

THIS INSTRUMENT PREPARED BY & RETURN TO:
Fred A. Morrison
McLin & Burnsed, P.A.
Post Office Box 491357
Leesburg, Florida 34749-1357

**Declaration of
Restrictive Covenant**

RESERVED FOR RECORDING

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration") is made this ____ day of _____, 2013, by **THE CITY OF LEESBURG, FLORIDA, a municipal corporation**, whose address is P.O. Box 490630, Leesburg, FL 34749 – 0630 (hereinafter **GRANTOR**) and the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** (hereinafter "FDEP").

RECITALS

A. GRANTOR is the fee simple owner of that certain real property situated in the County of Lake, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part thereof (hereinafter the "Property");

B. The FDEP Facility Identification Number for the Property is 35/8622937. The facility name at the time of this Declaration is City of Leesburg former Public Works complex;

C. The discharge of petroleum products on and under the Property is documented in the following reports that are incorporated by reference

Site Assessment Report dated February 15, 2010, submitted by Jones Edmonds & Associates, Inc.

D. The report noted in Recital C sets forth the nature and extent of the contamination remaining on the Property. The report confirms that contaminated groundwater exists on the Property. Also, the report documents that the groundwater contamination does not extend off the Property, that the extent of the groundwater contamination does not exceed 1/4 acre and the groundwater contamination is not migrating.

E. The City of Leesburg has selected the *Risk Management Options Level II – A No Further Action with Institutional Controls* (Chapter 62-770.680(2) Florida Administrative Code) as the remedial alternative for the site.

F. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure of the contaminants to the environment and to users or occupants of the Property and to reduce or eliminate the threat of migration of the contaminants.

G. The FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter "Order") upon recordation of this Declaration, and the FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, in the event concentrations of petroleum products chemicals of concern increase above the levels approved in the

Order, or if a subsequent discharge occurs at the site, the FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the appropriate FDEP rules. The Order relating to FDEP Facility No. 35/8622937, is on file with the FDEP Petroleum Cleanup Section, Team 3, 2600 Blair Stone Road, Tallahassee, FL 32399 – 2400.

H. 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 changes, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce the FDEP to issue the Order and for other good and valuable consideration, the receipt and sufficiency of which is 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 on the Property the following restriction:

There shall be no use of the groundwater on the Property. There shall be no drilling for water conducted on the Property nor shall any wells be installed on the Property other than monitoring wells pre-approved in writing by the FDEP's Division of Waste Management ("DWM"), in addition to any authorizations required by the FDEP's Division of Water Resource Management and the Florida Water Management Districts. Additionally, there shall be no stormwater swales, stormwater detention or retention facilities or ditches on the Property. For any dewatering activities, a plan approved by the FDEP's DWM must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

3. For the purpose of monitoring the restrictions contained herein, FDEP or its respective successors and assigns shall have site access to the Property at reasonable times and with reasonable notice to the GRANTOR and its successors and assigns.
4. It is the intention of GRANTOR that the restriction contained in 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 the successors and assigns of GRANTOR, and to FDEP, its successors and assigns, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. The FDEP, its successors and assigns may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of the FDEP to exercise its right in the event of the failure of the GRANTOR, its successors and assigns to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR, its successors and assigns and the FDEP, its successors and assigns as provided in paragraph 6 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 this restriction. If the GRANTOR does not or will not be able to comply with any or all of the provisions of the Declaration, the GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notice 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.

5. In order to ensure the perpetual nature of these restrictions, GRANTOR, its successors and assigns, shall 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, the GRANTOR agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration of Restrictive Covenant.

6. This Declaration is binding until a release of covenant is executed by the FDEP Secretary (or designee) and GRANTOR or their successors and assigns and is recorded in the county land records. To receive prior approval from FDEP to remove any requirement herein cleanup target levels established pursuant to Florida Statutes and FDEP rules must have been achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both GRANTOR and the FDEP or their respective successors and assigns and be recorded by GRANTOR, or its successors and assigns as an amendment hereto.

7. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions thereof. All such other provisions shall continue unimpaired in full force and effect.

8. GRANTOR, its successors and assigns, covenant and represent 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 or that would be superior to the restrictive covenant described in this Declaration.

IN WITNESS WHEREOF, the Grantor has caused its duly authorized officers to set their hands and seals to this Declaration.

THE CITY OF LEESBURG, FLORIDA

BY: _____
 DAVID KNOWLES, Mayor

ATTEST: _____
 BETTY RICHARDSON, City Clerk

APPROVED AS TO FORM AND CONTENT:

 CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF LAKE

BEFORE ME, the undersigned Notary Public, personally appeared Bill Polk, as Mayor, and Betty Richardson, as City Clerk, respectively, of the City of Leesburg, Florida, who acknowledged before me on the _____ day of _____, 2013, that they executed the foregoing instrument, and who were either {CHECK ONE} personally known to me, or who produced _____ as identification.

NOTARY PUBLIC SIGNATURE

Commission Number

Type or print name of Notary Public

Commission Expiration Date

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this _____ day of _____, 2011.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: _____
Name: ROBERT C. BROWN
Bureau Chief
Division of Waste Management
Bureau of Petroleum Storage Systems
Mailing Address: 2600 Blair Stone Road
Mail Station 4575
Tallahassee, Florida 32399 – 2400

STATE OF FLORIDA
COUNTY OF LAKE

BEFORE ME, the undersigned Notary Public, personally appeared Charles T. Williams, the Acting Bureau Chief, Division of Waste Management, Bureau of Petroleum Storage Systems, Florida Department of Environmental Protection, who acknowledged before me on the _____ day of _____, 2013, that he executed the foregoing instrument, and who was either {CHECK ONE} personally known to me, or who produced _____ as identification.

NOTARY PUBLIC SIGNATURE

Commission Number

Type or print name of Notary Public

Commission Expiration Date

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

THE EAST 250 FEET OF GOVERNMENT LOT 7 LYING SOUTH OF HIGHWAY 441, SECTION 23, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA.

PARCEL 2:

THAT PART OF GOVERNMENT LOT 8 IN SECTION 24, TOWNSHIP 19 SOUTH, RANGE 24 EAST, IN THE CITY OF LEESBURG, FLORIDA, BOUNDED AND DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 8, RUN THENCE EAST ALONG THE SOUTH LINE THEREOF 295 FEET; THENCE NORTH 00°18'00 38.83 FEET TO THE NORTHERLY LINE OF THE RIGHT OF WAY OF U.S. HIGHWAY 441; THENCE NORTHWESTERLY ALONG THE SOUTHERLY LINE OF SAID RIGHT OF WAY TO THE WEST LINE OF SAID GOVERNMENT LOT 8; THENCE SOUTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

PARCEL 3:

LOTS 1 & 2, BLOCK 53, OFFICIAL PLAT OF THE CITY OF LEESBURG, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 19, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA.

PARCEL 4:

LOTS 8, 9, 10 & 11, BLOCK 60, LYING NORTH OF THE RAILROAD RIGHT OF WAY, OFFICIAL PLAT OF THE CITY OF LEESBURG, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 19, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA.