

Memorandum



CITY OF DALLAS

DATE May 26, 2023

TO Honorable Mayor and Members of the City Council

SUBJECT **Cypress Creek Project Update to Questions During the Housing and Homelessness Solutions Committee on May 22, 2023**

At the May 22, 2023 Housing and Homelessness Solutions Committee, several City Council members submitted inquiries regarding the Cypress Creek development project. Staff reviewed the questions in consultation with the City Attorney's Office (CAO) and offered the following responses:

Inquiry: Please confirm whether or not the City or State were advised of the Deed Restriction in connection with the Developers original application for initial approval by the City or request for Tax Credit funding by the State.

Response: Deed restrictions were not considered when the City Council approved the Resolution of Support for tax credits, as it is not typically normal to consider factors outside the merits of the proposed project.

Inquiry: Please confirm whether there are currently any pending lawsuits with the Developer or their associated parties on other projects that they are associated with.

Response: Staff is not aware of pending lawsuits.

Inquiry: Please confirm whether the census tract, used in the Developer's application to determine the Opportunity Area for this project included the Hamilton Park community and adjacent related neighborhoods.

Response: The subject census tract (48113007805) does not include Hamilton Park.

Inquiry: It is not clear who the truly financially responsible Tenant / Developer / Operator would be in this project - Cypress Creek Forest Lane LP, Cypress Creek Forest GP LLC General Partner, Cypress Creek Forest Developer LLC, Anthem Interests LLC, Sycamore Strategies, LLC, Bonner Carrington, others?

Response: The City's proposed lease agreement is with Cypress Creek Forest Lane LP.

Inquiry: Has the City performed a background check and financial/credit check on the principals and the entities involved in this transaction?

Response: No, financial/credit checks on the principals and the entities involved is not a common practice. City subsidies operate on a reimbursement basis, staff verifies work

completion and expenditures prior to approving a reimbursement. This transaction does not involve City subsidies, the developer is constructing the project at their own expense.

Inquiry: Will there be a required indemnity agreement for the development and operation of the project backed by a significant surety bond requirement and ongoing personal guarantees by the Principals of the Tenant and related parties? Jessica Krochtengel, Zach Krochtengel, Stuart Shaw, Tax Credit Partner, others?

Response: As a ground lease transaction, the lease agreement will include indemnity and insurance requirements for Tenant/developer's use and operation of the premises built on the property. Effective during the construction period, the lease will also require payment and performance bonds to assure the project is completed and contractors are paid. Personal guarantees are not standard provisions imposed on a tenant and this lease transaction is no exception and is not deemed necessary when the project is being undertaken at the Tenant/Developer's sole cost and expense.

Inquiry: The term Cash Flow related to proposed rent payments is not adequately defined to avoid inappropriate or manipulated expense charges. What expense items are allowed to be deducted in establishing net cash flow? What limitations are being placed on discretionary expenses such as management fees, administration expenses, indirect employee costs, developer /management company in-house service providers, consultants, capital reserves, etc. to maximize City receipts?

Response: The Property Management Agreement will formalize and outline the budgeting process, specifically how the budget is approved and who has authorization to allow expenditures that fall outside the annual Budget. Budgets are proposed and reviewed annually to ensure that the property is operating according to expectations – any line items outside of expected norms are verified before budgets are approved. Expenditures above a predetermined amount (for example, an unexpected repair that may exceed the budget by \$25,000) are typically approved through property and asset management as well as through an owner's representative (in this case, the City staff who will be the administrator for this property). Annual audits of the property financial statements are performed to verify and determine if any fraudulent transactions are completed at the property.

Inquiry: Why is there not a base Minimum Monthly rent being charged and payable monthly (regardless of Cash Flow)?

Response: The City's objective is to expand the availability of affordable housing. By waiting to charge a lease payment until the project has stabilized, the City helps ensure the project will be sustainable.

Inquiry: The rent should be established as either the Base Minimum Monthly rent or 20% of defined annual Cash Flow, whichever is greater. Why is there a 90% stabilized occupancy requirement (and 6-month delay for payments) before rent begins. Rent should not be contingent on or delayed due to Tenant controlled operational /management / leasing issues.

Response: This is a standard requirement to help ensure the project succeeds.

Inquiry: Will there be any real estate taxes or business personal property taxes due on this project (based on Land Value and/or Improvements Value) to the City, County or RISD /DISD?

Response: If the project is completed as described in the resolution, it will be a City-owned property and the City is not subject to property taxes.

Inquiry: Please clarify the process of how the Tenants option to purchase the property is exercised and how the option purchase price is established. Such options should not be transferable to third parties or tenant assignees or designees and should be personal to the Tenant. Any tenant default should void the purchase option.

Response: Subject to 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. It is a business decision whether to limit the *option to renew* to be personal to the Tenant (meaning if the original Tenant is replaced with another Tenant, the option is no longer in effect).

Any uncured tenant default under the lease is grounds for the City's termination of the lease agreement. Per standard CAO lease requirements for options of any kind, the Tenant is required to be in good standing without any uncured defaults.

Inquiry: Please clarify the process of how the Tenant's option to renew the lease is exercised. Such option should be personal to Tenant not transferable and void in the event of a tenant default. Due to the unique nature of the project's use and operational requirements, any Assignment, Encumbrance or Conveyance of the lease should be strictly determined by the City in their sole discretion and not subject to a reasonable standard.

Response: The lease will include a one-time automatic renewal period of six (6) years. Any uncured tenant default under the lease is grounds for the City's termination of the lease agreement. Per standard CAO lease requirements for options of any kind, the

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Tenant is required to be in good standing without any uncured defaults for the renewal to be effective.

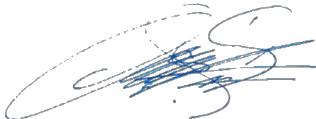
The current negotiated terms provide that Tenant shall have no right to assign, encumber, or convey the lease contrary to the public purpose without prior written consent of City, which consent shall not be unreasonably withheld. It is a business decision whether to limit the option to renew as personal to the Tenant.

Inquiry: Default provisions should include monetary damage remedies to Landlord with ongoing personal guarantees by Principals of Tenant and related parties. Extension of the 2-year Completion date of the project should be limited to a date certain subject to lease termination and damages from Tenant for noncompletion. In the event of the Tenants default in the development or operation of the project, what is the relationship and operational / financial obligations of any purchaser of the Tenant / Developers Tax Credits to the lease and should this issue be addressed in the lease?

Response: Extension of the 2-year completion timeframe requires mutual agreement of the parties. Non-completion protection for the City is provided through the performance bond requirement to enable City to work with bonding surety to complete the project.

The relationship and operational/financial obligations of any purchaser of the Tenant/Developers Tax Credits is not a relationship City will be in privity of contract. As such, the lease would not extend to them to create any benefits or impose obligations, to them or the City, without them taking the Tenant/Developer's position by assignment, subject to City Council approval.

Should you have questions or comments regarding the responses to these questions please contact David Noguera at david.noguera@dallas.gov or 214-670-3619.



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