

COUNCIL CHAMBER

January 9, 2002

WHEREAS, the deed restrictions in the attached instruments have been volunteered in connection with property located at the northeast and southwest corners of Marsh Lane and George Bush Turnpike, which is the subject of Zoning Case No. Z001-248/6039-NW(WE); and

WHEREAS, the City Council desires to accept the deed restrictions in the attached instruments; Now, Therefore,

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

Section 1. That the deed restrictions 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 that is the subject of Zoning Case No. Z001-248/6039-NW(WE).

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

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

APPROVED AS TO FORM:

MADELEINE B. JOHNSON, City Attorney

By Christine Lanner  
Assistant City Attorney

APPROVED \_\_\_\_\_  
HEAD OF DEPARTMENT

APPROVED \_\_\_\_\_  
DIRECTOR OF FINANCE

APPROVED \_\_\_\_\_  
CITY MANAGER

DEED RESTRICTIONS

THE STATE OF TEXAS    §  
                                   §  
 COUNTY OF DENTON     §

KNOW ALL PERSONS BY THESE PRESENTS:

## I.

The undersigned Lexwood Realty Interests, Ltd., a Texas limited partnership ("Owner"), is the owner of that certain real property (the "Property") located in the City of Dallas ("City"), Denton County, Texas, being in particular a tract of land out of the John Smith Survey, Abstract No. 1225, part of City Block 8749, City of Dallas, and being the same property conveyed to the Owner by the Timberglen Company, a Texas general partnership, by deed recorded in Volume 4509, Page 0361, in the Deed Records of Denton County, Texas, more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof.

## II.

Owner does hereby impress all of the Property with the following deed restrictions ("Restrictions"), to wit:

No portion of the property shall be used for any of the following uses:

1. building repair and maintenance shop;
2. adult day care facility;
3. cemetery or mausoleum;
4. college, university, or seminary;
5. lodging or boarding house;
6. overnight general purpose shelter;
7. ambulance service;
8. animal shelter or clinic; however, an animal clinic that is accessory to a general merchandise or food store, that does not provide boarding or overnight shelter for animals, is permitted;
9. car wash, except as an accessory use to a motor vehicle fueling station;

10. carnival or circus (temporary);
11. private recreation center, club or area;
12. mortuary, funeral home, or commercial wedding chapel;
13. commercial radio or television transmitting station;
14. electrical substation;
15. radio, television, or microwave tower;
16. recycling collection center;
17. pawn shop;
18. accessory helistop;
19. accessory medical/infectious waste incinerator;
20. hotel or motel;
21. tool or equipment rental;
22. home improvement center, lumber, brick, or building materials sales yard;
23. medical or scientific laboratory;
24. theater;
25. mini-warehouse;
26. electronics service center.

### 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 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 Owner must then file the amending or terminating instrument in the Deed Records of the county or counties where the Property is located at his or her 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 Owner agrees that these restrictions inure to the benefit of the City. The Owner hereby grants 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 Owner agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owner agrees 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 Owner agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this document.

VIII.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the Owner 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 provisions of this document.

IX.

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

X.

The Owner understands and agrees that this document shall be governed by the laws of the State of Texas.

XI.

The Owner certifies and represents that there are no mortgages or liens, other than liens for ad valorem taxes, against the Property if there are no signatures of mortgagees or lienholders subscribed below.

XII.

The invalidation of any provision of this instrument 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 this the 20 day of Nov, 2001.

**Owner:**

LEXWOOD REALTY INTERESTS, LTD.,  
a Texas limited partnership

By: Lexwood Investment Corp.,  
a Texas corporation  
Its: General Partner

By: Karen MacArthur  
Karen MacArthur  
Its: President

CONSENT AND CONCURRENCE OF  
LIENHOLDER:

Graham Mortgage Corporation  
Property Lienholder or Mortgagee

By: Jerry Donahue

Print Name: Jerry Donahue, Vice Pres.

2480

020111

APPROVED AS TO FORM:

Madeleine B. Johnson

By: Christine Lamm  
Assistant City Attorney

24806

020111

STATE OF TEXAS §  
§  
COUNTY OF DENTON §

Before me, the undersigned Notary Public in and for the State of Texas, on this day personally appeared Karen MacArthur, President of Lexwood Investment Corp., the General Partner of Lexwood Realty Interests, Ltd., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Keith MacNeill  
Notary Public in and for said State

My Commission Expires:  
10-31-05



STATE OF Texas §  
§  
COUNTY OF Dallas §

This instrument was acknowledged before me on Nov. 27, 2001, by Karen MacArthur of Lexwood Realty Corp a LLP, on behalf of said Corporation.

Connie J. Nichols  
Notary Public in and for said State

My Commission Expires: §  
§  
§

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**EXHIBIT A**

BEING a tract of land out of the John Smith Survey, Abstract No. 1225, and the William Larkin Survey, Abstract No. 755, located in City Block 8748 and 8749, City of Dallas, Denton County, Texas, and being part of a called 4.9577 acre tract of land conveyed to Sullivan Development Co., Inc. by Deed dated September 1, 1987 recorded in Volume 2263, Page 259 of the Deed Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING of the Northwest corner of said Sullivan tract at the common property corner of Twin Creeks Estates, Phase II, as recorded in Cabinet C, Page 64, Rosemeade Addition, as recorded in Cabinet C, Page 216, and Timberglen Village as recorded in Cabinet E, Page 165, of the Plat Records of Denton County, Texas, said point being in the Right-of-Way of Marsh Lane (100' R.O.W.);

THENCE, South 89°18'49" East, with the North line of said Sullivan tract and South line of said Rosemeade Addition, crossing the centerline of said Marsh Lane at a distance 2.60 feet, continuing in all a total distance of 52.60 feet to a 3/8" iron pin found for the POINT OF BEGINNING (from which a found 1/2" iron pin with yellow cap marked RLG bears S 23°23'02" E, 0.07');

THENCE, South 89°18'49" East, continuing with said common line, a distance of 504.47 feet to a 1/2" iron pin with red cap marked ABA found for a corner in the Northwesterly line of State Highway 190 as shown on Right-of-Way maps dated July 7, 1992;

THENCE, South 34°25'39" West, with said Northwesterly line of State Highway 190, a distance of 803.13 feet to a 1/2" iron pin with cap set for a corner in the Northeasterly line of the aforementioned Marsh Lane (from which a found 1/2" iron pin with red cap marked ABA bears S 63°05'51" E, 5.01'), said point being in a circular curve to the right having a radius of 905.00 feet, a tangent, length of 141.30 feet, and a chord which bears North 09°30'00" West, 279.21 feet;

THENCE, in a Northwesterly direction with said Northeasterly line of Marsh Lane and circular curve to the right, thru a central angle of 17°44'52", a distance of 280.33 feet to 3/8" iron pin found for the point of tangency.

THENCE North 00°37'33" West, continuing with said Northeasterly line of Marsh Lane, a distance of 393.14 feet to the POINT OF BEGINNING and CONTAINING 178,945 Square Feet, or 4.1080 Acres of land, more or less.

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OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

January 9, 2002

02-0111

Item 33: Zoning Case Z001-248(WE)

Councilmember Greyson requested that consent zoning docket 33 be removed from the consent zoning docket to be called as an individual hearing. Acting Mayor Poss stated that consent zoning docket item 33 would be removed from the consent zoning docket to be called as an individual hearing, there being no objection voiced to Councilmember Greyson's request.

Later in the meeting, zoning docket item 33 was brought up for consideration.

A public hearing was called on zoning case Z001-248(WE), an application for and an ordinance granting a CR Community Retail District on property presently zoned an NS(A) Neighborhood Service District and an ordinance terminating Specific Use Permit No. 957 for a Service Station Use on the southwest and northeast corners of Marsh Lane and SH 190 and a resolution authorizing acceptance of a deed restriction instrument in conjunction with the change of zoning.

(The city plan commission recommended approval.)

No one appeared in opposition to the city plan commission recommendation.

Appearing in favor of the city plan commission recommendation:

Kirk Williams, 5400 Renaissance Tower, representing the applicant

The following individual address the city council regarding zoning case Z001-248(WE).

William Hopkins, 2011 Leath St.

Councilmember Greyson moved to close the public hearing, accept the recommendation of the staff and the city plan commission as corrected on the addendum and pass the ordinance.

Motion seconded by Councilmember Rasansky and unanimously adopted. (Hill absent: Place 15, Place 3 vacant)

Assigned ORDINANCE NO. 24805 and ORDINANCE NO. 24806.