

WHEREAS, the deed restrictions in the attached instruments have been volunteered in conjunction with a request for an MF-3(A) Multifamily District which was approved by the City Council on October 24, 1990, on Zoning Case #Z890-215/8034-N on property on both sides of Kelly Boulevard, south of Frankford Road; and

WHEREAS, said deed restrictions have been approved as to form; Now, Therefore,

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

Section 1. That the deed restrictions set forth in the attached instruments be and are hereby accepted by the City Council of the City of Dallas, Texas, to be used in conjunction with the development of property zoned an MF-3(A) Multifamily District as described in Ordinance 20771.

Section 2. That said deed restrictions shall be filed in the Deed Records of Denton County, Texas.

Section 3. That this resolution shall take effect from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

cc: Building Inspection - 2
Planning and Development - 2

90-14/ct

**APPROVED BY
CITY COUNCIL**

OCT 24 1990

Robert B. ...
City Secretary

Approved as to form:
ANAESLIE MUNCY, City Attorney

By: *Chris Bowers*
Assistant City Attorney

APPROVED

HEAD OF DEPARTMENT

APPROVED

DIRECTOR OF FINANCE

APPROVED

CITY MANAGER

REAL PROPERTY RECORDS

VOL 2886 PG 6585

DEED RESTRICTIONS

52997

STATE OF TEXAS)
COUNTY OF DENTON)

KNOW ALL MEN BY THESE PRESENTS:

I.

The undersigned, ZIDELL SUSMAN COMPANY ("the Owner"), a Texas General Partnership, is the owner of the following described property ("the Property"), being in particular a tract of land out of the J. M. Cants Survey, Abstract No. 885, City Block M/8752, City of Dallas ("City"), Denton County, Texas, and being a part of the same tract of land conveyed to ZIDELL SUSMAN COMPANY by Allan Zidell and Ari Susman, by deed dated March 15, 1985, and recorded in Volume 1841, Page 921, in the Deed Records of Denton County, Texas, and being more particularly described as follows:

Being a tract of land described in Exhibit "A" attached hereto and made a part hereof for all purposes.

II.

The Owners do hereby impress all of the Property with the following deed restrictions ("restrictions"), to wit:

- (1) No more than 192 dwelling units shall be constructed or maintained on the Property.
(2) No building on the Property shall consist of more than two (2) stories.

III.

These restrictions shall continue in full force and effect for a period of twenty (20) years from the date of execution, and shall automatically be extended for additional periods of ten (10) years unless amended or terminated in the manner specified in this document.

IV.

These restrictions may be amended or terminated only after a public hearing before the City Plan Commission and a public hearing before and approval by the City Council of the City. Notice of the public hearings must be given as would be required by law for a zoning change on the Property. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the Owners must then file the amending or terminating instrument in

the Deed Records of the county or counties where the Property is located at their sole cost and expense before the amendment or termination becomes effective.

V.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned.

VI.

The Owners agree that these restrictions inure to the benefit of the City. The Owners hereby grant the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the Owners agree that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owners agree that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

VII.

The Owners agree to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with these restrictions.

VIII.

These restrictions are hereby declared covenants running with the land and are fully binding on any successors, heirs, and assigns of the Owners who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the foregoing restrictions.

IX.

Unless stated otherwise in this document, the definitions and provisions of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, apply and are incorporated into this document as if recited herein.

X.


The Owners understand and agree that these restrictions shall be governed by the laws of the State of Texas.

XI.

The invalidation of any provision in this document by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.


EXECUTED at the City of Dallas, Dallas County, Texas, on this the 22 day of OCTOBER, 1990.

OWNER:
ZIDELL SUSMAN COMPANY,
a Texas General Partnership

BY 
ALLAN ZIDELL,
General and Managing
Partner


STATE OF TEXAS)
)
COUNTY OF DALLAS)

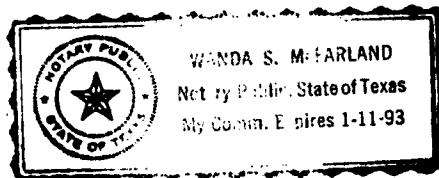
Subscribed and acknowledged before me by the said ALLAN ZIDELL, General and Managing Partner of Zidell Susman Company, a Texas General Partnership, this 22 day of October, 1990, in the capacity therein stated for said Partnership.


Notary Public, State of Texas

My Commission Expires:
1-11-93

Typed/Printed Name of Notary: _____

Approved as to form:
ANALESIE MUNCY, City Attorney
By: 
Assistant City Attorney



VOL 2884 PG 688

EXHIBIT "A"

PROPERTY DESCRIPTION

BEING part of Lot 20, Block M/8752 of the Dallas Apartment/Homes Additon, an addition in the City of Dallas, as recorded in Cabinet 2308 , Page 383 , Deed Records of Denton County, Texas and being more particularly described as follows:

BEGINNING at a point in the East ROW line of Kelly Springfield Road (an 80' ROW), said point being S 06° 21' 26" W, a distance of 153.9 feet from the intersection of the extension of the South line of Frankford Road (a 100' ROW) and the extension of the East line of Kelly Springfield Road;

THENCE: N 89° 47' 51" E, a distance of 344.31 feet to a point for corner;

THENCE: S 00° 12' 09" E, a distance of 466.51 feet to a point for corner;

THENCE: S 89° 47' 07" W, a distance of 397.96 feet to a point for corner being in the East ROW line of Kelly Springfield Road;

THENCE: N 06° 21' 26" E, along the East ROW line of Kelly Springfield Road a distance of 469.58 feet to the PLACE OF BEGINNING and containing 3.975 acres of land.

SURVEYOR'S CERTIFICATION

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct and that the size, location and type of buildings and improvements are as shown hereon, and that there are no discrepancies, conflicts, shortages in area, boundary lines conflicts, encroachments, overlapping of improvements, fences, evidence of abandoned fences, ponds, creeks, streams, rivers, visible easements or rights of way except as shown hereon, and that said property has access to and from a dedicated roadway. The location of all rights-of-way, easements and any other matters of record (of of which I have knowledge or have been advised, whether or not of record) affecting the subject property are shown hereon. This property does not lie within any designated flood plain or hazard area.

MAY 14, 1987

J. L. LANE
REGISTERED PUBLIC SURVEYOR NO. 2509

EOD

MAY 15 '90

FILED
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
MAY 14 4 40 PM '90
CLERK
BY DE
101-2884-160689

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
ZIDELL SUSMAN COMPANY,	§	CASE NO. 90-40076-A
DEBTOR	§	CHAPTER 11
-----	§	
IN RE:	§	Administratively
CENTERPOINT WEST SHOPPING	§	Consolidated Under
CENTER COMPANY,	§	Case No. 90-40076-A
DEBTOR	§	CASE NO. 90-40077-A
	§	
	§	CHAPTER 11

FINAL JUDGMENT AUTHORIZING AND APPROVING
CONTRACT TO SELL FREE AND CLEAR OF LIENS
THE CENTERPOINT AND NORTHVIEW APARTMENTS

CAME ON TO BE HEARD on the 9th day of May, 1990, the Motion for Authorization to Approve Contract to Sell Free and Clear of Liens the Centerpoint and Northview Apartments (the "Motion") filed by Allan Zidell ("Zidell") and the Court, having considered the pleadings, testimony, exhibits received in evidence and argument of counsel at such hearing and, by agreement of the parties, the pleadings, testimony and exhibits received at the hearing on April 18, 1990 on Zidell's Motion for Authorization to Approve Contract to Sell Free and Clear of Liens the Centerpoint Apartments, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On January 18, 1990, Ari Susman ("Susman") commenced each of the above referenced cases by filing, with respect to each debtor, an Involuntary Case Against Partnership: Partner's Petition.

2. On February 13, 1990, each of the above referenced debtors was adjudicated as a Chapter 11 debtor-in-possession. An Order for Joint Administration of Cases was signed on April 5, 1990 and entered on April 6, 1990.

3. The Debtor, Zidell Susman Company ("ZSC") was organized as a Texas General Partnership, of which Zidell and Susman were the only General Partners. Susman has alleged and Zidell has denied that Zidell's interest in ZSC has been forfeited.

4. On March 15, 1990, counsel for Zidell and Susman agreed in open court that Zidell was to perform on behalf of ZSC the filing of all statements and schedules, attend the first meeting of creditors, file monthly operating statements and to manage the Centerpoint Apartments and Northview Apartments owned by ZSC. A Motion for Approval of Stipulation regarding Zidell's management of the Debtors' properties is presently pending.

5. The Debtor ZSC is the owner of the Centerpoint Apartments and Northview Apartments located in Denton County, Texas. On April 13, 1990, Zidell executed two contracts of sale (the "Contracts") with Merkim Corporation ("Merkim"), the first contract for ZSC to sell and Merkim to purchase the Centerpoint Apartments (the "Centerpoint Apartments Property") for the gross purchase price of \$12,525,000. The second contract calls for ZSC to sell the Northview Apartments (the "Northview Apartments Property") to Merkim for a purchase price of \$5,250,000. The Contracts specifically call for approval by the Bankruptcy Court.

6. Following the filing of the Motion for Authorization to Approve Contract to Sell Free and Clear of Liens the Centerpoint

and Northview Apartments, Zidell filed a Request for an Emergency Hearing, requesting that a hearing on the motion be set on an expedited basis in that the Contracts may be terminated if not approved by May 15, 1990.

7. Susman filed the only objection to the Motion.

8. At the hearing on May 9, 1990, all creditors of the Debtor ZSC were present either in person or through counsel.

9. The testimony from both Zidell and Susman was that neither of them wish to continue in partnership with the other. The Partnership Agreement does not define the terms and conditions upon which one partner must sell and the other partner must buy a particular partnership interest. Neither partner to the other. Zidell testified that it is unlikely he and Susman could agree on the terms of such a transaction.

10. Zidell testified that the debt directly against the Centerpoint Apartments Property and the Northview Apartments Property is in excess of \$16,400,000 and continues to accrue interest at the rate of approximately of \$5,000 per day. NCNB Texas National Bank ("NCNB") asserts certain cross-collateralized debt against the estates' assets, an issue not litigated or reached at this time.

11. There does not appear to be any reasonable likelihood for reorganization of the Debtor ZSC inasmuch as neither partner of the Debtor ZSC wishes to continue the business with the other partner.

12. The Court finds that the sales prices of \$12,525,000 and \$5,250,000 are fair and reasonable prices for the Centerpoint and Northview Apartments Properties respectively and that a sale of

properties under the terms of the Contracts with Merkim is in the best interest of creditors and the estate of ZSC. There is no assurance that the Centerpoint and Northview Apartments properties will appreciate or depreciate in value or that they will appreciate to an extent necessary to offset any accrual of interest or operating losses of the ZSC partnership during the interim.

13. Inasmuch as the debt the Debtor ZSC is incurring operating losses in excess of \$23,000 per month, an emergency does exist in connection with the motion to approve these contracts of sale and an expedited hearing on the Motion is appropriate.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334 and 157.

2. This is a core proceeding pursuant to 28 U.S.C. §157 (b) (2)(A), (M), (N) and (O).

3. There exists a business justification for the sale of the Centerpoint Apartments Property and the Northview Apartments Property pursuant to the pending Contracts in that: (a) it appears that there will be no reorganization of this Debtor ZSC other than through liquidation; (b) the proceeds to be obtained from the disposition of these properties pursuant to the terms of the contracts of sale appear to be in the best interest of the Debtor ZSC and creditors of ZSC inasmuch as there is no assurance that a sale of the assets can be made at a later date for a greater net benefit to the ZSC bankruptcy estate; (c) the Debtor ZSC is operating at a net loss because it is incurring interest expense and real estate taxes as well as other expenses.

4. To the extent that any Conclusion of Law should be entitled a Finding of Fact it shall be deemed a Finding of Fact to the extent that any Finding of Fact herein should be labeled as a Conclusion of Law, it shall be deemed a Conclusion of Law.

In accordance with the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED that the Motion for Authorization to Approve Contract to Sell Free and Clear of Liens the Centerpoint and Northview Apartments pursuant to the contracts of sale attached to the Motion as Exhibits "A" and "B" to that Motion be, and hereby is GRANTED and it is further

ORDERED, ADJUDGED AND DECREED that the contract of sale for and the sale of the Centerpoint Apartments Property pursuant thereto is APPROVED, and it is further

ORDERED, ADJUDGED AND DECREED that the contract of sale for and the sale of the Northview Apartments Property pursuant thereto is APPROVED, and it is further

ORDERED, ADJUDGED AND DECREED that the sale of the Centerpoint Apartments Property and the Northview Apartments Property is free of all liens, claims and encumbrances of any nature, including claims against the Debtor ZSC in any way relating to the ownership and operation of either the Centerpoint Apartments Property or the Northview Apartments Property, other than as specified in the applicable contract of sale with all such liens and claims attaching to the proceeds of sale which shall be disbursed to NCNB to satisfy its direct indebtedness against the properties specified herein with the remainder to be escrowed at NCNB Texas National Bank, or as otherwise

agreed between Zidell and Susman, with no disbursements to be made until Order of this Court, and it is further

ORDERED, ADJUDGED AND DECREED that Allan Zidell may execute all documents necessary to consummate these sales, and it is further

ORDERED, ADJUDGED AND DECREED that this JUDGMENT is to be entered as a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure which rule is applicable to these proceedings under Federal Bankruptcy Rules 9014 and 7054(a). This judgment is entered pursuant to Rule 54(b) so that the matters raised in the Motion may be fully and finally resolved as soon as possible. This Court expressly determines that there is no just reason to delay a final determination of all matters raised in the Motion.

SIGNED this 14th day of May, 1990.

C. HOUSTON ABEL,
CHIEF U.S. BANKRUPTCY JUDGE

Order prepared by:

PATRICK KELLEY
Attorney for Allan Zidell