

Service of Process Transmittal Summary

TO: Hope Barnett
Bonner Carrington
901 S MOPAC EXPY BLDG V STE 100
AUSTIN, TX 78746-5776

RE: Process Served in Texas

FOR: Cypress Creek Forest Lane LP (Domestic State: TX)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: FC INVESTMENT, LTD. vs. ANTHEM INTERESTS, LLC

CASE #: DC2320173

PROCESS SERVED ON: C T Corporation System, Dallas, TX

DATE/METHOD OF SERVICE: By Process Server on 12/19/2023 at 14:15

JURISDICTION SERVED: Texas

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air
Image SOP
Email Notification, Hope Barnett hope@bonnercarrington.com
Email Notification, DeWitt VanWisse dewitt@bonnercarrington.com
Email Notification, Lisa Hodges lisa@bonnercarrington.com

REGISTERED AGENT CONTACT: C T Corporation System
1999 Bryan Street
Suite 900
Dallas, TX 75201
866-539-8692
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

PROCESS SERVER DELIVERY DETAILS

Date: Tue, Dec 19, 2023
Server Name: Tracy Edwards

Entity Served	CYPRESS CREEK FOREST LANE LP
Case Number	DC-23-20173
Jurisdiction	TX

Inserts		



FORM NO. 353-3—CITATION
THE STATE OF TEXAS

To: CYPRESS CREEK FOREST LANE, LP
BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS TX 75201-3136

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. on the Monday next following the expiration of twenty days after you were served this citation and **ORIGINAL** petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Your answer should be addressed to the clerk of the **14th District Court** at 600 Commerce Street, Dallas, Texas 75202.

Said Plaintiff being **FC INVESTMENT, LTD.**

Filed in said Court **4th day of December, 2023** against

SYCAMORE STRATEGIES, LLC; ANTHEM INTERESTS, LLC; CYPRESS CREEK FOREST LANE, LP; CYPRESS CREEK FOREST DEVELOPER LLC; EY VENTURES LLC; PARULA PARTNERS LP; CITY OF DALLAS

For Suit, said suit being numbered **DC-23-20173**, the nature of which demand is as follows:
Suit on **OTHER (CIVIL)** etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office **on this the 11th day of December, 2023**

ATTEST: FELICIA PITRE,
Clerk of the District Courts of Dallas County, Texas

By  Deputy
DOMINIQUE GADBERRY



ESERVE
CITATION

No.: **DC-23-20173**

FC INVESTMENT, LTD.
vs.
SYCAMORE STRATEGIES, LLC, et al

ISSUED
on this the 11th day of December, 2023

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: **DOMINIQUE GADBERRY**,
Deputy

Attorney for Plaintiff
ROBERT JAMES MIKLOS
2500 DALLAS PKWY
STE 600
PLANO TX 75093
972-378-9111
rmiklos@fbfk.law
DALLAS COUNTY
SERVICE FEES
NOT PAID

OFFICER'S RETURN

Cause No. DC-23-20173

Court No.: 14th District Court

Style: FC INVESTMENT, LTD.

vs.

SYCAMORE STRATEGIES, LLC, et al

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____ .M.
Executed at _____, within the County of _____ at _____
o'clock _____ .M. on the _____ day of _____, 20_____, by delivering to the within named

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____,
20_____, to certify which witness my hand and seal of office.

Notary Public _____ County _____

7 CIT ESERVE

DC-23-20173
CAUSE NO. DC-_____

FC INVESTMENT, LTD.	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	14th
vs.	§	_____ JUDICIAL DISTRICT
	§	
ANTHEM INTERESTS, LLC, CYPRESS	§	
CREEK FOREST LANE, LP, CYPRESS	§	
CREEK FOREST DEVELOPER LLC, EY	§	
VENTURES LLC, SYCAMORE	§	
STRATEGIES, LLC, PARULA PARTNERS,	§	
LP, and the CITY OF DALLAS.	§	DALLAS COUNTY, TEXAS

Defendants.

**PLAINTIFF'S ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND
REQUEST FOR INJUNCTIVE RELIEF**

Plaintiff FC Investment, Ltd. ("Plaintiff"), files this its *Plaintiff's Original Petition for Declaratory Judgment and Request for Injunctive Relief* (this "Original Petition") against Defendants Anthem Interests, LLC, Cypress Creek Forest Lane, LP, Cypress Creek Forest Developer LLC, EY Ventures LLC, Sycamore Strategies, LLC, Parula Partners, LP, and the City of Dallas, and would show as follows:

NATURE OF ACTION

Plaintiff is the owner of a property located within the Forest-Central Office Park at 11551 Forest Central Drive, Dallas, Texas 75243. Defendant Parula Partners, LP is the owner of the land immediately adjacent to Plaintiff's property to the north, located at 11520 N. Central Expressway, Dallas Texas 75243 ("Owner"), and EY Ventures LLC is Parula Partners, LP's General Partner. Defendants Anthem Interests, LLC, Cypress Creek Forest Lane, LP, Cypress Creek Forest Developer LLC and Sycamore Strategies, LLC are the planned developers of the tax credit multifamily complex (collectively, "Developer"). Both properties, plus other surrounding immediately adjacent properties (the "Forest-Central Office Park") are subject to existing, valid

deed restrictions that govern the use and development of all properties in that immediate area (the “Deed Restrictions”) attached as Exhibit A-1. By this action, Plaintiff seeks to enforce those Deed Restrictions against the Owner, Developer, and the City of Dallas, all of whom are subject to the Deed Restrictions. In particular, Plaintiff seeks to enforce the relevant portion of the Deed Restrictions that explicitly prevent any property within the Forest-Central Office Park from being used for any purpose other than office buildings, hotels and motels, and restaurants. In an effort to skirt the Forest-Central Office Park’s deed restrictions, Defendants have created a scheme by which the City of Dallas would be given title to 11520 N. Central Expressway, Dallas, Texas 75243, then either claim that it isn’t subject to those deed restrictions, or use its powers of eminent domain to purchase the Forest-Central Office Park’s Deed Restrictions, and subsequently lease the property to Developer who would build an apartment development on the Property at 11520 N. Central Expressway, Dallas, Texas 75243. This scheme and utilization of the City of Dallas’ eminent domain powers is not allowed by law, and as such, Plaintiff seeks a declaration of rights deeming the Deed Restrictions applicable to the City of Dallas’ intended partnership with Developer to use Owner’s Property in violation of those Deed Restrictions, as well as a temporary injunction preventing Defendants’ scheme from proceeding, and other further relief to which Plaintiff is justly entitled.

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiff requests that discovery be conducted under Level 3. Tex. R. Civ. P. 190.4.

PARTIES

2. Plaintiff FC Investment, LTD is a Texas limited partnership which is the owner of 11551 Forest Central Drive, Dallas, Texas.

3. Defendant Sycamore Strategies, LLC (“Sycamore”) is a Texas limited liability company which may be served with process by serving its registered agent, Jessica D. Krochtengel, at 17014 Preston Bend Drive, Dallas, Texas 75248, or wheresoever it may be found. **Issuance of Citation is Requested.**

4. Defendant Anthem Interests LLC (“Anthem”) is a Texas limited liability company which may be served with process by serving its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. **Issuance of Citation is Requested.**

5. Defendant Cypress Creek Forest Lane, LP (“CCFL”) is a Texas limited partnership which may be served with process by serving its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136. **Issuance of Citation is Requested.**

6. Defendant Cypress Creek Forest Developer LLC (“CCFD”) is a Texas limited liability company and under developer which may be served with process by serving its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136. **Issuance of Citation is Requested.**

7. Defendant EY Ventures LLC (“EY Ventures”) is a Texas limited liability company and as an owner entity which may be serve with process by serving its registered agent Kelly R. Fisher, 1717 Main St., 25th Floor, Dallas, Texas 75201. **Issuance of Citation is Requested.**

8. Defendant Parula Partners, LP (“Owner”) is a Texas limited partnership which may be served with process by serving its registered agent, Kelly R. Fisher, at 1717 Main Street, 25th Floor, Dallas, Texas, 75201. **Issuance of Citation is requested.**

9. Defendant City of Dallas (the “City”) is a home rule municipal corporation primarily situated in Dallas County, Texas, incorporated and operating under the laws of the State of Texas. The City may be served by serving the Dallas City Secretary, at 1500 Marilla, 5DS, Dallas Texas 75201. **Issuance of Citation is requested.**

JURISDICTION AND VENUE

10. Jurisdiction is proper because the damages and the value of the equitable relief sought are within the jurisdictional limits of this Court. Tex. R. Civ. P. 47.

11. Venue is proper in Dallas County pursuant to the mandatory venue provision regarding suits affecting real property contained in Texas Civil Practice and Remedies Code Sections 15.011 and 65.023.

VERIFICATION AND EVIDENCE FOR INJUNCTIVE RELIEF

12. In support of its Application for Temporary and Permanent Injunction, Plaintiff attaches the following evidence that supports the allegations set forth in this application for injunctive relief and incorporates them herein by reference:

- a. **Exhibit A:** Affidavit of William Roth (the “Roth Affidavit”), with a true and correct copy of the following attachment thereto:
 - i. Forest-Central Office Park Reservations, Restrictions, and Covenants (the “Deed Restrictions”), attached as **Exhibit A-1**.
 - ii. Resolution by the City, dated June 14, 2023 (the “Resolution”), attached as **Exhibit A-2**.
 - iii. Legal Memorandum sent to the Interim City Attorney, dated September 6, 2023 (the “City Legal Memorandum”), attached as **Exhibit A-3**.

FACTS

The Properties

13. Plaintiff is the rightful owner of that certain property within the Forest-Central Office Park located at 11551 Forest Central Drive, Dallas, Texas 75243 (“Plaintiff’s Property”). Like all other properties located within the Forest-Central Office Park, Plaintiff’s Property is

subject to the Deed Restrictions, which were originally adopted on or about January 22, 1976. *See Exhibit A-1*. The Deed Restrictions contain a variety of restrictive covenants, each of which run with the land, and serve to protect the Forest-Central Office Park's collective purpose and property value. *Id.*, ¶ 24.

14. By the following language, the Deed Restrictions place stringent limitations on the usage of any building site within the Forest-Central Office Park:

All of the building sites in Forest-Central Office Park shall be used solely for office buildings, hotels and motels, and restaurants; and if approved in writing by the Developer, for other purposes reasonably and customarily auxiliary and incidental to the aforementioned usage...

Id., ¶ 1.

15. The Deed Restrictions may only be amended by the joint action of owners of at least sixty percent (60%) of the total net acres of the Forest-Central Office Park. *Id.*, ¶ 20. To date, no such action has been taken which materially affects the restrictions on the usage of the properties contained within the Forest-Central Office Park, and every property therein is still subject to the restrictions on use contained within paragraph 1 of the Deed Restrictions. *Id.*, ¶ 1.

16. Recently, on June 14, 2023, the City passed the Resolution, which authorized staff to take certain actions in order to the develop Owner's Property as a tax-credit apartment project known as the Cypress Creek at Forest Lane Project. By the terms of the Resolution, Owner intends to convey title of the Cypress Creek Property to the City and, in turn, the City is to lease the Cypress Creek Property to, upon information and belief, a combination of Sycamore, Anthem, CCFL and CCFD (collectively, "Developer"). In turn, Developer shall obtain tax credits in order to help fund the construction of a tax credit multifamily affordable housing apartment complex at the Cypress Creek at Forest Land Project.

17. Owner's Property is directly adjacent to Plaintiff's Property, is within the Forest-Central Office Park, and, as such, is subject to the restrictive covenants stated in the Deed

Restrictions. An apartment complex is not an office building, a hotel or motel, nor a restaurant, putting the planned construction and usage of the Cypress Creek Property in direct violation of the Deed Restrictions. *Id.*, ¶ 1. It is anticipated that the introduction of an apartment complex at the Forest Creek Office Park will greatly impact and lower the value and damage the use of Plaintiff's Property. *See Exhibit A.*

18. In passing the Resolution, the City has agreed, in concert with Owner and Developer, to try and avoid the Deed Restrictions. In particular, Developer and the City were relying on the legally deficient notion that, should the City hold title to the Cypress Creek Property, it would be invulnerable to any deed restrictions, or in the alternative, be able to invoke its eminent domain powers and subsequently remove the Deed Restrictions. This scheme is incorrect and flies in the face of well-established legal precedent.

The Demand Letters

19. As an interested property owner who benefits from the Deed Restrictions, Plaintiff is entitled to enforce the restrictive covenants therein. *See Hazel v. Lonesome Ranch Prop. Owners Ass'n*, 656 S.W.3d 468, 482 (Tex. App.—El Paso 2022, no pet.); *Garden Oaks Maint. Org. v. Chang*, 542 S.W.3d 117, 138 (Tex. App.—Houston [14th Dist.] 2017, no pet.); *Anderson v. New Prop. Owners' Ass'n of Newport, Inc.*, 122 S.W.3d 378, 384 (Tex. App.—Texarkana 2003, pet. denied) (“Ordinarily, any person entitled to benefit under a restrictive covenant may enforce it.”).

20. By way of a series of demand letters to Owner and Developer, dated on or about August 15, 2023, Plaintiff made its objection to the Cypress Creek Property's planned usage known to Owner and Developer, and outlined the legal basis for Plaintiff's objections. In particular, Plaintiff informed the Owner and Developer that, because a municipality in Texas can only utilize its eminent domain power for a “public use,” the Resolution, which cited the apartment complex while utilizing tax credits to offer a certain number of reduced rent units in the apartments, as

serving a “public purpose,” was insufficient to invoke the City’s eminent domain powers. As such, the City lacked the authority to act upon the Resolution, and the planned multifamily project at the Cypress Creek Property was in violation of the Deed Restrictions. After receiving the duly sent demand letters, no action was taken by Owner or Developer to halt the planned multifamily project at the Cypress Creek Property.

21. By way of the City Legal Memorandum, dated September 6, 2023, and addressed to the Interim City Attorney for Dallas, Tammy Palomino, Plaintiff further expanded on its objections to the Cypress Creek Property’s planned usage. *See Exhibit A-3*. In particular, Plaintiff walked the City through a series of determinative legislation and caselaw, each aspect of which stands for the proposition that a municipality may only exercise its eminent domain powers for the furtherance of a “public use”, except for narrow exceptions which are not implicated by the facts of the case at bar. *Id.*, pages 1-2 (citing Tex. Gov’t Code Ann. § 2206.001; *City of Austin v. Whittington*, 388 S.W.3d (Tex. 2012); *Coastal States Gas Producing Co. v. Pate*, 309 S.W.2d 828, 833 (Tex. 1958); *Kelo v. New London*, 545 U.S. 469 (2005)).

22. In relevant part, Section 2206.001 of the Texas Government Code restricts municipalities in the use of condemnation powers solely to those items enumerated in that section. The Resolution relies on the concept that, because the planned development is for tax credit mixed income residential units, the development serves a public purpose. That may very well be so. And the Resolution on June 14, 2023, certainly contemplates the development as serving a public purpose. However, the City’s ability to use condemnation powers in this matter has been specifically removed by the Legislature by and through Section 2206.01 of the Texas Government Code.

23. Additionally, in relevant part, Section 272.001(g) of the Texas Local Government Code reads as follows:

A political subdivision may acquire or assemble land or real property interest, except by condemnation, and sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate income housing. The political subdivision shall determine the terms and conditions of the transactions so as to effectuate and maintain the public purpose. If conveyance of land under this subsection serves a public purpose, the land may be conveyed for less than its fair market value...

Tex. Loc. Gov't Code Ann. § 272.001(g).

24. Because a deed restriction is a real property interest, the City, by statute, is unable to use its power of eminent domain to nullify and/or obtain by condemnation the Deed Restrictions, thereby making Defendants' scheme impossible. *See El Dorado Land Co., L.P. v. City of McKinney*, 395 S.W.3d 798 (Tex. 2013) (identifying a use restriction as a property interest); *City of Heath v. Duncan*, 152 S.W.3d 147, 152 (Tex. App.—Dallas 2004, pet. denied) (recognizing deed restriction on the use of property as a property right); *Westside Ventures, Ltd. v. Houston Cmty. Coll. Sys. Dist.*, No. CV H-19-2928, 2021 WL 4690577 (S.D. Tex. Oct. 7, 2021) ("The deed restriction is compensable property").

25. Indeed, as explained in the demand letters, Plaintiff has never been opposed to Developer's right to sell the Cypress Creek Property, and is not opposed to the City's retention of the Cypress Creek Property. Rather, Plaintiff has always correctly maintained that the City would be subject to the Deed Restrictions, or that the attempt to condemn the Deed Restrictions constitutes a use of the City's eminent domain powers and, as such, constitutes an act of condemnation in direct violation of Section 2206.001 and Texas Local Government Code Section 272.001. *See Exhibit A-4*.

26. Despite receiving a roadmap of caselaw and legislation which points to the clear conclusion that "the City cannot use its powers of eminent domain to invalidate valid and enforceable deed restrictions to facilitate the economic development of property to benefit a private party for a private use," Defendants have failed to bring their scheme to a halt, and Defendants

still plan to jointly violate the use limitations of the Cypress Creek Property as set forth in the Deed Restrictions. *Id.*, page 2.

CLAIMS

COUNT 1 – VIOLATION OF RESTRICTIVE COVENANT/BREACH OF CONTRACT/REPUDIATION

27. Plaintiff realleges and incorporates paragraphs 1 through 26 as if fully set forth herein.

28. The Deed Restrictions are valid, existing, and binding, and constitute a contract between each of the parties owning property in the Forest-Central Office Park.

29. Defendants' attempts to construct and implement the multifamily apartment plan at the Cypress Creek Property constitute a violation, breach, and repudiation of the restrictive covenants contained in Forest-Central Office Park Deed Restrictions.

30. At all material times, Plaintiff has performed its contractual obligations pursuant to the Deed Restrictions.

31. As a direct and proximate result of Defendants' attempts to construct and implement the multifamily apartment plan at the Cypress Creek Property, Plaintiff has been or will be injured in the form of lost property value and damaged use of its property.

32. To any extent necessary, Plaintiff pleads this count in addition and in the alternative to its other counts.

COUNT 2 – SUIT FOR DECLARATORY RELIEF PURSUANT TO TEX. GOV'T CODE § 2206.002

33. Plaintiff realleges and incorporates paragraphs 1 through 32 as if fully set forth herein.

34. Pursuant to Section 37.003 of the Texas Civil Practice & Remedies Code, Plaintiff requests a declaration that the attempt to develop Owner's property in violation of valid and enforceable deed restrictions constitutes a violation of those deed restrictions.

35. Pursuant to Texas Government Code Section 2206.001, a municipality may not use condemnation to acquire property or remove deed restrictions to develop property for low to moderate income housing. *See* Tex. Gov't Code § 2206.001. As discussed at length in Plaintiff's communications with Defendants, the nullification of restrictive covenants constitutes a usage of the City's powers of eminent domain. As such, Defendants' actions are in violation of Section 2206.001 of the Texas Government Code, and Plaintiff seeks a ruling that Defendants' joint scheme may not proceed in violation of said statute.

36. To any extent necessary, Plaintiff pleads this count in addition and in the alternative to its other counts.

**COUNT 3—SUIT FOR DECLARATORY RELIEF PURSUANT TO
TEX. LOCAL GOV'T CODE § 272.001**

37. Plaintiff realleges and incorporates paragraphs 1 through 36 as if fully set forth herein.

38. Pursuant to Section 37.003 of the Texas Civil Practice & Remedies Code, Plaintiff requests a declaration that the purchase of the Cypress Creek Property and the subsequent nullification of the Deed Restrictions constitutes a violation of Section 272.001 of the Texas Local Government Code.

39. Pursuant to Section 272.001, a municipality may not use condemnation to acquire property for low to moderate income housing. *See* Tex. Loc. Gov't Code § 272.001(g). As discussed at length in Plaintiff's communications with Defendants, the nullification of restrictive covenants constitutes a usage of the City's powers of eminent domain. As such, Defendants'

actions are in violation of Section 272.001 of the Texas Local Government Code, and Plaintiff seeks a ruling that Defendants' joint scheme may not proceed in violation of said statute.

40. To any extent necessary, Plaintiff pleads this count in addition and in the alternative to its other counts.

COUNT 4 – INVERSE CONDEMANATION

41. Plaintiff realleges and incorporates paragraphs 1 through 40 as if fully set forth herein.

42. By passing the Resolution, the City engaged in an intentional governmental act that is resulting in the uncompensated taking of Plaintiff's property. Should the Cypress Creek Property's contemplated usage move forward, the nature of Plaintiff's usage of its neighboring property would be negatively affected to such a degree as to be so onerous that its effect is tantamount to a direct appropriation or ouster.

43. To any extent necessary, Plaintiff pleads this count in addition and in the alternative to its other counts.

COUNT 5 – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

44. Plaintiff realleges and reincorporates paragraphs 1 through 43 as if fully set forth herein.

45. The Deed Restrictions constitute a valid and enforceable contract between Plaintiff, Developer, and all other owners of property in the Forest-Central Office Park.

46. The City, Owner, and Developer, by and through their actions taken with respect to the Resolution and the planned construction and usage of the Cypress Creek Property, willfully and intentionally interfered with those Deed Restrictions.

47. Through these willful and intentional interferences with the Deed Restrictions, the City, Owner, and Developer have directly and proximately caused injury to Plaintiff in the form of

actual damage or loss, namely through the loss of property value and the loss of the benefit associated with the Deed Restrictions.

48. To any extent necessary, Plaintiff pleads this count in addition and in the alternative to its other counts.

COUNT 6 – CIVIL CONSPIRACY

49. Plaintiff realleges and reincorporates paragraphs 1 through 48 as if fully set forth herein.

50. The City, Owner, and Developer engaged in a joint meeting of the minds by which they set out to unlawfully violate Section 2206.001 of the Texas Government Code and/or Section 272.001 of the Texas Local Government Code. By passing the Resolution, Defendants wrongfully performed an overt act to further their unlawful course of action, and Plaintiff was directly and proximately injured by such action.

51. To any extent necessary, Plaintiff pleads this count in addition and in the alternative to its other counts.

APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

52. Plaintiff realleges and incorporates paragraphs 1 through 51 as if fully set forth herein. Plaintiff also relies on the Roth Affidavit and the attachments thereto to support and verify the material allegations for this application.

53. Plaintiff's Application for Temporary Injunction is authorized by Texas Civil Practice and Remedies Code Section 65.011 and Texas Rule of Civil Procedure 683, as all or part of the relief requested by Plaintiff requires the restraint of acts prejudicial to Plaintiff; because Defendants, by taking steps to implement the Owner's planned usage, are performing acts relating to the subject of pending litigation, which would render judgment in that litigation ineffectual; and irreparable injury is threatened to Plaintiff's Property. Therefore, injunctive relief is necessary to

cease the implementation of Defendants’ planned apartment development, which is in direct violation of the Deed Restrictions and would inherently affect and change the nature of Plaintiff’s property rights, property usage, and property value.

54. An applicant may seek a temporary injunction to preserve the status quo of the subject matter of the litigation pending trial on the merits. *Miller v. Talley Dunn Gallery, LLC*, No. 05-15-00444-CV, 2016 WL 836775 at *5 (Tex. App.—Dallas Mar. 3, 2016, no pet.) (citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). For purposes of injunctive relief, the status quo is defined as “the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

55. Generally, the “party applying for a temporary injunction ‘must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable imminent, and irreparable injury in the interim.’” *Butnaru*, 84 S.W.3d at 204.

56. However, restrictive covenants may be enforced by injunction where a distinct or substantial breach is shown, without regard to the amount of damages caused by the breach. *Voice of Cornerstone Church Corporation v. Pizza Property Partners*, 160 S.W.3d 657, 668 (Tex. App.—Austin 2005). Further, in such cases, it is not necessary to show the existence of any particular amount of damages or to show that the injury will be irreparable. *Id*; *See also Dao v. Mission Bend Homeowners Ass’n, Inc.*, 667 S.W.3d 304 (Tex. App.—Houston [1st Dist.] 2022, no pet.) (“[W]hen a substantial breach of the covenant is shown, it is not necessary to show the existence of any particular amount of damages or to show that the injury will be irreparable.”); *McGinty v. West Airport Homeowners Ass’n, Inc.*, 2001 WL 197397 at *4 (Tex. App. – Houston [14th Dist.] Mar. 1, 2001) (holding that “[t]o enjoin the violation of restrictive covenants...demonstrable intent to do an act that would breach a restrictive covenant will support an injunction without showing

irreparable injury or imminent harm”); *Winfield v. Lamoyne*, 1995 WL 634161 (Tex. App. – Dallas Oct. 16, 1995) (“when the applicant shows a distinct or substantial breach of the covenant, he does not have show the existence of irreparable injury” in order to obtain injunctive relief); *accord Marcus v. Whispering Springs Homeowners’ Ass’n, Inc.*, 153 S.W.3d 702, 707 (Tex. App. – Dallas 2005).

57. As identified above, Plaintiff requires injunctive relief in order to preserve the status quo, and to prevent Defendants from constructing the Cypress Creek at Forest Lane project that is in violation of the Deed Restrictions allowing for only the development of office buildings, hotels and motels, and restaurants. Through the passage of the Resolution, Developer, the City, and Owner have clearly demonstrated their intent to violate the Deed Restrictions by developing a property in violation of the use restrictions within the Forest-Central Office Park. If preliminary injunctive relief is not issued, Defendants are likely to later argue that after a substantial portion of the Cypress Creek at Forest Lane project is built, that it would be inequitable to require them to demolish the completed portion of the development, even if Plaintiff prevailed at trial. As such, in the absence of a temporary injunction, any potential judgment in favor of Plaintiff could be rendered ineffectual and moot.

58. As indicated in this Original Petition and the exhibits attached thereto, Plaintiff has shown a substantial breach or violation of the Deed Restrictions contained in the Forest-Central Office Park development plan, or an intent to do an act that would breach the Deed Restrictions, and a probable right to recovery and likelihood of success on the merits of their claims for: (1) breach of contract; (2) declaratory relief that Defendants’ actions would violate Section 2206.001 of the Texas Government Code; (3) declaratory relief that Defendants’ actions would violate Section 272.001 of the Texas Local Government Code; (4) inverse condemnation; (5) tortious interference with existing contract; and (6) civil conspiracy.

59. The only adequate, effective and complete relief is to maintain the *status quo*, and restrain Defendants from proceeding with the City's acquisition of the Owner's property, and the development of the Cypress Creek at Forest Lane project. Pursuant to Texas Rule of Civil Procedure 683 and Texas Civil Practice and Remedies Code Section 65.011, and in order to preserve the *status quo* during the pendency of this case, Plaintiff seeks, after a hearing and notice to Defendants, a temporary injunction, and upon a trial on the merits, a permanent injunction ordering and immediately restraining Defendants and their respective agents, employees, or other representatives as follows:

- a. enjoining the development of the Cypress Creek at Forest Lane apartment complex project located at 11520 N. Central Expressway, Dallas, Texas 75243.
- b. enjoining the development of any other apartment complex project located at 11520 N. Central Expressway, Dallas, Texas 75243.

60. Plaintiff is willing to post bond.

ATTORNEYS' FEES

61. Plaintiff is entitled to recover its attorneys' fees from Defendants pursuant to Tex. Civ. Prac. & Rem. Code §§ 37, 38, *et seq.* Plaintiff presented its contentions to Defendants, but to no avail. As such, Plaintiff has been forced to retain the services of counsel to prosecute this action and is entitled to recover its attorneys' fees for the presentation and prosecution of this action to final judgment and, if necessary, for any and all post-trial proceedings and any appeal therefrom to any Court of Appeals and/or a further appeal to the Texas Supreme Court.

PRAYER

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully requests that Defendants be cited to appear and answer herein and respectfully asks the Court to enter judgment for Plaintiff:

- i. Issuing the injunctive relief, restraining Defendants as requested herein;
- ii. Awarding Plaintiff its actual, direct, and consequential damages incurred as a result of Defendants' conduct;
- iii. Awarding Plaintiff its reasonable attorneys' fees and costs in the presentation and prosecution of its claims through any and all appeals; and
- iv. For such other and further relied, a law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

/s/ Robert Miklos

Robert Miklos

State Bar No. 14033110

rmiklos@fbfk.law

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MILLER WEISBROD OLESKY, LLP

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

FC INVESTMENT, LTD.

Plaintiff,

VS.

ANTHEM INTERESTS, LLC, CYPRESS CREEK FOREST LANE, LP, CYPRESS CREEK FOREST DEVELOPER LLC, EX VENTURES LLC, SYCAMORE STRATEGIES, LLC, PARULA PARTNERS, LP, and the CITY OF DALLAS.

Defendants.

DECLARATION OF WILLIAM N. ROTH

STATE OF TEXAS

COUNTY OF DALLAS

1. "My name is William Roth. I am over 18 years of age and am fully competent in all respects to make this affidavit. I am a partner of FC Investments, LTD. ("Plaintiff"), the plaintiff in the above-styled and numbered cause. Through this role, I have learned the following facts and such facts are within my personal knowledge and are true and correct.

2. Plaintiff's Property¹, located at 11551 Forest Central Drive, Dallas, Texas 75243, and the Cypress Creek Property, immediately adjacent to the north, located at 11520 N. Central Expressway, Dallas, Texas 75243, are subject to existing, valid, Deed Restrictions that govern the use and development of all properties in that immediate area. A genuine, true, and correct copy of the Deed Restrictions is attached hereto and incorporated for all purposes as **Exhibit A-1**.

¹ Unless otherwise noted, all capitalized terms are given the same meaning as in *Plaintiff's Original Petition for Declaratory Judgment and Request for Injunctive Relief*.

3. To date, no action has been taken which could have validly amended the Deed Restrictions and, as such, the Deed Restrictions remain valid and enforceable with respect to every property owner within the Forest-Central Office Park.

4. Recently, Plaintiff became aware that, on June 14, 2023, the City passed the Resolution, which authorized staff to take certain actions in order to develop the Cypress Creek Property as a tax-credit apartment project known as the Cypress Creek at Forest Lane Project. A genuine, true, and correct copy of the Resolution is attached hereto and incorporated for all purposes as **Exhibit A-2**.

5. Should the Resolution be carried out to full effect, Plaintiff anticipates that the introduction of an apartment complex at the Forest Creek Office Park will greatly impact and lower the value and damage the use of Plaintiff's Property.

6. In efforts to notify Owner and Developer about the incorrect and legally deficient basis upon which the Resolution is founded, Plaintiff deemed it necessary to send out a series of demand letters, each of which were dated and sent on or about August 15, 2023. By way of these demand letters, Plaintiff outlined the legal basis for Plaintiff's objections. Despite the explicitly clear demand letters, no action was taken by Owner or Developer to halt the planned multifamily project at the Cypress Creek Property.

7. Dated September 6, 2023, and in light of Owner and Developer's collective inaction, Plaintiff deemed it necessary to send the City Legal Memorandum to the City via Tammy Palomino, the Interim City Attorney for Dallas. A genuine, true, and correct copy of the City Legal Memorandum is attached hereto and incorporated for all purposes as **Exhibit A-3**. Yet again, despite a clear roadmap of caselaw which dictates an outcome to the contrary, Defendants collectively failed to bring their development of the Cypress Creek Property to a halt.

8. To date, Plaintiff has received no further communication or indication from Defendants that they intend to bring their development of the Cypress Creek Property to a halt."

Further Declarant sayeth not.

JURAT IN ACCORDANCE WITH TEX. CIV. [RAC. & REM. CODE § 132.001(d)

"My name is William Roth and my date of birth is January 19, 1954, and my address is 11551 Forest Central Drive, Suite 110, Dallas, Texas 75243. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Dallas County, Texas, on the 1st day of December, 2023.


William Roth

Exhibit A-1

DEED RECORD

RESTRICTIONS

FOREST-CENTRAL OFFICE PARK

RESERVATIONS, RESTRICTIONS AND COVENANTS

THE STATE OF TEXAS X
COUNTY OF DALLAS X KNOW ALL MEN BY THESE PRESENTS:

That FOREST-CENTRAL JOINT VENTURE, hereinafter referred to as "Developer", being a joint venture comprised of Southern Union Realty Company and Windward Corporation with office and principal place of business in Dallas, Dallas County, Texas, being the owner of that certain tract of land herein referred to as Forest-Central Office Park, which tract has heretofore been platted according to the plat thereof recorded in the office of the County Clerk of Dallas County, Texas, on January 19, 1976, after having been approved as provided by law, and being recorded in Volume 76012, Page 0060 of the Map Records of Dallas County, Texas, does hereby adopt, establish, promulgate and impress the following Reservations, Restrictions and Covenants which shall be and are hereby made applicable to Forest-Central Office Park:

Uses

1. All of the building sites in Forest-Central Office Park shall be used solely for office buildings, hotels and motels, and restaurants; and if approved in writing by the Developer, for other purposes reasonably and customarily auxiliary and incidental to the aforesaid usages; plus paved employee and visitor parking as hereafter set forth; or any other use if, in the judgment of the Developer, such use meets the standards set forth in the next succeeding paragraph and is approved in writing by the Developer.

No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or which constitutes a nuisance or is hazardous by reason of fire or

explosion, or injurious to the reputation of any site in Forest-Central Office Park, or in violation of the laws of the United States, the State of Texas, or the City of Dallas.

Set Backs

2. No building shall be constructed in Forest-Central Office Park nearer than twenty-five (25) feet to a front property line or nearer than ten (10) feet to any side yard.

The term site, as used herein, shall mean each parcel of land in Forest-Central Office Park owned or developed as a unit, including both building and parking facilities therefor, whether such parcel of land consists of a full tract as shown on the recorded plat or less than or more than a full tract as shown on the aforesaid recorded plat.

Construction Standards

3. Construction or alteration of any building or structure in Forest-Central Office Park shall meet the standards set forth in these Reservations, Restrictions and Covenants. No construction work shall start until written approval from the Developer has been received in accordance with paragraphs thirteen (13) and fourteen (14).

All sides of any building or structure in Forest-Central Office Park shall be finished with face brick, stone, marble, exposed aggregate or architectural concrete, glass or equal, from finished grade to roof level. No building shall be covered with corrugated metal or asbestos. No building shall be constructed with a wooden frame. Where a construction material is specified herein, another material may be used in lieu thereof, provided such material is approved by the Developer.

From the terminal facility serving a site, extensions of utility lines across property hereafter sold by Developer and all other utility lines across property hereafter sold by Developer must be constructed underground (including telephone lines): but this shall not be interpreted to require existing above ground utility lines to be placed underground or to control the placement of temporary utility lines

during construction or to control the location of lines to such terminal facility from off such site.

Signs

4. All signs shall be of a size and nature that will preserve the quality and atmosphere of Forest-Central Office Park and be consistent with the intended dignified standing of Forest-Central Office Park. Unless otherwise approved in writing by the Developer, all signs must: (a) be attached to a building; (b) be installed so as to be parallel to and contiguous with the building wall; (c) not project above the roof line of the building to which it is attached; (d) not be of a flashing or moving character; and (e) be approved by Developer.

Storage

5. No articles, goods or materials shall be stored in the open or so as to be exposed to public view.

Screening
of Objects

6. Water tower, storage tanks, stand-fans, cooling towers, heating equipment, air conditioning or ventilating equipment, electrical equipment, mechanical equipment, and any other equipment (excluding communication towers) including that which is located on the roof of any building or on the ground shall be effectively shielded from view from any dedicated street or ground level parking area by means of an architecturally and aesthetically sound method which has been approved in writing by the Developer before construction or erection thereof.

Parking

7. Paved asphalt or concrete parking shall be provided in a number not less than the minimum guideline standards set forth in the then current Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas.

Parking will not be permitted on any street or road, either public or private, or at any other place than the paved parking spaces provided in accordance with the provisions hereof; and each building owner shall be responsible for compliance with such provisions by its lessees and their respective employees and visitors.

Landscaping

8. Planted areas, landscaping, drives, sidewalks and locations of loading docks and building service entrances shall conform to reasonable standards approved in writing by the Developer in advance of the installation, construction or establishment thereof.

All loading docks must be effectively shielded from ground level view from any dedicated street by an aesthetically and architecturally sound method which has been approved in writing by the Developer before construction thereof.

Illumination

9. If exterior illumination is desired for any building in Forest-Central Office Park, such exterior illumination shall be designed so as to be directed on the particular building for which such illumination has been approved by the Developer and such particular building's landscaping; and such illumination shall not be installed without the prior written approval of the Developer as to the plans therefor.

Sidewalks

10. Each owner of Property in Forest-Central Office Park shall install along side any dedicated street bordering its land a sidewalk which is four (4) feet in width and constructed of aggregate concrete or comparable material approved in writing by the Developer, such construction to be completed by the time occupancy of the building constructed on such site occurs.

Maintenance

11. The owner of each parcel of property in Forest-Central Office Park shall have the duty and responsibility for:

- (a) keeping the property free of unsightly weeds and keeping grass and other ground cover mowed and landscaping in a well maintained, safe, clean and attractive condition at all times
- (b) keeping all buildings and improvements and appurtenances thereon in a well maintained, safe, clean and attractive condition at all times; and (c) complying with all governmental, health, safety and police requirements affecting said parcel of real property and improvements thereon. If, in the reasonable judgment of the Developer, any such owner is failing to comply with any of the obligations of such owner set

forth in the preceeding sentence, the Developer may give owner written notice specifying such default and owner shall thereupon have ten (10) days to cure such default or if such default cannot be cured with the application of reasonable diligence within such ten (10) day period, to commence in good faith to cure such default and thereupon carry forward the curing of such default to completion with reasonable diligence. If the owner fails to fulfill such duty, then Developer shall have the right to cure such default and the owner shall be liable to Developer for the reasonable cost and expense to Developer of curing or attempting to cure such default; and if the owner fails to pay said required sum to Developer within thirty (30) days after being billed therefor by Developer, then the indebtedness thereby represented shall be automatically deemed secured by a lien against such Forest-Central Office Park property of owner; however, such lien shall automatically be subordinated to the lien of any bank, savings and loan association, trust company, insurance company, university, pension trust or other institutional lender loaning funds for construction financing or long term financing of improvements on such property.

Traffic
Control

12. Developer retains the right to regulate and control the direction of traffic on streets and proposed streets on the land and the location of entrances and exits from building sites and portions of the land to and from streets and proposed streets until such controls legally become the responsibility of any city or other governmental entity.

Architectural
Control

13. No building or other structure of any character shall be erected or placed or the erection or placing thereof commenced (or changes made in the design thereof after original construction) on any property in Forest-Central Office Park until the obtaining of approval (as hereafter provided) of such construction plans and other construction information as is adequate in the judgment of the Developer to apprise the Developer of the scope and appearance of the planned

building and until the approval (as hereafter provided) of a plat showing the location thereof. Approval shall be granted or withheld by the Developer based on matters of compliance with the provisions of this instrument and shall not be unreasonably withheld.

Notice from
Developer

14. Approval or disapproval as to architectural control matters as set forth in the preceding provisions shall be in writing. In the event that the Developer fails to approve or disapprove in writing any plans and specifications and plats submitted to it in compliance with the preceding provisions within thirty (30) days following such submission (or having disapproved, fails to specify the particular reasons for disapproval), then the Developer shall be deemed to have approved such plans and specifications and plat.

Applicability

15. Each Contract, Deed, or Deed of Trust which may be hereafter executed with respect to any property in Forest-Central Office Park shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this instrument, including, without limitation, the Reservations, Restrictions and Covenants herein set forth, regardless of whether or not any of such provisions are set forth in said Contract, Deed or Deed of Trust, and whether or not referred to in any such instrument.

Sprinkler
System

16. The area between the back of the front curb and the front building line or side building line shall be sprinkled by the property owner and said owner shall be responsible for the operation and maintenance of the sprinkler system.

Right to
Re-subdivide

17. At the time of purchase of a tract or parcel of land from Developer, such tract or parcel of land shall be considered as a single building site for all purposes hereunder unless and until owner, in connection with approval of plans and specifications for improvements, shall designate one or more building sites thereon.

Repairs

18. Notwithstanding that Developer may have approved owner's landscape plan or plans and specifications for a building, if the owner of property in Forest-Central Office Park, during his landscaping or construction, causes any destruction or damage to occur to trees, landscaping installed by Developer, which damage or destruction is not called for by the plans approved by Developer, then said owner, at his own cost and expense, will restore or replace any such items so damaged or destroyed.

Governmental
and Agency
Regulations

19. The owners, users, lessees, and occupants of each and every building site or portions of the land shall at all times comply with all laws, ordinances, rules, regulations and orders of all federal, state, county and municipal governments and governmental agencies presently applicable to the land or that may in the future, be applicable to the land.

Amendments

20. These Reservations, Restrictions and Covenants may be amended by the action of owners of at least sixty percent (60%) of the total net acres whether such sixty percent (60%) ownership consists of Developer alone, Developer and property owners or property owners alone, provided, however, that if such sixty percent (60%) consists of property owners alone, then, so long as Developer retains fee simple legal title to any net acres, such property owners must obtain Developer's written consent to any amendment to the Reservations, Restrictions and Covenants. Any and all such amendments adopted and imposed upon Forest-Central Office Park pursuant hereto shall be administered, interpreted and enforced by Developer. Any and all such amendments shall become effective at the time when executed and acknowledged by the appropriate persons or entities specified hereinabove and filed for recording in the Dallas County Clerk's Office. The term "Net Acres" for purposes of this paragraph shall be land held under private ownership excluding all land within streets, alleys, rights-of-way, easements and areas which have been formally dedicated to public

use by plat or other instrument of dedication.

Plats

21. Developer may, at any time and from time to time hereafter, exercise, acknowledge and file for recording in the Dallas County Clerk's Office, Dallas, Texas, any and all plats, drawings or plot plans of any portion or section of Forest-Central Office Park and by so doing dedicate all of the public areas, streets, alleys, rights-of-way and easements shown and described on said plats to public use and shall indicate on such plat, plot plan or drawing the building lines applicable to any and all buildingsites and other area within the portion or section so platted. Any and all such plats shall be effective at the date when exercised and acknowledged by the appropriate persons or entities specified in the foregoing and filed for recording in the Dallas County Clerk's Office, Dallas, Texas.

Addition of
Land Hereto

22. Developer shall have the right to include other additional land within the subdivision by filing an additional plat or plats embracing such additional land.

Partial
Invalidity

23. In the event that any portion of the provisions hereof shall become or be held invalid, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, such partial invalidity shall not affect, alter or impair any other provision hereof which was not thereby held invalid; and such other provisions, including Reservations, Restrictions and Covenants shall remain in full force and effect, binding in accordance with their terms.

Binding
Effect

24. All of the provisions hereof shall be covenants running with the land thereby affected. The provisions hereof shall be binding upon and inure to the benefit of the owners of the land affected and Developer and the respective heirs, executors, administrators, successors and assigns of the aforesaid.

WITNESS OUR HANDS at Dallas, Texas this 22 day of
JAN, 1976.

FOREST-CENTRAL JOINT VENTURE, by

Alden E. Wagner
Alden E. Wagner, President
Windward Corporation

Roger Beach
Roger Beach, Vice President
Southern Union Realty Company, Inc.

STATE OF TEXAS X
COUNTY OF DALLAS X

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Alden E. Wagner, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 22nd day of January, 1976.

Dorothy Jones
Notary Public in and for
Dallas County, Texas

STATE OF TEXAS X
COUNTY OF DALLAS X

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Roger Beach, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 22nd day of January, 1976

Paula F. Kelley
Notary Public in and for
Dallas County, Texas

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L. E. Munday

Return to

*Forest - Central Point, Antine
4051, 11th Kinney Ave, Suite 200
Dallas, Texas 75204*

COUNTY CLERK
DALLAS COUNTY, TEXAS

JAN 23 1976
L. E. MUNDAY
COUNTY CLERK
DALLAS, TEXAS

Exhibit A-2

June 14, 2023

WHEREAS, the City of Dallas ("City") seeks to enter into a ground lease with Cypress Creek Forest Lane, LP (hereinafter "Tax Credit Partnership/Tenant") allowing the Tax Credit Partnership/Tenant to, at their sole cost and expense, design, construct and operate an affordable multifamily development on a tract of land containing approximately 2.85 acres located at 11520 North Central Expressway, Dallas, Dallas County, Texas (hereinafter "the Land") (further described on the attached Exhibit A); and

WHEREAS, the City seeks to provide and promote the development of affordable housing; and;

WHEREAS, on April 12, 2023, the City Council adopted the Dallas Housing Policy 2033 to replace the CHP by Resolution No. 23-0443, and the Dallas Housing Resource Catalog to include the approved programs from the CHP by Resolution No. 23-0444; and

WHEREAS, the Department of Housing & Neighborhood Revitalization continues operating its programs, previously authorized and adopted under the CHP, now as restated in the Dallas Housing Resource Catalog approved on April 12, 2023; and

WHEREAS, affordable housing is recognized as a public purpose by the City's Dallas Housing Policy 2033 and Texas state law; and

WHEREAS, the City desires to lease the Land to Tax Credit Partnership/Tenant, of up to 2.85 acres of leasable space within the Premises for the exclusive use to operate a mixed-income affordable multifamily apartment complex called Cypress Creek at Forest Lane Apartments (the "Project"); and

WHEREAS, Tax Credit Partnership/Tenant is willing to lease the Land, to serve the City's public purpose, and (i) construct the Improvements; and (ii) endeavor to establish the Premises as a mixed-income, affordable housing community; and

WHEREAS, Tax Credit Partnership/Tenant intends to develop the Project utilizing low-income housing tax credits provided by the Texas Department of Housing and Community Affairs (TDHCA), commercial debt, and intends to apply for soft debt financing from the City and secured by the Tax Credit Partnership for the Project; and

WHEREAS, the City will own the Premises and lease them, for a term of 39 years commencing on the day of the certificate of occupancy, to Tax Credit Partnership for the public purpose of constructing and operating a mixed-income, affordable housing community; and

June 14, 2023

WHEREAS, the Tax Credit Partnership will be required to consult with the Office of Integrated Public Safety Solutions (OIPSS) for planning and design process for security input, community activities, and incorporate Crime Prevention Through Environmental

Design recommendations. Additionally, the Tax Credit Partnership will be required to provide modern security features to include a full camera system with Dallas Police Department access, controlled access, lighting, a community crime watch program, and participation in National Night Out to ensure a safe living environment for all residents and staff. The lease will be subject to performance measures representing the affordable housing requirements in a typical Low Income Housing Tax Credit Notice of Funding Availability development project whereby the City authorizes gap funding; and

WHEREAS, Tax Credit Partnership is willing to accept the Premises, in "as is, where is, with all faults" condition subject to a ground lease, to serve the City's public purpose and use, construct apartments, operate, and maintain the Premises to provide affordable housing; and

WHEREAS, on May 10, 2023 the City Council authorized the City Manager to move forward with the closing and acquisition of the Premises by accepting the conveyance from Tenant/Tax Credit Partnership by Resolution No. 23-0641.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City hereby identifies a severe lack of affordable housing. The City further finds that mixed-income communities create healthier and more sustainable affordable housing.

SECTION 2. That the City hereby establishes as a public purpose the desire to enter into a ground lease to lease the Land to Tax Credit Partnership/Tenant allowing the Tax Credit Partnership/Tenant to, at their sole cost and expense, design, construct and operate the Project as a mixed-income, affordable housing community (hereinafter the "City's public purpose").

SECTION 3. That the City Manager is hereby authorized to negotiate and execute a ground lease for a term or 39 years with Tax Credit Partnership/Tenant, approved as to form by City Attorney, allowing the construction and operation of the Project. The lease will be prepared once lenders for the Project are identified and will include commercially reasonable provisions agreed to by the parties and approved as to form by the City Attorney.

SECTION 3. (continued)

Some of the salient Lease terms are described below:

1. The lease will set forth the rental terms and detailed performance measures including Tenant reporting and the City audit rights to ensure the City's public purpose is met. The performance measures will be the affordability requirements of the tax credits to be used to construct the Project.
2. The lease will define the terms of development of the Project including time anticipated for construction and placement into service of both the market rate and affordable units in the Project.
3. The City, as landlord, will at all times remain fee owner of the Premises and will have no obligations for the maintenance and operation of the Premises during the term of the lease.
4. The lease between the City, as landlord, and Tenant, shall be for a term of 39 years, commencing on the date of certificate of occupancy (the "Term"). Tenant shall be solely responsible for securing certificate of occupancy. Tenant shall have no right to assign, encumber, or convey the lease contrary to the public purpose without prior written consent of the City which consent shall not be unreasonably withheld.
5. The lease will provide that Tenant will construct 189 units of multifamily residential housing and set aside or rent 40% of the units to tenants whose income is less than 80% of the Area Median Income (AMI) and 10% of the units to tenants whose income is 60% of the AMI (the "Affordable Units"), such AMI shall have a floor no lower than the AMI on the Closing Date. The income and rent limits will be adjusted for family size and bedroom size and rent shall be calculated by using the Novogradac Rent and Income Limit Calculator. The Affordable Units at each AMI level will be spread pro- rata with the overall unit mix between one, two, and three-bedroom units. Once initially qualified, Tenants and their assigned units will remain income restricted so long as they are eligible under LIHTC/TDHCA income guidelines which are monitored annually by city staff for compliance.
6. Tenant will pay the City a one-time structuring fee of \$100,000.00 within 90 days of the City Council approval of the lease in addition to rent of 20% of the total cash flow, commencing six months after the Project stabilizes, which is defined as reaching 90% occupancy (the "rental commencement date"). Rent will be paid annually, in full, on the first of the month following six months after stabilization and every 12 months thereafter. As City-owned property, the Premises are to be exempt from real property taxes during the term of the agreement. In the event the Premises become taxable, the parties reserve the right the to renegotiate the rental terms.

June 14, 2023

SECTION 3. (continued)

7. The lease will require the Tenant to maintain the Project as a Class A residential project and will require renovations to the extent financially feasible, to the extent necessary to maintain the Project as a Class A residential project. Tenant will insure the Project and will set aside an amount per door per year as determined by lenders as a reserve for replacements. Tenant will provide full indemnities to the City. Provisions will be negotiated to help the City assure that the Project remains a Class A residential project throughout the Term, including conducting periodic needs assessments by an engineer experienced in such assessments at predetermined intervals, prior to a capital event, and at any point in time when there is a significant negative change in occupancy. For avoidance of doubt, the parties agree that maintaining the Project as a Class A apartment project means keeping the Project as originally designed and constructed in appropriate condition to compete with other Class A residential projects of the same age as the Project, but does not mean adding amenities, making structural or other changes to the exterior or interior of the Project to make it consistent with newly constructed Class A apartment projects at a future date.
8. Within one month after the execution of the lease, Tax Credit Partnership shall at its sole cost and expense, commence design and construction of the Improvements, with completion of the Improvements to be fully accomplished within two years thereafter, subject to extension by mutual agreement of the parties.
9. The lease is eligible for one automatic renewal period of six years.
10. Subject to the City Council approval, at such time as the initial term of 39 years shall expire, Tenant or its assign or designee shall have a one-time option to purchase the Project from the City, subject to and in accordance with the requirements of Texas Local Government Code 272.001 or other law applicable to a conveyance to an entity for the development of low to moderate income housing.
11. The lease will provide that Tenant will defend, with the City's choice of legal counsel, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims, lawsuits, judgments, costs, expenses, and damages sought or suffered by any person arising out of Tenant's use of the Premises, as well as against any and all claims, litigation expenses, and/or damages arising out of any of the restrictive covenants attached hereto as Exhibit B.

SECTION 3. (continued)

12. The Tax Credit Partnership will be required to consult with the Office of Integrated Public Safety Solutions (OIPSS) for planning and design process for security input, community activities, and incorporate Crime Prevention Through Environmental Design recommendations. Additionally, the Tax Credit Partnership will be required to provide modern security features to include a full camera system with the Dallas Police Department access, controlled access, lighting, a community crime watch program, and participation in National Night Out to ensure a safe living environment for all residents and staff. The lease will be subject to performance measures representing the affordable housing requirements in a typical LIHTC NOFA development project whereby the City authorizes gap funding.
13. Tenant shall be responsible to pay all taxes arising out of the use on the Premises during the lease term. As City-owned property, the Premises is assumed to be exempt from real property taxes. The City and Tenant shall have the right to contest any real property taxes assessed against the Premises.
14. Tenant shall at all times during the term of the lease, maintain in full force and effect adequate insurance, including without limitation worker's compensation, liability and builder's risk insurance, on the Premises, in such form and amounts as the City shall reasonably require, subject to the City's risk management department review and approval. In the event of fire and other casualty loss, Tenant shall promptly repair, restore, and rebuild the Premises to at least its pre-loss condition regardless of the availability of or inadequacy of insurance proceeds, subject to a reasonable period to complete negotiation of a loss claim with its insurer and complete all required repairs to restore the Premises. Failure to repair, restore, or rebuild the Premises to a condition deemed suitable by the City to maintain the public purpose shall constitute a lease default and may cause a termination of the Lease.
15. The Lease shall be subject to a use restriction ("Use Restriction") limiting the use of the Premises to the construction, maintenance, and operation of an affordable housing apartment complex which shall not be materially altered, amended, or discontinued without the prior written consent of the City.
16. During the term of the lease, the lease shall be subject to the City's right of termination and a right of reentry in favor of the City enforcing the Use Restriction and the City's public purpose.
17. The lease will be subject to any and all covenants, conditions, reservations, restrictions, exceptions, easements, rights-of-way, mineral interest, mineral leases, or other instruments of record in the official real property records for the county where the Premises are located effective as to the Premises, or any part thereof, and any and all visible and apparent easements and encroachments, whether of record or not impacting the Premises.

June 14, 2023

SECTION 3. (continued)

18. The lease will be subject to a reservation by the City of floodway, flood control, drainage or levee easements as reasonably deemed necessary, appropriate or convenient by the City.
19. The lease will be subject to performance and payment bonds as required for any development, design and construction activity undertaken by Tenant and or tenant contractors.
20. Tenant shall be solely responsible for all improvements, repairs, and maintenance to the Premises, at no cost to the city, including all structural, mechanical, and core system functions maintenance, repairs and replacements. The City shall have a right of inspection to ensure compliance with Tenant's maintenance responsibilities set out in the lease.
21. Tenant shall be solely responsible for all operating costs, including all utilities, connection charges, arising out of the Project.
22. Tenant shall be responsible to comply with all applicable law and make reasonable efforts to comply with the City's Business Inclusion & Diversity policies and non-discriminatory housing requirements.
23. All construction plans and specifications for any construction work on the Premises must be reviewed by construction experienced City personnel in the City's Building Services, Planning and Urban Design, Development Services, and Housing & Neighborhood Revitalization Departments and accepted in writing by the Director of Housing or designee prior to commencement of any work.
24. The lease will be subject to such other terms, conditions, waivers and disclaimers as the City deems necessary, convenient or appropriate.

SECTION 4. That this Agreement is designated as Contract No.HOU-2023-00022127.

SECTION 5. That the Chief Financial Officer is hereby authorized to receive and deposit revenue lease payments in the Lease Revenues Fund, Fund 0764, Department HOU, Unit (TBD), Revenue Code 8483.

SECTION 6. That the City Controller is hereby authorized to setup accounts payable for generated receipts from the Property to allow the Housing Department to use funds to address the following:

- a. Public improvements to sidewalks and lighting in the area surrounding the property as recommended by the Dallas Police Department and the Dallas Public Works Department.

June 14, 2023

SECTION 7. That Tenant shall allocate additional financial resources for recreational uses and park dedication fees for upgrades to nearby parks and consult with the Dallas Department of Parks and Recreation to determine playground equipment needs at Orbiter Park and Willie B. Johnson Recreation Center for the enjoyment of residents and neighbors.

SECTION 8. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM:

TAMMY L. PALOMINO, Interim City Attorney

BY: _____
Assistant City Attorney



ROBERT J. MIKLOS

EXHIBIT A-3

RMIKLOS@FBFK.LAW
PHONE (972) 378-9111
FAX (972) 378-9115

September 6, 2023

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
NO. 9414 7266 9904 2213 9317 87

Tammy Palomino
Interim Dallas City Attorney
1500 Marilla, 7CN
Dallas Texas 75201

Dear Ms. Palomino,

Please be advised this firm represents the owners of the property located at 11551 Forest Central Drive, Dallas, Texas 75243 (the "Client"), adjacent to the land at 11520 North Central Expressway, Dallas, Texas 75243 (the "Property"). Please direct all further communication regarding this matter to this office. We have been made aware of an effort to circumvent the restrictive covenants regarding the Property specifically in connection with the Cypress Creek at Forest Lane Affordable Housing Project. These deed restrictions (see attached Exhibit A) prohibit the use of the Property, as well as my client's property, for any other uses than "office buildings, hotels and motels, and restaurants; and if approved in writing by the Developer, for other purposes reasonably and customarily auxiliary and incidental to the aforesaid usages." This letter serves as formal notice that my client adamantly opposes any such plan to circumvent the attached deed restrictions as doing so would result in direct injury to my Client.

We believe the misconception exists that if the City of Dallas obtains title to the Property, that the deed restrictions discussed above cannot be enforced. We dispute this notion. It is our position that the Texas Legislature, starting in 2005 and subsequently, restricted the authority of municipalities in their use of eminent domain to its exercise to establish a public use, such as a fire station, road, drainage improvements, etc. However, the use of eminent domain to facilitate the development of property by a private entity for a public purpose, such as economic development, but not a public use, was eliminated except for a narrow exception that this fact pattern does not fit into. Municipalities currently do not have the authority to use eminent domain to obtain property to facilitate private developers in their economic development activities, or to use eminent domain to remove deed restrictions, regardless of any declaration of a municipality that the private development is to serve a public purpose. My Client will protect its interest in the restrictive covenants, and will pursue all legal avenues to enforce the deed restrictions in place on the properties to the fullest extent of the law.

Instructive in this discussion is Texas Supreme Court's decision in *City of Austin v. Whittington*, 384 S.W.3d 766 (Tex. 2012). In it, the court states

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” The parties agreed to define public use as:

A use which the public is entitled to share indiscriminately in as a matter of right. A use is public when the public obtains some definite right or use in the undertaking to which the property is devoted. What is important in the public use determination is the character of the right inuring to the public, not the extent to which the public’s right is exercised.”

The decision next states “A ‘public use’ is not a private use. A taking may not be used to confer a private benefit on a particular private party or parties through the use of the property. A taking may not be used for a public use that is merely a pretext to confer a private benefit on a particular private party or parties” (p. 779). The court goes on, quoting an earlier decision in *Coastal States Gas Producing Co. v. Pate*, 309 S.W.2d 828, 833 (Tex. 1958), when it states “Public use, however, does not include a benefit to the public welfare or good undertaking which any business that promotes the community’s comfort or prosperity might be benefitted from the taking” *Pate*, 309 S.W.2d at 833.

These distinctions are determinative, since the state legislature, starting in 2005, in reaction to the *Kelo v. New London*, 545 U.S. 469 (2005) decision, revised state law to specifically exclude uses defined for the public purpose, like tax credit financed private housing, and restricted condemnation powers to strictly those found to be for a public use. Ultimately the court in *Whittington* found that the project, a parking garage, fit within a specific provision enumerated under Texas Government Code Section 2206.001. Tax credit assisted development of rent restricted private housing, however laudable, is not a public use, and is not listed in Texas Government Code Section 2206.001. In sum, the City cannot use its powers of eminent domain to invalidate valid and enforceable deed restrictions to facilitate the economic development of property to benefit a private party for a private use.

Very Truly Yours,

FERGUSON BRASWELL FRASER KUBASTA PC


By: 
Robert J. Miklos
Attorney for FC Investments, Ltd.

EXHIBIT A

RESERVATIONS, RESTRICTIONS AND COVENANTS

DEED RECORD

RESTRICTIONS

FOREST-CENTRAL OFFICE PARK

RESERVATIONS, RESTRICTIONS AND COVENANTS

THE STATE OF TEXAS I
COUNTY OF DALLAS I KNOW ALL MEN BY THESE PRESENTS:

That FOREST-CENTRAL JOINT VENTURE, hereinafter referred to as "Developer", being a joint venture comprised of Southern Union Realty Company and Windward Corporation with office and principal place of business in Dallas, Dallas County, Texas, being the owner of that certain tract of land herein referred to as Forest-Central Office Park, which tract has heretofore been platted according to the plat thereof recorded in the office of the County Clerk of Dallas County, Texas, on January 19, 1976, after having been approved as provided by law, and being recorded in Volume 76012, Page 0060 of the Map Records of Dallas County, Texas, does hereby adopt, establish, promulgate and impress the following Reservations, Restrictions and Covenants which shall be and are hereby made applicable to Forest-Central Office Park:

1. All of the building sites in Forest-Central Office Park shall be used solely for office buildings, hotels and motels, and restaurants; and if approved in writing by the Developer, for other purposes reasonably and customarily auxiliary and incidental to the aforesaid usages; plus paved employee and visitor parking as hereafter set forth; or any other use if, in the judgment of the Developer, such use meets the standards set forth in the next succeeding paragraph and is approved in writing by the Developer.

No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or which constitutes a nuisance or is hazardous by reason of fire or

explosion, or injurious to the reputation of any site in Forest-Central Office Park, or in violation of the laws of the United States, the State of Texas, or the City of Dallas.

Set Backs

2. No building shall be constructed in Forest-Central Office Park nearer than twenty-five (25) feet to a front property line or nearer than ten (10) feet to any side yard.

The term site, as used herein, shall mean each parcel of land in Forest-Central Office Park owned or developed as a unit, including both building and parking facilities therefor, whether such parcel of land consists of a full tract as shown on the recorded plat or less than or more than a full tract as shown on the aforesaid recorded plat.

Construction Standards

3. Construction or alteration of any building or structure in Forest-Central Office Park shall meet the standards set forth in these Reservations, Restrictions and Covenants. No construction work shall start until written approval from the Developer has been received in accordance with paragraphs thirteen (13) and fourteen (14).

All sides of any building or structure in Forest-Central Office Park shall be finished with face brick, stone, marble, exposed aggregate or architectural concrete, glass or equal, from finished grade to roof level. No building shall be covered with corrugated metal or asbestos. No building shall be constructed with a wooden frame. Where a construction material is specified herein, another material may be used in lieu thereof, provided such material is approved by the Developer.

From the terminal facility serving a site, extensions of utility lines across property hereafter sold by Developer and all other utility lines across property hereafter sold by Developer must be constructed underground (including telephone lines); but this shall not be interpreted to require existing above ground utility lines to be placed underground or to control the placement of temporary utility lines

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during construction or to control the location of lines to such terminal facility from off such site.

Signs

4. All signs shall be of a size and nature that will preserve the quality and atmosphere of Forest-Central Office Park and be consistent with the intended dignified standing of Forest-Central Office Park. Unless otherwise approved in writing by the Developer, all signs must: (a) be attached to a building; (b) be installed so as to be parallel to and contiguous with the building wall; (c) not project above the roof line of the building to which it is attached; (d) not be of a flashing or moving character; and (e) be approved by Developer.

Storage

5. No articles, goods or materials shall be stored in the open or so as to be exposed to public view.

Screening
of Objects

6. Water tower, storage tanks, stand-fans, cooling towers, heating equipment, air conditioning or ventilating equipment, electrical equipment, mechanical equipment, and any other equipment (excluding communication towers) including that which is located on the roof of any building or on the ground shall be effectively shielded from view from any dedicated street or ground level parking area by means of an architecturally and aesthetically sound method which has been approved in writing by the Developer before construction or erection thereof.

Parking

7. Paved asphalt or concrete parking shall be provided in a number not less than the minimum guideline standards set forth in the then current Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas.

Parking will not be permitted on any street or road, either public or private, or at any other place than the paved parking spaces provided in accordance with the provisions hereof; and each building owner shall be responsible for compliance with such provisions by its lessees and their respective employees and visitors.

Landscaping

8. Planted areas, landscaping, drives, sidewalks and locations of loading docks and building service entrances shall conform to reasonable standards approved in writing by the Developer in advance of the installation, construction or establishment thereof.

All loading docks must be effectively shielded from ground level view from any dedicated street by an aesthetically and architecturally sound method which has been approved in writing by the Developer before construction thereof.

Illumination

9. If exterior illumination is desired for any building in Forest-Central Office Park, such exterior illumination shall be designed so as to be directed on the particular building for which such illumination has been approved by the Developer and such particular building's landscaping; and such illumination shall not be installed without the prior written approval of the Developer as to the plans therefor.

Sidewalks

10. Each owner of Property in Forest-Central Office Park shall install along side any dedicated street bordering its land a sidewalk which is four (4) feet in width and constructed of aggregate concrete or comparable material approved in writing by the Developer, such construction to be completed by the time occupancy of the building constructed on such site occurs.

Maintenance

11. The owner of each parcel of property in Forest-Central Office Park shall have the duty and responsibility for:

- (a) keeping the property free of unsightly weeds and keeping grass and other ground cover mowed and landscaping in a well maintained, safe, clean and attractive condition at all times
- (b) keeping all buildings and improvements and appurtenances thereon in a well maintained, safe, clean and attractive condition at all times; and (c) complying with all governmental, health, safety and police requirements affecting said parcel of real property and improvements thereon. If, in the reasonable judgment of the Developer, any such owner is failing to comply with any of the obligations of such owner set

forth in the preceeding sentence, the Developer may give owner written notice specifying such default and owner shall thereupon have ten (10) days to cure such default or if such default cannot be cured with the application of reasonable diligence within such ten (10) day period, to commence in good faith to cure such default and thereupon carry forward the curing of such default to completion with reasonable diligence. If the owner fails to fulfill such duty, then Developer shall have the right to cure such default and the owner shall be liable to Developer for the reasonable cost and expense to Developer of curing or attempting to cure such default; and if the owner fails to pay said required sum to Developer within thirty (30) days after being billed therefor by Developer, then the indebtedness thereby represented shall be automatically deemed secured by a lien against such Forest-Central Office Park property of owner; however, such lien shall automatically be subordinated to the lien of any bank, savings and loan association, trust company, insurance company, university, pension trust or other institutional lender loaning funds for construction financing or long term financing of improvements on such property.

Traffic Control

12. Developer retains the right to regulate and control the direction of traffic on streets and proposed streets on the land and the location of entrances and exits from building sites and portions of the land to and from streets and proposed streets until such controls legally become the responsibility of any city or other governmental entity.

Architectural Control

13. No building or other structure of any character shall be erected or placed or the erection or placing thereof commenced (or changes made in the design thereof after original construction) on any property in Forest-Central Office Park until the obtaining of approval (as hereafter provided) of such construction plans and other construction information as is adequate in the judgment of the Developer to apprise the Developer of the scope and appearance of the planned

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building and until the approval (as hereafter provided) of a plat showing the location thereof. Approval shall be granted or withheld by the Developer based on matters of compliance with the provisions of this instrument and shall not be unreasonably withheld.

Notice from Developer

14. Approval or disapproval as to architectural control matters as set forth in the preceding provisions shall be in writing. In the event that the Developer fails to approve or disapprove in writing any plans and specifications and plats submitted to it in compliance with the preceding provisions within thirty (30) days following such submission (or having disapproved, fails to specify the particular reasons for disapproval), then the Developer shall be deemed to have approved such plans and specifications and plat.

Applicability

15. Each Contract, Deed, or Deed of Trust which may be hereafter executed with respect to any property in Forest-Central Office Park shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this instrument, including, without limitation, the Reservations, Restrictions and Covenants herein set forth, regardless of whether or not any of such provisions are set forth in said Contract, Deed or Deed of Trust, and whether or not referred to in any such instrument.

Sprinkler System

16. The area between the back of the front curb and the front building line or side building line shall be sprinkled by the property owner and said owner shall be responsible for the operation and maintenance of the sprinkler system.

Right to Re-subdivide

17. At the time of purchase of a tract or parcel of land from Developer, such tract or parcel of land shall be considered as a single building site for all purposes hereunder unless and until owner, in connection with approval of plans and specifications for improvements, shall designate one or more building sites thereon.

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Repairs

18. Notwithstanding that Developer may have approved owner's landscape plan or plans and specifications for a building, if the owner of property in Forest-Central Office Park, during his landscaping or construction, causes any destruction or damage to occur to trees, landscaping installed by Developer, which damage or destruction is not called for by the plans approved by Developer, then said owner, at his own cost and expense, will restore or replace any such items so damaged or destroyed.

Governmental
and Agency
Regulations

19. The owners, users, lessees, and occupants of each and every building site or portions of the land shall at all times comply with all laws, ordinances, rules, regulations and orders of all federal, state, county and municipal governments and governmental agencies presently applicable to the land or that may in the future, be applicable to the land.

Covenants

20. These Reservations, Restrictions and Covenants may be amended by the action of owners of at least sixty percent (60%) of the total net acres whether such sixty percent (60%) ownership consists of Developer alone, Developer and property owners or property owners alone, provided, however, that if such sixty percent (60%) consists of property owners alone, then, so long as Developer retains fee simple legal title to any net acres, such property owners must obtain Developer's written consent to any amendment to the Reservations, Restrictions and Covenants. Any and all such amendments adopted and imposed upon Forest-Central Office Park pursuant hereto shall be administered, interpreted and enforced by Developer. Any and all such amendments shall become effective at the time when executed and acknowledged by the appropriate persons or entities specified hereinabove and filed for recording in the Dallas County Clerk's Office. The term "Net Acres" for purposes of this paragraph shall be land held under private ownership excluding all land within streets, alleys, rights-of-way, easements and areas which have been formally dedicated to public

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Plats

use by plat or other instrument of dedication.

21. Developer may, at any time and from time to time hereafter, exercise, acknowledge and file for recording in the Dallas County Clerk's Office, Dallas, Texas, any and all plats, drawings or plot plans of any portion or section of Forest-Central Office Park and by so doing dedicate all of the public areas, streets, alleys, rights-of-way and easements shown and described on said plats to public use and shall indicate on such plat, plot plan or drawing the building lines applicable to any and all buildingsites and other area within the portion or section so platted. Any and all such plats shall be effective at the date when exercised and acknowledged by the appropriate persons or entities specified in the foregoing and filed for recording in the Dallas County Clerk's Office, Dallas, Texas.

Addition of
Land Hereafter

22. Developer shall have the right to include other additional land within the subdivision by filing an additional plat or plats embracing such additional land.

Partial
Invalidity

23. In the event that any portion of the provisions hereof shall become or be held invalid, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, such partial invalidity shall not affect, alter or impair any other provision hereof which was not thereby held invalid; and such other provisions, including Reservations, Restrictions and Covenants shall remain in full force and effect, binding in accordance with their terms.

Binding
Effect

24. All of the provisions hereof shall be covenants running with the land thereby affected. The provisions hereof shall be binding upon and inure to the benefit of the owners of the land affected and Developer and the respective heirs, executors, administrators, successors and assigns of the aforesaid.

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WITNESS OUR HANDS at Dallas, Texas this 22 day of
JAN, 1976.

FOREST-CENTRAL JOINT VENTURE, by

Alden E. Wagner
Alden E. Wagner, President
Wayward Corporation

Roger Beach
Roger Beach, Vice President
Southern Union Realty Company, Inc.

STATE OF TEXAS I
COUNTY OF DALLAS I

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Alden E. Wagner, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 22nd day of January, 1976.

Donna J. Jones
Notary Public in and for
Dallas County, Texas

STATE OF TEXAS I
COUNTY OF DALLAS I

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Roger Beach, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office, this 22nd day of January, 1976.

Donna J. Jones
Notary Public in and for
Dallas County, Texas

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L.E. Munday

Return to

*Project: Central Texas Pipeline
4550 Pittsboro Ave., Suite 200
Dallas, Texas 75206*

COUNTY CLERK
DALLAS COUNTY, TEXAS

