls.
- i. The mowing, cutting, clearing, burning, pruning, removal of any kind, disturbance, destruction, or collection of any natural trees, shrubs, or other vegetation, except for:
  - i. safety purposes;
  - ii. control in accordance with accepted scientific forestry management practices for the treatment of diseased or dead vegetation;
  - iii. control of non-native species and noxious weeds; or
  - iv. scientific or natural study.
- j. Agricultural or grazing activities of any kind, except for vegetation management activities as specifically provided in the Mitigation Plan.

- k. Use of all-terrain vehicles (ATVs), dirt bikes, motorcycles, off-road vehicles, or other motorized vehicle of any kind, except on existing roads and trails as necessary to manage the Water Quality Buffer Zone.
- l. Engaging in any use or activity that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Water Quality Buffer Zone, or the use or activity in question.

## **SECTION II. ACCESS, ENFORCEMENT AND REMEDIES**

- A. **Access.** Declarant and its successors and assigns hereby grant access to the Property by City or its successors and assigns, with any necessary equipment or vehicles, for the purpose of determining compliance with this Declaration. The City may enforce this Declaration by means of a civil action. This Declaration does not convey to the public the right to enter the Property for any purpose whatsoever.
- B. **Enforcement.** The terms and conditions of this Declaration may be enforced by the City and its assigns at law or equity, at the City's reasonable discretion, to prevent the occurrence of any of the prohibited activities set forth herein, and to require the restoration of such areas or features of the Water Quality Buffer Zone that may be damaged by any activity or use that is inconsistent with this Declaration. Any forbearance on behalf of the City to exercise its rights in the event of the failure of Declarant to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the City's rights hereunder in the event of any subsequent failure of the Declarant to comply. The City shall not be obligated to Declarant, or to any other person or entity, to enforce the provisions of this Declaration. Nothing herein shall be construed to authorize City to institute proceedings against the Declarant for changes to the Water Quality Buffer Zone due to acts of God, natural disasters, or unauthorized acts of third parties outside the control of Declarant.

## **SECTION III. DECLARANT'S RIGHTS.**

The Declarant, its successors and assigns, reserves all rights as owner of the Property, including the right to engage in uses of the Property that that are not prohibited herein and that are not inconsistent with the Permit (or any modification thereto) or the intent and purposes of this Declaration.

## **SECTION IV. TERMINATION OR MODIFICATION.**

This Declaration shall not be terminated or modified without the express written consent of the City. Any agreed upon modification shall be recorded in the public records of Hamilton County, Tennessee.

**SECTION V. TRANSFER AND ASSIGNMENT.**

Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property

**This Property is subject to a Declaration of Restrictive Covenants dated \_\_\_\_\_, recorded in the Register’s Office of Hamilton County, Tennessee on \_\_\_\_\_ in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ and enforceable by the City of Chattanooga.**

Declarant shall provide City with written notice of any transfer sixty (60) days prior to such transfer. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Property being transferred. The new transferee will provide City a letter acknowledging the terms and conditions of this Declaration. Failure to comply with this Section does not impair the validity or enforceability of this Declaration.

**SECTION VI. GENERAL DISCLAIMER.**

City, including its employees, agents, and assigns, disclaim and will not be held responsible for Declarant’s negligent acts or omissions or Declarant’s breach of any representation, warranty, covenant, or agreements contained in this Declaration, or violations of any federal state or local laws, including all environmental laws, including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs and reasonable attorneys’ fees and attorneys’ fees on appeal) to which City may be subject or incur relating to the Property.

**SECTION VII. NOTICES.**

Any notice, request for approval, or other communication required by these land use restrictions shall be sent by registered mail, pre-paid postage, to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this Section:

To Declarant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

To City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

**SECTION VIII. FURTHER ASSURANCES.**

Declarant shall take all actions deemed necessary by City to amend this Declaration to comply with and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements now or hereafter in effect.

**SECTION IX. COMPLIANCE WITH APPLICABLE LAWS.**

Declarant shall comply with all other applicable federal, state, or local laws, statutes, ordinances, codes, rules, or regulations, as the same may be amended from time to time.

**SECTION X. GOVERNING LAW.**

This Declaration shall be governed by the laws of the State of Tennessee.

**SECTION XI.**

Declarant states that Declarant is lawfully seized of the Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Declaration; all deeds of trusts and liens on the Property, if any, have been subordinated to this Declaration; and that Declarant has good, right, and lawful authority to execute this Declaration.

**IN WITNESS WHEREOF**, Declarant has duly executed, or caused to be duly executed, this Declaration as of the date first written below:

DECLARANT:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Personally appeared before me, \_\_\_\_\_, Notary Public,  
\_\_\_\_\_, with whom I am personally acquainted, and who  
acknowledged that (s)he executed the within instrument for the purposes therein contained,  
and who further acknowledged that (s)he is the \_\_\_\_\_ of  
\_\_\_\_\_, and is authorized by \_\_\_\_\_ to  
execute this instrument on behalf of \_\_\_\_\_.

WITNESS my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 202.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

EXHIBIT "A"

Description of the Property

EXHIBIT "B"

Water Quality Buffer Zone