



CITY COUNCIL REGULAR SESSION

Tuesday, January 03, 2023 at 7:00 PM
Council Chambers and YouTube Livestream

MISSION STATEMENT

It is the mission of the City of Forest Park to enhance, strengthen, and grow our city by collaborating with our community to provide the highest level of service. Striving to be recognized as a diverse community that values and respects all members. We will strive to provide fair, professional, and courteous service through transparency and open communication. As we work to achieve this mission, we will have integrity beyond reproach while employing fiscal discipline and innovation. In this work there are no praises and raises for mediocrity.

Website: www.forestparkga.gov
YouTube: <https://bit.ly/3c28p0A>
Phone Number: (404) 366.4720

FOREST PARK CITY HALL
745 Forest Parkway
Forest Park, GA 30297

The Honorable Mayor Angelyne Butler, MPA

The Honorable Kimberly James
The Honorable Hector Gutierrez
The Honorable Allan Mears

The Honorable Dabouze Antoine
The Honorable Latresa Akins-Wells

Dr. Marc-Antonie Cooper, City Manager
S. Diane White, City Clerk
Mike Williams, City Attorney

AGENDA

VIRTUAL MEETING NOTICE

DISCLAIMER: For in-person attendance, all CDC requirements of Masks and Social Distancing is recommended.

To watch the meeting via YouTube - <https://bit.ly/3c28p0A>

The Council Meetings will be livestream and available on the City's

YouTube page - **"City of Forest Park GA"**

CALL TO ORDER/WELCOME:

INVOCATION/PLEDGE:

ROLL CALL - CITY CLERK:

PUBLIC COMMENTS: (All Speakers will have 3 Minutes)

ADOPTION OF THE AGENDA WITH ANY ADDITIONS / DELETIONS:

APPROVAL OF MINUTES:

1. **Council Approval of Council Work Session and Regular Meeting Minutes from December 5, 2022 - City Clerk**

NEW BUSINESS:**2. Council Approval of Administrative Appeal (Blood Plasma Center) – Planning & Zoning; Legal****Background/History:**

During the October 3, 2022 meeting, the City Council adopted a moratorium on blood plasma centers due to the concern regarding the potential negative effects such centers might have on local neighborhoods. This arose in part due to an inquiry the City received from a potential developer of such a center and the fact that the City does not currently have any regulations controlling such centers.

The language of the moratorium provides for an appeal and/or exemption from the moratorium if the applicant can show that its proposed use would be in compliance with the anticipated changes the City might adopt.

3. Council Approval of Resolution of the Appointment of Mayor Pro-Tem for 2023 - Legislative**4. Council Approval of Resolution to Set and Publish the Qualifying Fees for Nov. 2023 - Executive Office****CLOSING COMMENTS BY GOVERNING BODY:**

EXECUTIVE SESSION: (When an Executive Session is required, one will be called for the following issues: Personnel, Litigation or Real Estate)

ADJOURNMENT:

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 404-366-1555.

File Attachments for Item:

1. Council Approval of Council Work Session and Regular Meeting Minutes from December 5, 2022

- City Clerk



CITY COUNCIL WORK SESSION

Monday, December 05, 2022, at 6:00 PM
Council Chambers and YouTube Livestream

MISSION STATEMENT

It is the mission of the City of Forest Park to enhance, strengthen, and grow our city by collaborating with our community to provide the highest level of service. Striving to be recognized as a diverse community that values and respects all members. We will strive to provide fair, professional, and courteous service through transparency and open communication. As we work to achieve this mission, we will have integrity beyond reproach while employing fiscal discipline and innovation. In this work there are no praises and raises for mediocrity.

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Dr. Marc-Antonie Cooper, City Manager

S. Diane White, City Clerk

Mike Williams, City Attorney

DRAFT MINUTES

CALL TO ORDER/WELCOME: The meeting was called to order by Mayor Butler at 6:00 pm and she read the mission statement.

ROLL CALL - CITY CLERK: A quorum was established.

Attendee's Name	Title	Absent	Present
Angelyne Butler, MPA	Mayor, At-Large		✓
Kimberly James	Council Member, Ward 1		✓
Dabouze Antoine	Council Member, Ward 2		✓
Hector Gutierrez	Council Member, Ward 3		✓
Latresa Akins-Wells	Council Member, Ward 4		✓
Allan Mears	Council Member, Ward 5		✓

Javon Lloyd, Public Information Officer, Joshua Cox, IT Director, Chiquita Barkley, Finance Director, Jeremi Patterson, Deputy Finance Director, LaShawn Gardiner, Director Planning & Community Development, Diane Lewis, Deputy HR Director, Fire Chief Latosha Clemons, David Halcome, Deputy Fire Chief, Bobby Jinks, Director Public

Works, Police Chief, Nathaniel Clark, and Arthur Geeter, Purchasing Manager, Tarik Maxwell, Parks and Recreation Director

CITY MANAGER'S REPORT: Dr. Marc-Antonie Cooper, City Manager

COMMUNITY INFORMATION/REMINDERS:

- **GENERAL RUNOFF ELECTION DAY IS DECEMBER 6, 2022.** For more information or to find your voting location please visit the Clayton County Board of Elections website at www.claytonelections.com.
- Saturday, December 10, 2022 @ 11:00 am - 2:00 pm at the City of Forest Park Senior Center, 5087 Park Ave – Breakfast with Santa. Games, Arts & Crafts, Face Painting, horseback riding and more. Bring an unwrapped toy donation to participate in the horseback riding.
- Friday, December 16, 2022, from 5:00pm – 11:00pm - you're invited 55 and up to the City of Forest Park Senior Panthers in Action 2nd Annual Holiday Ball. The ball will be held at the Forest Park Senior Center 5087 Park Ave. Please RSVP by December 6, 2022, with Ms. Tenisha Dixon, 470-487-3753 or Ms. Marsha Johnson, 470-630-2355.
- Saturday, December 17, 2022, from 12:00 pm – 4:00pm Recreation and Leisure will host a Holiday Give Back at City of Forest Park Recreation Center.
- The City of Forest Park will be closed in observance of the Christmas Holiday, Friday, December 23 and Monday, December 26, 2022, reopening at 8:00am, Tuesday, December 27, 2022.

CITY OPERATIONS:

- We are continuing to upgrade our internal operations, which have been obsolete for quite some time. This includes our manual payroll system that has been in place for years. We are working with our partner ADP to upgrade this system and bring more self-service functions to our employees. We have had some glitches, and coding issues, but our dedicated staff has worked to help resolve these issues, and no one missed a pay day. Our pay days are Friday's, and we have been doing everything to ensure no one has missed a pay period. While there have been some shortages, or miss calculation of amounts due to coding errors, these matters were resolved before the close of business on pay day. It has been and will continue to be a priority for our staff to work with ADP to have these matters resolved in a timely manner, so they do not negatively impact our employees. However, I do again thank staff for their patience and understanding, and rest assured we will get through this implementation and provide a better way to serve each of you.
- Working on development of a Citizens Academy Forest Park 101 to bring forward for council consideration. The Citizen's Academy would be a program to further enhance communications with our residents, but also provide needed information on how local governments operate. We are looking to have this come forward to the council in the 2nd quarter of 2023 for consideration.

EMPLOYEE SPOTLIGHT/SHOUT OUT:

- I would like to send a huge shout out and thank you to our Finance Team, specifically Finance Director Chiquita Barkley, Deputy Finance Director Mr. Jeremi Patterson, Finance Manager Ms. Nakeeta Davis who

was here on Friday, December 2 until 7:00pm ensure that all check were corrected and delivered to staff.
Thank you all for your dedication to keeping us moving forward as a city.

COVID-19 / MONKEY- POX UPDATE: EMS Coordinator, Andrew Gelmini

Between 11/28 – 12/04 there were 139 new positive cases in Clayton County, an increase from last month with 8 hospitalizations and 0 death. Case breakdown still shows approx. 58% of Cases to be female and 42% Male with any remaining to be unknown sex.

Forest Park continues to make up 8.6% of County cases. Forest Park continues to show, on average 4 - 8 new cases a week. The 30 to 39 age group shows the highest percentage of positive cases.

We have Plateaued with vaccines from last month staying at 56% of County residents have received at least 1 dose of vaccine and 50% are fully vaccinated. 21% of vaccinated citizens have received the additional booster dose. The 35 - 64 age groups show the highest vaccination rate.

The CDC continues to encourage and recommend vaccination and boosters for Covid 19, with a second booster dose being recommended to people 50 and older, especially for people with underlying medical conditions.

Information on how to obtain vaccine information is available on the city website under the fire department tab under covid 19.

Monkey Pox shows an increase in cases this month now totaling 1,965 cases in Georgia an increase of 44 from last month. Age group of 26-44 shows the largest numbers with men being primarily affected sex. Anyone can contract this disease, and everyone should take precautions especially during activities of prolonged personal contact and especially during intimacy to ensure safety.

The CDC continues to research the disease and its spread and is still working on the best course of action in vaccines and boosters to eliminate this outbreak. The CDC is recommending vaccines if interested and high risk, or with underlying medical conditions. This disease continues to show that it is rarely fatal and has only been listed in 19 deaths nationwide, all of which had other underlying health issues reported with the diagnosis. For further information on the outbreak and vaccines visit: www.cdc.gov/poxvirus/monkeypox/
Dph.georgia.gov/monkeypox

City Manager – We would like to move these updates to once a quarter instead of monthly, because it seems like our numbers are stable. That is what we choose to do coming into the new year.

OLD BUSINESS:

1. **Discussion and action regarding guidelines for Usage of Discretionary Ward Funds and Capital Outlay** – Chief Executive Office

Background/History:

We have been asked to review and prepare a set of guidelines regarding the usage of the discretionary funds and Capital Outlay Funds each Councilmember is entitled to spend in furtherance of their duties as a member of the City Council. These guidelines were requested to be brought forward for discussion during the FY22-23 budget talks in order to clearly define acceptable uses of Regular and Capital Outlay Ward

Funds. Per Council's direction to the City Manager once a policy was approved Capital Outlay Ward Funds would be released to members.

In the September 6th City Council Meeting there was disagreement with the section regarding "donated funds and goods". This section has been removed from the policy, and the City Manager is seeking councils' direction, and/or approval on the guidelines as presented.

Comments/Discussions from Governing Body:

2. Council Discussion of Changes to IGA between City and URA - Legal

Background/History:

The City Finance Department currently manages the finances for the URA. Under the Intergovernmental Agreement with the URA (IGA) which was recently approved by the City Council, it was proposed that the URA would begin to manage its own finances.

Councilwoman James has requested that the City Council revisit this portion of the IGA. Attached to this agenda item is a draft of the IGA which shows the differences between the URA-approved version and the City-approved version.

Comments/Discussions from the Governing Body:

Councilmember James – I wanted this item to be brought back to the governing body, because it was never the intention of the URA board to separate from the city. I do not think it is a wise decision to move our finances from the city. That is one of the reasons why I wanted this back on the agenda and Mike can provide some clarity. Initially, the conversation that we had was defining the roles of each member. We want to define the roles for the members of the URA and not pull away from the finance department.

City Attorney – In general terms yes, we had advised that we wanted the city and the DDA, D.A and URA to have intergovernmental agreements that clearly define the relationship, between the city and the respective body in terms of who is responsible for what types of projects, use of city facilities, everything involving how the bodies operate with respect to each other.

The Development Authority, for example, has decided they are going to manage their own finances and it was proposed by city staff that the same be done for the other boards. This is clearly a policy decision and whatever the pleasure of the respective body is. It is very important that you come to an agreement so that it is clear what the responsibilities are.

Councilmember James - Dr. Cooper, he said it is the desire of the city that we move in that direction. I want to know is there a reason why?

City Manager – What I was clarifying is not necessarily the desire to separate your funds. For the URA to have the people to handle their funds, not necessarily taking their bank someplace else. Which means if you are going to have someone as a treasurer or whatever with the URA, DDA and the DA that they will understand what their role is, and our finance department would basically handle the cutting of your checks. When a PO is issued, or an invoice is sent in, it is sent to the designated person for that board. That person will then process the PO the way they are supposed to, because they do have access to the system. Once that comes through, the only thing our finance department is doing is cutting the checks.

If it comes to balancing the account and all of those things, it will go through the person or the individual that is responsible for that particular board. It would not fall on the finance department to go and balance the bank accounts for the boards.

Councilmember James – Let me provide some history with our boards. Typically, with our boards the city finance is like the bookkeeper of all the boards. For whatever the reason the D.A is going in their own direction and that is their prerogative to do that. For us as a URA board we do not do anything independent of the city. In other words, we have three outstanding bonds, and those bonds were defined; because of the city we are a tool in the city's toolbox. What I am proposing to the council is we do not move in that direction, because typically as the city finance being the bookkeeper for the boards, they were responsible handling the bills, cutting the checks, reconciling the bank statements, and auditing the books. This is included in the cost that we already pay every year.

So, if we are going to move in a different direction to understand that the board members are volunteers, and not professionals. Even a treasurer is a supervisor and overseer of the accounts, and they should be working directly with someone that does have expertise in financing. So, we as the URA board, would have to incur more cost and that is more cost even for the city to try and find a financial person or firm to handle those auditing.

I would not want to put that on our treasurer, because the treasurer is really the oversight. One of the things that I question, for me being the chair of the URA board, I ask that copies of the bank statement be sent to our treasurer, so that there is some checks and balances, but the response was, well the treasurer is going to get all the statements from now on.

So, I am like wait that is not what we want, and that never was the intent. I do not know how the council feels about this, and this puts the city in a bad place, when all of us may not be here at one point and we do not have the oversight that we would need. I believe as a council as a city to have oversight that we need in these boards if we pull it away.

Councilmember Antione – What is the city attorney recommendation?

City Attorney – This is really a policy question and all I can say is in my experience with the clients over the last couple of decades, usually the same group that handles the city's finances handles the boards. Whether it is an outside firm or it is city staff. That has been my experience, but it does not mean you have to do it that way. It is what you all decide you want to do.

Councilmember Gutierrez – I trust your judgement as the chair of that board councilwoman, I think you have done a great job, and I support you with that. The board I am part of with the D.A. the justification it falls in is things with the city do take longer than usual. The thinking behind our chair's logic was that we could move faster on things if we had our own finances.

Councilmember Wells – I agree with you Councilwoman James, and I think with wither board it should be the same for both boards. Like you said, both boards are a tool in the city's toolbox. When thinking about everything and how you put it that nobody should have their own. The city is still a volunteer board, and it is something that the city established.

One thing I think we should do with handling the finances, and I am all about not putting a lot on our employees, so I would like to know how they feel as well; but I think the city should be more involved. It is okay for the city to take on certain things, but then the city council members do not even know what is going

on with these boards' half of the time. I do agree with you, as far as, the city handling the finances, because these people are not professionals, they are volunteers.

Councilmember Mears – I am not in favor of turning the boards loose. These positions change, the board changes and different things. Like she said the board is a tool in the city's toolbox and the city should have an active involvement in the finances with the boards.

Mayor Butler – I am a bit perplexed, when you are referring to the city as it currently stands you have a city employee within the Economic Development Department, that currently serves as the treasurer, correct?

Councilmember James – Correct.

Mayor Butler – So you no longer want that person to serve as treasurer, you want it to be the finance department?

Councilmember James – No that is not what I am saying.

Mayor Butler – What are you saying, I am not understanding?

Councilmember James – What I am saying is the way the bookkeeping is done with the boards, the reconciling of the books, the city audit that is done they audit the URA board, and everything that they are currently done and have done in the past should remain the same. When the board elects different members like the chair and the vice chair, and the treasurer and the secretary, we select who we want to oversee those positions.

The treasurer is someone that is a liaison between the board and finance. The treasurer would have the information and bring it back to the board, but they are not the person that is going to be handling the bookkeeping of the board. That is not what the treasurer does, the treasurer is a liaison for the board.

Mayor Butler – As the Finance Director it appears the direction may be going to put this back under your jurisdiction and so I wanted your take on this.

Chiquita Barkley – I do not know how much I can divulge of the situation or matter, but it was my understanding that the boards the treasurer for the URA would take on the responsibility for the financial component. At the point we received our directive we were giving all the information to the treasurer and having meetings.

As far as having the treasurer to be the liaison it is fine if they know finances, but it is a problem when they do not. The information could come back incorrectly, it could come back inaccurately and that puts the burden back on me. If I am to feed this information to the liaisons and she or he takes it to the board, and it is not correct. So, either it is all or nothing or it is with the treasurer, and I am not sure how they want to handle that.

City Manager – I think that we are missing the point. We are not taking or separating the boards, and as far as the bookkeeping of the board itself, the journal entry and all those things will still be done in finance. That is a finance component, if there is money to go to one account to another and it is something that they have they will address the journal entries. As far as reconciling the accounts is something that the treasurer can see in the system.

When reading the bank statements and understanding what the bank statements are; that is what the treasurer does. When those things come into the URA or the DDA or whomever those things are put on the PO, they are put into the system and then they work over to finance. Finance only responsibility at that point is to say, you have this much to pay, it was authorized for the URA to pay it, cut the check and mail it out.

If it is coming from one account to another it is not up to the treasurer to go to the bank and say transfer money from here to here, that is finance. I think we are just getting a little confused, we are not trying to separate the board from the city, the board and the city employees that work for the board is still part of the city. It is the actual roles and functions that we are looking to separate. Finance will do what finance is supposed to do and the treasurer will do what they are supposed to do.

Councilmember Antione – I knew that.

Councilmember James – I just want to be perfectly clear on the booking aspect and the treasurer aspect. Can you clearly define that for me Mike?

City Attorney – I think what we can do in the agreement is to better clarify specifically, because right now it is still in general terms. Both versions were more general: the first version was to leave it as it is, and the second version was to separate it out. Based on this discussion we can go back and clarify, whether it is bookkeeping, check cutting, transferring finances would remain the city staff, but the overall direction and management in terms of preparing purchase orders and things like that would remain with the URA. I think there is a compromise there that everyone can live with as long as it is more specific in the agreement.

Councilmember Gutierrez – With that being said Dr. Cooper, with the D.A., going on their own route is this going to change that?

City Manager – Yes, the D.A. will be handling everything so our staff will not be handling any of the financial components for the D.A. They will have their own accounting firm, their own auditors, all of those things, because they are in a totally separate bank from anything with DDA, the URA or any of the finances that we have here.

Councilmember Gutierrez – So in essence that is the DA's decision, but the URA will it do it itself or does it have to come to us, is it our decision or the chair decision?

City Manager – It will be the URA decision if they want to do that. Councilwoman James and I discussed that, that was never thought that the URA was going to do, it was really not what we thought any of them was going to do, but the DA did take that role. It was never meant for the DDA, URA or anybody to separate their finances from the city. It was to define the roles in each area for who does what in the boards and how that comes back to the city.

Councilmember Wells – This goes back to what I was saying as far as the URA and the DA, both of them are city appointed boards, why is it that this board is doing this thing and this board is doing that thing? Why is it okay for the DA to do that on their own? What do you suggest I that case?

City Attorney – All of the boards just as a reminder are independent entities under state law. I did not have all the conversations with the Development Authority chair into what went into that decision, so I cannot speak to that; but they do have the authority to do that if it is the decision of the board.

NEW BUSINESS:

3. **Council Discussion on Heritage Park Veterans Museum requesting donation of two military vehicles to restore for museum display – Economic Development and Police Department**

Background/History:

The Heritage Park Veterans Museum, a non-profit operated by volunteer military veterans in McDonough, Georgia, is a 10,000 square foot facility owned by Henry County which has 8,000 visitors annually. The Museum requests the donation of two used military vehicles in the possession of the City which are stored at Fort Gillem. Both vehicles are in disrepair, and one of the vehicles will be restored by veteran volunteers while the other will serve as a parts vehicle. They are VIN 156651 and 071506.

The "United States Government Certificate to Obtain Title to a Vehicle" documents were delivered along with the vehicles by the US Defense Logistics Agency to the Forest Park Police Department Sept. 25, 2018. The vehicles were never titled by the City. The Museum has offered to pay for the two Georgia titles to be processed into the name of the City. The Museum then requests that the titles be transferred to the Museum where they will be restored and put on display.

Bruce Abrahams, Economic Development Director - As part of the sale at Fort Gillem to the movie studio, we had to clean up 55 acres and four historic buildings. We hauled off 17 dumpsters of trash from the buildings and four pallets of contaminated materials. Part of the things to remove were five military vehicles which were on the property in the possession of the police department.

In 2018 the US Department of Defense surpluses old military vehicles and gave them to police departments across the US. Our police department received five vehicles known as Humvees which were in disrepair. None of them were operable, and they were stored at the police training area at Gillem which was sold to the movie studio.

Around this time, we had a visit to the Heritage Park Veterans Museum in McDonough to tour the old army base. They expressed an interest in the military Humvees and asked about acquiring them to restore their museum.

The 10,000 square foot museum is located in McDonough and the building belongs to Henry County. The museum is a non-profit run by military veteran volunteers who collect uniforms and arms and equipment for display to the public. They have about 8,000 visits each year from people all over the country.

We are here tonight to ask you to transfer the titles for two of these vehicles to the museum for restoration. One is a military police vehicle and the other is a general truck for parts. They will need full restoration, which will be the responsibility and expense of the museum. The museum will pay the title transfer fees which we estimate at about \$200 per vehicle.

If transferred to the museum, the vehicles will join a helicopter, jeep, motorcycles and other military equipment, and please let me introduce the folks who will restore the vehicles and who run the museum. Ron Weiss was in the Air Force, Ebony Freeman was a United States Marine, Joshua Augusto was in the Army, Guilford Wells was with the United States Navy and Jim Joyce served 24 years in the United States Army, thank you for your service.

The museum would be happy to invite you to the museum and attend a ceremony when they pick up the vehicles. The restored vehicles will display the name of the city of forest park as their donors. these vehicles, among others, will help tell the stories of the men and women who serve our country in war and peace.

We ask for the council to approve the transfer of the two vehicles (you have photos and titles in your packet) to the Heritage Park Veterans Museum for restoration and display to the public.

Comments/Discussions from Governing Body:

Councilmember Gutierrez – This is exciting, thank you Bruce for working with each gentleman and welcome to our city. I would love for one of those to go on Main Street once they get fixed up. I think Fort Gillem is one of the biggest parts of our history here in Forest Park, and we should definitely be proud of that. Thank you for your service and thank you for being here and thank you Bruce for putting this all together.

Councilmember Wells – Thank you so much Bruce, I think you do an amazing job. Thank you, gentlemen, for your service. I do think this is a great thing and it will also make the City of Forest Park look good and tell some of our history as well. Again, thank you gentlemen so much.

Councilmember Mears – I am 100 percent in agreement. Thank you first for your service, and I would like to see what happens when you get through with it and get it cleaned up. I was looking at the pictures in the book, and you got your work cut out for you.

Mayor Butler – Yes, it absolutely would be our honor. Thank you for your service and your continued commitment to our community. Thank you.

4. Council Discussion of City Directory Brochures – Executive Office

Background/History:

In an effort to help increase the overall level of communication between the City of Forest Park and its residents, the city has created several department directory brochures. Each brochure contains department-specific information regarding available services, frequently asked questions, contact information and more. The city manager is seeking council's approval on the brochures.

Comments/Discussions from Governing Body:

City Manager – This is just one piece of a bigger picture the council will start to see. We are working on our welcome to Forest Park package, which is something the council has been discussing for a minute. The brochures are just that one piece that we are trying to get finalized with certain areas. These are just examples of two that we do have. Once we get it done, we are going to put together an entire package of information from council members.

We are going to have council ward specific information, brochure information, we will have overall general city information. We will look to do a mailout to all of the city residents come next budget year, I will put the funds in for that, but also creating those that we have on display with us at the city hall and wherever we

go. This information will basically tell them everything that they need to know about Forest Park. The brochures are just the begging of things that will be coming before the council for approval.

Councilmember Gutierrez – Great job on these I really like the pictures that included and highlighted the community. They look really good Dr. Cooper.

Councilmember Mears – Yes, I am in favor of this.

City Manager – It was Mr. Lloyd that made them look as good as they look.

5. Emergency Building Repair Appropriation (Public Works) –Public Works/IT Departments

Background/History:

The Main Public Works building experienced a lightning strike at some point during the last few days. This strike severely damaged the transfer switch impacting all power to the building, as well as damaging several battery backups in the core server room affecting IT functionality.

An electrician is working on the building's power issues identifying what is needed to bring the building back online. Also, the battery backups for the servers are unable to carry any load, anytime the building loses power or switches from grid to generator, the servers perform a hard reset. This is not good and can cause long term damage, so Information Technology, and Public Works have taken preventative measures.

Due this unforeseen issue and the cost associated with it the City Manager is requesting a budget amendment to appropriate \$60,000 from emergency contingency in the following way - \$10,000 for Information Technology and \$50,000 to public works to purchase repair services and needed equipment to bring the building back online with full IT and Public Works functions.

Comments/Discussions from Governing Body:

Councilmember Antione – I am glad to hear that everybody was safe during the lighting strike. I am sorry to hear that.

Councilmember Gutierrez – I am glad to hear that everybody is safe, that is just scary. I am glad it happened when no one was there.

Councilmember Mears – I am in favor; we are lucky this has not happened before, and we need to get the department back up to speed.

EXECUTIVE SESSION: (When an Executive Session is required, one will be called for the following issues: Personnel, Litigation or Real Estate)

It was moved to recess into Executive Session for Personnel, Litigation and Real Estate at 6:38 pm

Motion made by Councilmember James, Seconded by Councilmember Antione.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was moved to reconvene the Work Session at 7:01pm

Motion made by Councilmember James, Seconded by Councilmember Antione.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

ADJOURNMENT:

It was moved to Adjourn the Work Session at 7:01pm

Motion made by Councilmember James, Seconded by Councilmember Antione.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

DRAFT



CITY COUNCIL REGULAR SESSION

Monday, December 05, 2022, at 7:00 PM
Council Chambers and YouTube Livestream

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The Honorable Mayor Angelyne Butler, MPA

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The Honorable Latresa Akins-Wells

Dr. Marc-Antonie Cooper, City Manager
S. Diane White, City Clerk
Mike Williams, City Attorney

DRAFT MINUTES

CALL TO ORDER/WELCOME: The meeting was called to order by Mayor Butler at 7:01 pm and she read the mission statement.

INVOCATION/PLEDGE: The invocation and pledge were led by Pastor Clinkscales.

ROLL CALL - CITY CLERK: A quorum was established.

Attendee's Name	Title	Absent	Present
Angelyne Butler, MPA	Mayor, At-Large		✓
Kimberly James	Council Member, Ward 1		✓
Dabouze Antoine	Council Member, Ward 2		✓
Hector Gutierrez	Council Member, Ward 3		✓
Latresa Akins-Wells	Council Member, Ward 4		✓
Allan Mears	Council Member, Ward 5		✓

Joshua Cox, IT Director, Diane Lewis, Deputy HR Director, Fire Chief Latosha Clemons, David Halcome, Deputy Fire Chief, Bruce Abrahams, Director Economic Development, Bobby Jinks, Director Public Works, Police Chief, Nathaniel Clark

PUBLIC COMMENTS: (All Speakers will have 3 Minutes)

There were four (4) speakers:

Dr. Leon D. Beeler – Stated he enjoyed the parade and even though he has gotten too old to walk in it he did sit on the side of the road. Wanted to invite everyone to the Georgia Christian Counseling Association, Christmas party at his church over on Phillips. It will be December 17th, from 10am to 2pm. They will be making Christmas fruit baskets for the police and fire department this year and will appreciate any donations. They will be putting the gift bags together on December 15th at 10am at Fairfield Baptist Church, located at 1746 Hwy 138 East, Jonesboro, GA. They deliver the baskets, get a photo, and tell them thank you. Pastor Clinkscales announced they will also be having their annual toy give-away on December 17th, as part of the Forest Park Minister Association, at Rock Church, along with Hype Health.

LaWanda Folami – Thanked the chair for addressing some of her concerns from the last meeting on behalf of concerned citizens. She gave condolences to Mr. John Slaughter, who used to work for the city. Wants the city to continue to grow and be able to engage with one another and put away the foolishness and collaborate on unifying. They all have seen the article where it says the chief resigned and some of the concerned citizens came to hear about it and she said, not to her knowledge. She told Chief Clark she is glad to see him here tonight. He stepped in as interim city manager, and she takes that very personally, because he came in working and went on to public service. He also received huge accomplishments through the FBI/GBI. She told the chief that she really appreciates him, and she understands that change is good, and people must get adjusted. She appreciates him and the community thank him for bringing the neighborhood watch to them, and that he is in their prayers, and they stand with him and thank him for serving them. She thanked Mr. Beeler for what he has done alongside Rev. Grant, before his passing and encouraged his son to continue to stand with his father.

Melanie Gay Carter – Thanked council for the speed bumps that was received on her street and thanked Mr. Gutierrez for his hard work and the turkey.

Pastor Mark – Is honored to participate in the growth of the city. Everyone is doing an excellent job. They have a Right Path Youth Foundation dealing with problematic youth and the negative association of drug, guns, and violence. He wanted to invite the council out on December 17th to a “Stop the Violence Car Show” at 1000 Main Street and would like the mayor to speak. They are targeting the youth to get them a new propensity for drugs, guns, and violence. The clock is ticking, and the youth are putting in a lot of unfortunate work. He is a victim of his son being murdered two years ago, on this day, and he is an advocate for the problematic youth. There is always a question of not can we afford to address this issue, but the real question is can we afford not to. So, I asked you all collectively to join us to make a worldwide difference in reaching our youth. He stated as Maya Angelo said, “It takes a village to raise a child.” He asked the mayor if she could, to please come out on the 17th to speak. The speaking aspect will be from three to five. For more information you can reach out to rightpathfoundationinc.org, and they are located on the corner of Springdale and West Street.

ADOPTION OF THE AGENDA WITH ANY ADDITIONS / DELETIONS:

It was moved to add “Council Consideration to Extend the Waste Management Contract for 30 days as Item 7

Motion made by Councilmember Mears, Seconded by Councilmember Akins-Wells.

Comments/Discussions from Governing Body:

Councilmember Wells- Where are we with this contract?

City Manager – We just got the revisions back that we first gave, and we are meeting tomorrow to go through everything, so that we can meet with them again. There are a lot of changes they want to make and that we want to make, so we are going to need additional time.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was moved to add Council Consideration of Settlement Agreement with Chief Clark as Item 8

Motion made by Councilmember Akins-Wells, Seconded by Councilmember Gutierrez.

Voting Yea: Councilmember Gutierrez

Voting Nay: Councilmember James and Antione

Councilmember Wells asked the mayor to repeat the motion. The mayor restated the motion and asked for the votes. Councilmember Dabouze did a point of order. The mayor asked him to state his point. Councilmember Antione asked if he could change his vote.

Mike Williams stated he could, but it was at the discretion of the chair to allow it.

The mayor asked if he would like to change it? Councilmember Antoine responded Yes, and the Mayor told him he could.

The Mayor then called for the vote again.

Voting Yea: Councilmember Gutierrez, Councilmember Antoine, Councilmember Akins-Wells, Councilmember Mears

Voting Nay: Councilmember James

It was moved to adopt the council agenda with the additional items.

Motion made by Councilmember Akins-Wells, Seconded by Councilmember Gutierrez.

Voting Yea: Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

Voting Nay: Councilmember James

APPROVAL OF MINUTES:

- 1. Council Approval of Council Work Session and Regular Meeting Minutes from November 21, 2022**
- City Clerk

It was moved to approve the council work session and regular meeting minutes from November 21, 2022.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

OLD BUSINESS:

2. Council Approval of actions regarding guidelines for Usage of Discretionary Ward Funds and Capital Outlay – Chief Executive Office.

It was moved to approve the guidelines for Usage of Discretionary Ward Funds and Capital Outlay.

Motion made by Councilmember Gutierrez.

Motion failed for lack of a second.

3. Council Approval of Changes to IGA between City and URA - Legal

It was moved to table this item.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

NEW BUSINESS:

4. Council Approval on Heritage Park Veterans Museum requesting donation of two military vehicles to restore for museum display – Economic Development and Police Department

It was moved to approve the request for donation to Heritage Park Veterans Museum of two military vehicles.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

5. Council Approval of City Directory Brochures – Executive Office

It was moved to approve the City Directory Brochures

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

6. Council Approval of Building Repair Appropriation (Public Works) –Public Works/IT Departments

It was moved to approve the Building Repair Appropriation.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

7. Council Approval to Extend the Waste Management Contract for 30 days

Mayor Butler stated that she originally said 30 days but would like it to be 45 days.

City Attorney said 45 days would be better so they will have a more time.

The city manager said he was okay with 45 days.

Motion made by Councilmember James, Seconded by Councilmember Mears.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

8. Council Approval for Consideration of the Settlement Agreement for the Clark Litigation

It was moved to accept the settle agreement for the Clark Litigation

Motion made by Councilmember Antione, Seconded by Councilmember Wells.

Comments/Discussions from Governing Body:

Councilmember James – I knew that this was concerning the supposed, resignation, but was not clear as to if the chief wanting to resign and wanted to ask before she gave her vote.

City Attorney - Do you mean ask the chief? That is within your prerogative.

Councilmember James - I would like to find out if it is true that he wants to resign.

Chief Clark – Do I want to resign, and my answer to you is that I initially had no intention of resigning but based on the information received. It is what the governing body desires, so I am prepared to step down tonight.

Councilmember James – Did you say that it is our desire?

Chief Clark – That is the information that I have received.

Councilmember James – No, that is not true.

Councilmember Gutierrez – Chief, I would like to thank you for everything you have done for the community. You bought us out of a time that was not good for us. As a Hispanic, you made a tremendous difference and treated my people with extreme respect. You changed the narrative of how they feel toward our police, which is really hard to bring back once it is ruined. The past administration did a good job of not building that trust with our community. So, I just want to thank you for everything you have done for us. No hard feelings and I wish you the best.

Chief Clark – I want to thank the community for allowing me to serve as their Police Chief.

Councilmember Wells – I would like to say thank you for all that you have done. Serving as the interim city manager, doing a good job in that position, and serving as the chief, I really appreciate it. I wish you blessings in whatever you choose to do next.

Councilmember Mears – I would like to thank you also. I am a bit confused which is not normal at all. I hope that I am assuming right and that this is partially part of your decision and, I would like to thank you for what you have done for the community and the city, and I wish you well.

Voting Yea: Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

Voting Nay: Councilmember James

CLOSING COMMENTS BY GOVERNING BODY:

Councilmember James – I would like to invite you out December 15th to Forest Park High School, Fine Arts Department, presents Our Christmas Wish List holiday concert experience. They will present celebrating the holiday through the gift of music. I would like you all to make plans to come it is free and will be at the Lloyd Tarpley Theater, in Jonesboro. This is the Performance Art Center for the Clayton County Public Schools. Doors open at 6:15pm and the concert will start at 7pm. Please come and support our young people. This is the first time Forest Park High School; Fine Arts Department is hosting an event such as this.

Thank you all for coming out, thank you all for everything that you have done, here in our city. I had the chance to go to the fire department party and here are some pictures, of people on Santa's lap. It was a wonderful time. The kids are all around getting presents from Santa. Kudos to Chief Clemmons for doing this for the department, it was a wonderful event. I am a little heart heavy this evening. I do want to thank our chief for all the services he has done for our city, and I wish him well.

It is unfortunate of all the circumstances that surrounded him even having to bring a suit against the cit. I would just like to say the election is tomorrow and we also have an election coming up in our city this year and there are a lot of things you all need to consider. I wish Chief Clark the best.

Councilmember Antione – Chief Clark if you are here, I just want to let you know that you are a good man without that badge and that title. I know you have done a lot for me personally and that means a lot to me and the city. I also want to give a big shoutout to Ms. White and her staff, Ms. Hood. Thank you two for being the greatest City Clerk Department that I have ever seen.

I also want to give a shoutout to the Rock Church of Atlanta. I often tell students or just people in general, if your church is around the corner if it just happens to be missing one day, would anybody in the community notice. In Ward 2 there are churches and if you were missing people would notice. That is what Rock Church does every Friday, there is a lot of mission work that goes on there. Big shoutout to the Church of Atlanta, you all know who you are. Merry Christmas and God Bless you all.

Councilmember Gutierrez – I had an amazing time at the Christmas parade, and I had fun going and crashing the firefighter's celebration and I got to sit on Santa's lap. Just to see the joy on the children's faces is just beautiful. Thank you so much for the Forest Park Ministers Association and everything you all do. Dr. Beeler our hard work is not unseen by us. Condolences to you sir for coming here today, you are a strong man and I know because my daughter is everything to me. I am going to try and join you that day, and I am going to promote your event. On the 17th hopefully I can get some of my students out there because I know they love cars, so that is a cool thing you are doing. Make sure you RSVP for our Senior Ball that is coming up.

Next Tuesday, Johnathan Rashmir and the United Nonprofit Organization will be giving two scholarships to two Forest Park High School Students. We have finally narrowed it down to the two winners. If anyone wants to attend that it is going to be here. I am really excited to hear that, because Mr. Rashmir business is not popular here in the community. It is a business, and it is a choice, you can go there, or you can go to the other nice place on Main Street where you can get biscuits. With, if they choose to invest their money in our seniors and our youth, I am very appreciative and thankful for that. If anyone wants to come out let me know, we can add you to the list.

Councilmember Wells – First I would like to thank you all for coming out. Ms. Hood, thank you and Ms. Diane, so much. I agree with Mears, I am confused also. I do not know how much I can say, but I will say this was not just the council. It was us negotiating with Chief Clark's attorney, so I do not know where that part came from, but it confused me.

Yes, I do feel like Chief Clark is a great man, but things change, people leave, and it is okay. I am not going to let Councilmember James sit up here and act like this is all council, because this was a mutual agreement, and it takes two. So, I would like to put that out there for others that may be confused.

I do appreciate Chief Clark and what he brought to our community, but I also appreciate the officers that left, and I wish they would come back. You all have a good night, have a Merry Christmas, and remember, it is a season of giving and not about what you receive. There are some people that want get anything, so hug someone tell them you love them and do some small gesture.

Councilmember Mears - Thanks to everybody that showed up. I want to remember everybody on the search team Ms. Diane and Roy. She is seriously ill, and she has been on the search team longer than I have and the boys at the fire station are going to miss her. They do good jobs when they are called out and I want to keep them in our prayers. Thanks to everybody for coming and have a Merry Christmas and a Happy New Year.

Mayor Butler – Thanks to everyone for coming out. I do want to remind you this is the last meeting for the year unless there is a special-called meeting. We will resume on Tuesday, January 3, 2023. Election day is tomorrow go to your regular scheduled precinct to vote and have a great Christmas.

EXECUTIVE SESSION: (When an Executive Session is required, one will be called for the following issues: Personnel, Litigation or Real Estate)

ADJOURNMENT: It was moved to adjourn the Regular Council meeting at 7:36pm.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

File Attachments for Item:**2. Council Approval of Administrative Appeal (Blood Plasma Center) – Planning & Zoning; Legal****Background/History:**

During the October 3, 2022 meeting, the City Council adopted a moratorium on blood plasma centers due to the concern regarding the potential negative effects such centers might have on local neighborhoods. This arose in part due to an inquiry the City received from a potential developer of such a center and the fact that the City does not currently have any regulations controlling such centers.

The language of the moratorium provides for an appeal and/or exemption from the moratorium if the applicant can show that its proposed use would be in compliance with the anticipated changes the City might adopt.



CITY OF
FOREST PARK

City Council Agenda Item

Subject: Administrative Appeal (Blood Plasma Center) – Planning & Zoning; Legal

Submitted By: LaShawn Gardiner and Michael Williams

Date Submitted: December 22, 2022

Work Session Date: January 3, 2023

Council Meeting Date: January 3, 2023

Background/History:

During the October 3, 2022 meeting, the City Council adopted a moratorium on blood plasma centers due to the concern regarding the potential negative effects such centers might have on local neighborhoods. This arose in part due to an inquiry the City received from a potential developer of such a center and the fact that the City does not currently have any regulations controlling such centers.

The language of the moratorium provides for an appeal and/or exemption from the moratorium if the applicant can show that its proposed use would be in compliance with the anticipated changes the City might adopt. Staff has reviewed available options for the regulation of such facilities and will be submitting the following conditions to the Planning Commission for adoption as a text amendment to the City's Zoning Ordinance.

Proposed Conditions:

1. A blood plasma collection facility must not be located within one mile radius of another blood plasma collection facility.
2. Shall be located at least three hundred (300) linear feet away from any single-family residential use; elementary, middle, or high school facility; church or other house of worship facility.
3. Hours of operations for Blood Plasma Facilities shall be between 8:00 a.m. and 8:00 p.m. only.
4. Facilities must include a waiting and departure area of at least five hundred (500) square feet in area to accommodate all customers.
5. No persons shall be permitted to stand in line outside or otherwise loiter around Blood Plasma Facilities.
6. Shall only be located on major roads or highways throughout the City.
7. The minimum floor area for the facility is ten thousand (10,000) square feet.

-
8. Separate restroom facilities for customers and staff must be provided.
 9. Facilities must develop and follow a management plan for handling litter, security, and loitering. A copy of the plan must be provided to the City.
 10. Cash transactions between the facility and customers are prohibited.

Cost: \$ none

Budgeted for: _____ **Yes** _____ **No**

Financial Impact:

N/A

Action Requested from Council:

Staff needs direction from Council on this matter.

WILSON BROCK & IRBY, L.L.C.

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November 28, 2022

VIA FIRST CLASS MAIL & E-MAIL: DWHITE@FORESTPARKGA.GOV

Forest Park Mayor and City Council
c/o Ms. S. Diane White, CMC, City Clerk
City of Forest Park
785 Forest Parkway
Forest Park, GA 30297

RE: Administrative Appeal, Moratorium Exemption Request, and Ante Litem Notice by Collection Center Property Company ("CCPC") for Property Located at **833 Forest Parkway** (Parcel No. 13050D B002) (the "Subject Property") Challenging the Application of a Moratorium to a Proposed Blood Plasma Collection Center.

Dear Ms. White:

My firm represents CCPC, which owns the Subject Property that is the subject of this administrative appeal. The Subject Property is currently developed with a vacant pharmacy development and CCPC desires to redevelop this facility for use as a blood plasma collection center. Architects working on this redevelopment attempted to apply for building permits but the city refused to accept the application(s) because the city council previously adopted Resolution No. 22-23. This resolution imposed a moratorium prohibiting city staff from accepting "applications of any kind for blood and/or plasma donation centers or similar facilities." For the reasons presented below, CCPC properly vested its rights to redevelop the Subject Property for use as a blood plasma collection center before the moratorium was adopted. Therefore, the city has no legal authority to refuse to accept and process CCPC's permit application(s) for the proposed blood plasma collection center.

I. Georgia Vested Rights Law

Under Georgia law, a "vested right" is an interest "which it is proper for the state to recognize and protect and of which the individual cannot be deprived arbitrarily without injustice."¹ There are multiple ways for a landowner to vest rights to development entitlements, the first step of which includes obtaining: (1) informal approvals of a development plan by a government official or (2) official assurances that permits would likely issue (collectively "Official

¹ *Recycle & Recover, Inc. v. Georgia Bd. of Nat. Res.*, 266 Ga. 253, 254, 466 S.E.2d 197, 199 (1997) (citing *Hayes v. Howell*, 251 Ga. 580, 584, 308 S.E.2d 170, 175 (1983)).

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Assurances”).² A landowner vests their rights to the relevant development entitlements if they make a substantial change in financial position in reliance on prior Official Assurances.³

Once established, vested rights are constitutionally protected and a local government cannot deprive an individual of them without following constitutional requirements for due process and fair application of the laws.⁴ Once a landowner has vested rights to development entitlements, longstanding Georgia law makes those development entitlement rights immune to subsequent legislation that: (1) prohibits or restricts the vested development proposal and/or (2) imposes a moratorium on the proposed land use.⁵

II. CCPC’s Vested Rights Argument

A. CCPC’s Official Assurances

CCPC vested its entitlement to redevelop the Subject Property with a blood plasma collection center by obtaining Official Assurances from the planning staff and substantially changing its financial position in reliance on those assurances. CCPC contracted for the purchase of the Subject Property and, during its due diligence period, sought the planning staff’s official confirmation that a blood plasma collection center could be developed under its current zoning. On August 31, 2022, the planning staff issued a zoning verification letter that included the following verbatim certifications:

- “1. The zoning classification of the property is IC (Institutional Commercial).
2. The proposed use, a Blood Plasma Collection Center, is an approved use within the Institutional Commercial District and falls under the “Medical offices, clinics, and physical therapy facility” category.
3. The parking classification category for this property would fall under “clinics, health and medical centers” and as such, the parking requirement is 1 parking space per each 200 feet of gross floor area. After calculating the number of parking spaces needed for this location, 56 parking spaces will be required. The current configuration allows for 59 parking spaces. Thus, the requirement has been met.”

CCPC’s zoning verification letter included Official Assurances that the Subject Property’s zoning permitted its proposed blood plasma collection center by-right and the existing on-site parking was complied with the zoning ordinance’s minimum parking requirement.

B. CCPC’s Subsequent Financial Reliance on the Official Assurances

In reliance on the August 31st zoning verification letter, among other things, CCPC:

² *City of Duluth v. Riverbrooke Properties, Inc.*, 233 Ga. App. 46, 50-51, 502 S.E.2d 806, 810-11 (1998); *WMM Properties, Inc. v. Cobb County*, 255 Ga. 436, 439, 339 S.E.2d 252, 255 (1986); *DeKalb County v. Chapel Hill, Inc.*, 232 Ga. 238, 244, 205 S.E.2d 864, 868 (1974).

³ *Id.*

⁴ *Hayes v. Howell* 251 Ga. 580, 584, 308 S.e.2d 170 (1983).

⁵ See *WMM Properties, Inc. v. Cobb County*, *supra*.

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1. September 16, 2022
 - CCPC waived the remainder of its contractual due diligence period, which made its prior earnest money payment of \$50,000 nonrefundable.
 - CCPC paid an additional \$25,000 in nonrefundable earnest money (funds wired 9/19/22).
2. October 19, 2022
 - CCPC closed on the purchase of the property and paid the remainder of the \$1.7 million purchase price (total spend ~\$1.8+ million including acquisition expenses).

The Forest Park City Council adopted Resolution No. 22-23, which imposed the moratorium against blood plasma collection centers, on October 3, 2022.

C. CCPC's Vested Development Rights

As explained above, Georgia law specifically forbids local governments from retroactively invalidating vested development rights without following constitutional requirements for due process of law and fair and equitable application of the law, which is exactly what happened to CCPC.⁶ So, the dispositive question in this appeal is whether CCPC properly vested its right to develop a blood plasma collection center on the Subject Property prior to that date.

CCPC vested its rights to redevelop the Subject Property with a blood plasma collection center by taking several steps in reliance on its zoning verification letter. CCPC executed a contract to purchase the Subject Property on July 18, 2022, which ultimately triggered a 60-day due diligence period during which it could terminate the contract without penalty. CCPC voluntarily terminated its due diligence period in reliance on the Official Assurances that it received from the planning staff on August 31st, which immediately imposed an irrevocable obligation for it to pay and/or forfeit \$75,000 in earnest money. Because CCPC was unaware of the October 3rd moratorium, it closed on the Subject Property at a total cost of \$1.80 million (including ~\$100,000 of acquisition expenses) on October 19th.

CCPC contends that its ultimate purchase of the Subject Property at extraordinary expense supports its vested rights claims. Nevertheless, reasonable minds may debate whether CCPC's vested rights were bolstered when it closed on the Subject Property since that closing took place after the city council adopted the moratorium. Even so, it is indisputable that CCPC relinquished valuable contract rights and any rights it had to its initial \$50,000 earnest money payment, as well as making an additional nonrefundable \$25,000 earnest money payment in reliance on the Official Assurances it received on August 31st. And it took all of these actions **before** the city council adopted the moratorium against blood plasma collection centers. Therefore, under longstanding Georgia law, CCPC vested its rights to redevelop the Subject Property with its intended land use.

Because CCPC properly vested its rights to its proposed blood plasma collection center, the city lacked any legal authority to reject CCPC's building permit application(s). Therefore, that

⁶ See *WMM Properties, Inc. v. Cobb County*, supra.

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refusal was inherently arbitrary, capricious, and it violated CCPC's constitutional rights to due process and equal protection under the law.

III. The City Lacks any Authority to Deny CCPC's Appeal/Moratorium Exemption

A. The moratorium is void because it does not state a specific public emergency.

On the first page of Resolution 22-23, which purportedly imposed the 180-day moratorium, the city council makes reference to its "inherent ability to impose moratoria on an emergency basis," and on the second page, the city council expresses a need to protect the public's interest. In section I(a), the resolution asserts the following:

"Substantial disorder, detriment and irreparable harm would result to citizens, businesses, and City of Forest Park [sic] if the current land use regulation scheme in and for the above described uses in the City were to be utilized by property owners prior to a more thorough review..."

The resolution presents nothing further regarding the emergency that the city council deemed to justify the moratorium.

Based on its assertion of a public emergency, the city council adopted the resolution during its October 3, 2022 regular meeting. The moratorium was never listed on the meeting agenda, so it was impossible for anyone who might be impacted to know that this item was going to be handled that day. Instead, the moratorium was added to the agenda during the meeting, with no prior public notice.⁷ And even then, the city council refused to publicly discuss the necessity for its emergency moratorium, which it chose to discuss exclusively in executive session.⁸ Upon concluding its executive session, the city council unanimously voted to adopt the moratorium without any public notice or opportunity to be heard.⁹

To be valid, a moratorium must state with specificity the emergency public purpose that necessitates its adoption.¹⁰ In Dekalb County v. Townsend Associates, Inc., the Georgia Supreme Court considered the validity of a moratorium on sewer taps. In that case, the court cited the following legal rule:

"To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."¹¹

⁷ See Approved Minutes for the October 3, 2022 City Council Regular Session, p. 9.

⁸ *Id.*

⁹ *Id.*

¹⁰ *DeKalb Co. v. Townsend Associates, Inc.*, 243 Ga. 80 (1979); *Davidson Mineral Properties, Inc. v. Monroe County*, 257 Ga. 215 (1987).

¹¹ *Dekalb Co. v. Townsend Associates*, *supra* (citing *Mack v. Westbrook*, 148 Ga. 690, 692, 98 S.E.2d 339, 341 (1918)).

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Neither the resolution nor the October 3rd meeting minutes specify the particular circumstances that generated a public necessity for the imposition of the “emergency moratorium.” Instead, the resolution’s justification for the moratorium simply rephrases the legal requirement by asserting the existence of a public emergency without stating exactly what it is. Furthermore, the city council did not publicly discuss whether the moratorium was “reasonably necessary” for its intended purpose or unduly oppressive to landowners.

This is particularly fatal to the legality of the present moratorium given the circumstances under which it was adopted: (1) no advance notice or warning given to potentially affected landowners or the public, (2) its addition to the city council’s meeting agenda **after the start of the meeting during which it was adopted**, and (3) the city council’s intentional prevention of any public explanation whatsoever of the necessity of, justification for, or reasonableness of the moratorium.

B. The city council cannot deny this request because the exemption process lacks ascertainable approval standards.

The preamble of the Georgia constitution, also known as the bill of rights, provides a summary of the protected rights of the people, which include:

1. ***Life, liberty, and property.*** No person shall be deprived of life, liberty, or property except by due process of law; and
2. ***Protection to person and property; equal protection.*** Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

The body of Georgia’s constitution elaborates the first protection enumerated above by stating that “...private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.”¹² Georgia courts have enforced this constitutional imperative by requiring governmental permitting and licensing decisions to be made pursuant to ascertainable standards.¹³ The requirement for ascertainable standards is intended to prevent government officials from depriving people of their constitutional rights by legislative or administrative fiat. Stated another way, the exercise of discretion by local governments must be tempered with ascertainable standards by which an applicant can intelligently seek to qualify for approval.¹⁴

In Davidson Mineral Properties, Inc. v. Monroe Co., our Supreme Court struck down a moratorium that failed to provide sufficient objective standards to meet due process requirements because: “[it] allow[ed] the Board absolute discretion to grant or deny permission for construction

¹² GA CONST. ART. I. SECT. III. PARA. I.

¹³ *Arras v. Herrin*, 255 Ga. 11, 12, 334 S.E.2d 677 (1985) (A licensing ordinance must provide sufficient objective standards to control the discretion exercised by governing officials).

¹⁴ *Id.*

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for commercial uses with no standards whatsoever to control that discretion nor do they provide any notice to applicants of the criteria...Thus, the [moratorium] resolutions are void because they improperly allow uncontrolled discretion by the Board in granting or denying a permit application and are otherwise too vague, indefinite and uncertain to be enforceable..." 257 Ga. 215, 216-217 (1987). Here, the moratorium is invalid for very similar reasons.

After extensively stating the law of vested rights, the resolution states "...the City of Forest Park recognizes that, unknown to the City, de facto vesting may have occurred" and it goes on to establish procedures to provide moratorium exemptions "**where vesting has occurred.**" Pursuant to those procedures, the mayor and city council review "any facts or circumstances which the applicant feels substantiates a claim for vesting and the grant of an exemption."¹⁵ Therefore, the stated justification for the exemption process is to provide relief for anyone who may have vested their rights before the moratorium's adoption.

However, despite the fact that the moratorium exemption is presented as a vested rights analysis, its approval standards bear no relation to Georgia vested rights law. Section III (1) of the moratorium resolution provides the following:

"The Mayor and Council may grant such [moratorium] exemption where the proposed establishment(s) is/are **deemed to be in conformity with the proposed development ordinances, proposed Zoning Ordinance and/or the proposed Comprehensive Land Use Plan that are to be considered during the term of this moratorium.**" (*Emphasis Added.*)

The resolution then calls for the mayor and city council to consider various factors such as the proposed development's "general terms," the proposed use, the proposed development plans, the benefits of the proposed development to the City, and the comprehensive land use plan.

Instead of confirming whether vesting has already occurred, they constitute an attempt to retroactively apply laws and policies that have not even been finalized, let alone adopted. There is no way for an applicant, or the city for that matter, to know the exact form or provisions that will be included in ordinances and plans that it does not expect to complete or adopt until April of next year. Furthermore, there is nothing stopping the mayor and city council from changing any draft legislation to frustrate a disfavored exemption request. Adding insult to injury, the "and/or" clause in the approval standard prevents applicants from having any understanding as to which of the draft documents will be applied to any given exemption request.

The city's exemption approval standards are unconstitutionally vague because they are so broad that they do nothing: (1) to constrain the governing body's administrative discretion when it reviews individual applications; or (2) to inform applicants of exactly what they need to show to qualify for relief. Therefore, the city lacks the authority to deny CCPC's moratorium exemption request.

¹⁵ See Resolution 22-23, Sect. III (1).

WILSON BROCK & IRBY, L.L.C.

Administrative Appeal/Moratorium Exemption – 833 Forest Parkway

November 28, 2022

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For all of the foregoing reasons, CCPC has clearly demonstrated its acquisition of vested rights, as proscribed by Georgia law. Therefore, it has a clear legal right to have its exemption request approved. Furthermore, the mayor and council lack any legal authority to deny CCPC's exemption request because the approval standards for such relief fail to meet minimum constitutional requirements for due process of law and equal protection under the laws.

CCPC is hopeful that this matter can be resolved without resorting to litigation. However, in the event CCPC is forced to pursue litigation after exhausting its administrative remedies with the city, it fully intends to seek all damages and relief to which it is entitled under Georgia law, including but not limited to, attorney's fees and expenses pursuant to O.C.G.A. § 13-6-11.

Sincerely,

WILSON BROCK & IRBY, L.L.C.



By: Harold Buckley Jr., AICP

Attorneys for Collection Center Property Company

Attachments – Table of Exhibits (incorporated herein by reference)

Mayor Angelyne Butler (via email - abutler@forestparkga.gov)

Council Member Kimberly James, Dist. 1 (via email - kjames@forestparkga.gov)

Council Member Dabouze Antoine, Dist. 2 (via email - dantoine@forestparkga.gov)

Council Member Hector Gutierrez, Dist. 3 (via email - hgutierrez@forestparkga.gov)

Council Member Latresa Akins-Wells, Dist. 4 (via email - lwells@forestparkga.gov)

Council Member Allan Mears, Dist. 5 (via email - amears@forestparkga.gov)

HB:

**CCPC APPEAL AND EXEMPTION REQUEST
TABLE OF EXHIBITS**

RENDERING OF PROPOSED REDEVELOPMENT.....	EXHIBIT A
INFORMATION ON IMMUNOTEK BIO CENTERS.....	EXHIBIT B
AGREEMENT OF SALE (JULY 18, 2022).....	EXHIBIT C
TRANSMITTAL FOR ZONING VERIFICATION LETTER (AUG. 31, 2022).....	EXHIBIT D
FIRST AMENDMENT TO AGREEMENT OF SALE (SEPT. 16, 2022).....	EXHIBIT E
BUYER SETTLEMENT STATEMENT (OCT. 19, 2002).....	EXHIBIT F
LS DESIGN GROUP PLLC INVOICE (NOV. 1, 2002).....	EXHIBIT G
TRANSMITTAL FOR RESOLUTION 22-23 (Nov. 3, 2022).....	EXHIBIT H
AGENDA FOR OCT. 3, 2022 CITY COUNCIL MEETING.....	EXHIBIT I
MINUTES FOR OCT. 3, 2022 CITY COUNCIL MEETING.....	EXHIBIT J

8/30/2023 11:03:23 AM

1 ARCHITECTURAL RENDERING



PROJECT: INTERIOR TENANT IMPROVEMENT FOR:
FOREST PARK, GA
833 FOREST PARKWAY
DATE: 8-16-23
DRAWN BY: [Signature]
CHECKED BY: [Signature]
SCALE: AS SHOWN
SHEET: A2.1



Sheet Name:
Location: d

INTERIOR TENANT IMPROVEMENT FOR:
FOREST PARK, GA
833 FOREST PARKWAY

IMMUNOTEK
5750 JENNIFER ST. SUITE 302 COLLEGE PARK, MD 20740
301.550.2900 www.immunotek.com

Revisions	Description	Date	By
1			



IMMUNOTEK

BIO CENTERS



Exhibit B



IMMUNOTEK
BIO CENTERS

ALDI RENOVATION





IMMUNOTEK
BIO CENTERS

Key Leadership

Jerome Parnell, III

CEO and President
Board Member

Kathryn Rost

VP, New Center Development

Greg Strategier

Chief Asset Officer
Board Member

Jeff Robinson
VP, Quality Assurance

Scott Ramsey

Chief Operating Officer
Board Member

Michael Messick
VP, Regulatory Affairs

Tom Pennison

Chief Finance Officer

Aaron Renshaw

Director, Real Estate Acquisitions

Jay Williams

Chief Development Officer



IMMUNOTEK
BIO CENTERS

ImmunoTek – What We Do

ImmunoTek Bio Centers is a bio-tech company committed to the safe collection of human blood plasma. ImmunoTek operates plasma collection centers also known as plasmapheresis centers.

- The raw material (source plasma) is collected and shipped to a fractionation facility owned by a pharmaceutical company to produce plasma protein therapies and vaccines.
- Medical applications for plasma drug therapies include: burn victims, hemophiliacs, biologic products, albumin and specialty drugs.
- The facilities are state of the art medical facilities, approved and licensed by the FDA, EU and other regulatory authorities.
- The automated plasmapheresis process takes whole blood from donors, separates the plasma from the red cells in a centrifuge and returns the red cells to the donor.
- Rigorous screening and testing protocols are required and strictly enforced.

IMMUNOTEK
BIO CENTERS

Community Impact

A typical center will employ 25-30 people, many of whom are skilled technicians that are hired from right here in the community.

Positions include a Center Director, Assistant Managers, Physicians, Quality Assurance, Phlebotomists, Medical Screeners, Plasma Processors, and General Technicians.

- Salary ranges are competitive in the local market.
- The Director and QA \$65K to \$75K
- Our average hourly wage for non-licensed personnel \$12.50 to \$13.00 per hour. We provide on the job training and certification. Most of the positions are full time.

The economic impact of a typical center on the community is estimated at approximately \$2,500,000 per year.

IMMUNOTEK
BIO CENTERS

Hours of Operation

ImmunoTek operating hours will fluctuate over time and are subject to change depending on location:

- Initially:
 - Tuesday – Saturday
 - 10am – 4pm
- Approximately 6 Months
 - Monday – Saturday
 - 8am -6pm
- As the Center matures hours are adjusted to meet the donor needs.



IMMUNOTEK
BIO CENTERS

TYPICAL EXTERIOR SIGNAGE





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TYPICAL PYLON SIGNAGE





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Ground-Up Build





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Ground-Up Build





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LOBBY





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BIO CENTERS

LOBBY





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NEW DONOR REGISTRATION





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SCREENING





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SCREENING





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CONTROL COUNTER





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DONOR FLOOR





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DONOR FLOOR





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PLASMA PROCESSING





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BIO CENTERS

PLASMA PROCESSING





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PLASMA PROCESSING





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BIO CENTERS

SHIPPING





IMMUNOTEK
BIO CENTERS

FREEZER





IMMUNOTEK
BIO CENTERS

TUTELA





IMMUNOTEK
BIO CENTERS

STERILE SUPPLY





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STERILE SUPPLY





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EXAM ROOMS





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BIO CENTERS

Concerns:

1. Traffic - Will not be negatively impacted. Existing ingress/egress will satisfy the business.
2. Site Security – Exterior and interior cameras are installed at each site. Security guard is typically not necessary but will be implemented if needed.
3. Professional Looking Facility
 - Landscaping
 - Free of debris/trash
 - Well maintained parking lot
 - *Paved/Stripped
 - *Regular trash pick up and sweeping
 - Well maintained exterior and interior
 - Signage – free of broken panels/burnt out lighting
4. Parking Lot - Well lit and maintained
5. Loitering – We do not allow people to loiter inside or outside of the facility



IMMUNOTEK
BIO CENTERS

Appendix

IMMUNOTEK
BIO CENTERS

ImmunoTek History

2002-2006

International Bio Resources, LLC (IBR) Developed, Opened, Licensed, and Operated 13 plasma centers.

An additional 23 centers were purchased in June 2003 and operated through 2006.

All 36 centers were sold along with 25 additional centers in various stages of development.

IBR managed 39 FDA Inspections and 31 EU Inspections

IBR managed approximately 3 million procedures

2007-2010

IBR Developed, Opened, Licensed, and Operated 48 plasma centers.

All 48 were sold on or before June 30, 2010.

IBR developed advanced Standard Operating Procedures ("SOPs"), Training Manuals and New Center Development Plans.

2012

The former COO, CFO, and VP, Operations of IBR formed a new company called ImmunoTek Bio Centers, LLC and acquired the total assets of IBR in November 2012.

Assets included all intellectual property: Standard Operating Procedures ("SOPs"), Training Manuals and New Center Development Plans.

2014 – present

ImmunoTek opened first center in March 2014.

Since March, ImmunoTek has:

Opened 39 centers

Acquired 21 FDA Licenses

Acquired 22 EU certificates

Acquired numerous compliance licenses/certifications/approvals from customer audits and several regulatory agencies such as CLIA, PPTA, COLA, and AHCA.



IMMUNOTEK
BIO CENTERS



ANTIBODIES

Transplants, Rh-Negative Pregnancies,
Immune Deficiency

ALBUMIN

Surgeries. Bacterial Infections

COAGULATION FACTORS

Trauma, Bleeding Disorders

INHIBITORS

Hereditary Angioedema, Lung or
Liver Disease

GivingPlasma.org



AGREEMENT OF SALE

This **AGREEMENT OF SALE** (this “*Agreement*”) is dated July 18, 2022 (the “Effective Date”) by and between **SUMMIT REALTY LLC (DE)**, a Delaware limited liability company (“*Seller*”), and **COLLECTION CENTER PROPERTY COMPANY, LLC**, a Delaware limited liability company (“*Purchaser*”).

PRELIMINARY STATEMENT

Seller is the owner of (a) certain lands lying in Land Lot 50 of the 13th District, County of Clayton, State of Georgia, described on Exhibit A attached hereto and commonly known as 833 Forest Parkway, City of Forest Park, Clayton County, Georgia, as more particularly described on Exhibit A attached hereto (the “*Land*”), (b) all buildings, structures, fixtures and improvements presently located on the Land (the “*Improvements*” and, together with the Land, the “*Real Property*”), (c) all easements, licenses, rights and appurtenances relating to the Real Property (the “*Rights*”), (d) intentionally deleted; and (e) if and to the extent assignable by Seller, all right, title and interest of Seller, if any, in and to any intangible personal property relating exclusively to the Real Property, including all licenses, permits, plans, specifications, operating manuals, guarantees and warranties (the “*Intangible Property*”).

Seller desires to sell, convey, transfer and assign to Purchaser, and Purchaser desires to purchase from Seller, the Land, the Improvements, , the Rights, Seller’s rights as landlord under the Lease, and the Intangible Property (collectively, the “*Property*”), subject to the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

SALE OF PROPERTY; PRICE; PAYMENT TERMS

1.1 Sale of Property. Seller hereby agrees to sell, convey, transfer and assign to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Property upon the terms and conditions set forth herein. No portion of the Price (as defined herein) shall be deemed to have been paid for the Personal Property.

1.2 Price. The purchase price for the Property is One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) (the “*Price*”).

1.3 Payment Terms. Purchaser shall pay the Price as follows:

(a) Earnest Money. Within three (3) business days after the Opening of Escrow (as hereinafter defined), Purchaser agrees to deposit in escrow (“*Escrow*”) with National Land Tenure Company, LLC (the “*Title Company*”, “*Title Insurer*” and “*Escrow Agent*”), as agent for Chicago Title Insurance Company, having an office at 950 Franklin Avenue, Garden City, NY 11530, Attention: James P. Haggerty, by federal wire transfer or other immediately available funds, an earnest money deposit in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) (together

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with interest earned therein while invested by Escrow Agent, the “**Initial Deposit**”). The date the Escrow Agent receives a copy of the fully-executed Agreement shall be deemed the “Opening of Escrow.” The Escrow Agent will not be required to deposit the Deposit (or any other funds deposited by Purchaser with Escrow Agent) in an interest-bearing account unless and until the Escrow Agent receives from Purchaser a fully completed and signed W-9, setting forth the name, address and EIN of Purchaser. (b) upon closing of title, Purchaser shall pay the balance of the Price, with credit for the Deposit, as hereinafter defined, plus or minus any net closing adjustments, by wire transfer of immediately available funds to an account designated in writing by Seller. If Purchaser has not terminated this Agreement before the end of the Due Diligence Period, Buyer shall deposit in escrow with the Escrow Agent, by federal wire transfer or other immediately available funds, an additional deposit in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00) (together with interest earned therein while invested by Escrow Agent, the “**Additional Deposit**”) on or before one (1) business day after the expiration of the Due Diligence Period. As used herein “Deposit” shall mean the Initial Deposit together with the Additional Deposit (after the Additional Deposit has been delivered to Escrow Agent; and for the sake of clarity, unless and until Purchaser deposits in escrow the Additional Deposit, all references to Deposit herein shall mean the Initial Deposit).

1.4 Escrow Terms.

(a) Escrow Agent shall hold the Deposit in a noninterest-bearing trust account until disbursed as herein provided. Escrow Agent shall hold and disburse the Deposit in the following manner:

(i) to Seller at the Closing (as hereinafter defined); or

(ii) to Seller upon receipt of written demand therefor from Seller, stating that Purchaser has defaulted in the performance of Purchaser’s obligations under this Agreement and the facts and circumstances underlying such default or that Seller is otherwise entitled to the Deposit under the provisions of this Agreement; *provided, however*, that Escrow Agent shall not honor such demand until at least ten (10) days after it has sent a copy of such demand to Purchaser, nor thereafter if Escrow Agent receives a written notice of objection from Purchaser in accordance with the provisions of Section 1.4(b); or

(iii) to Purchaser upon receipt of written demand therefor from Purchaser, stating that either (x) this Agreement has been terminated pursuant to a provision hereof which states that Purchaser is entitled to the Deposit upon termination, and specifying the basis for such termination, or (y) Seller has defaulted in the performance of Seller’s obligations under this Agreement and the facts and circumstances underlying such default or that Purchaser is otherwise entitled to the Deposit under the provisions of this Agreement; *provided, however*, that Escrow Agent shall not honor such demand until at least ten (10) days after it has sent a copy of such demand to Seller, nor thereafter if Escrow Agent receives a written notice of objection from Seller in accordance with the provisions of Section 1.4(b); or

(iv) to Purchaser upon receipt of a written notice from Purchaser terminating this Agreement pursuant to Section 3.1; or

(v) as otherwise expressly set forth in this Section 1.4.

(b) Upon receipt of written demand for the Deposit by Seller pursuant to Section 1.4(a)(ii) or by Purchaser pursuant to Section 1.4(a)(iii), Escrow Agent shall promptly send a copy thereof to the other party. The other party will have the right to object to the delivery of the Deposit by sending written notice of such objection to Escrow Agent within the greater of five (5) days or three (3) business days after Escrow Agent delivers a copy of the written demand to the objecting party but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice, Escrow Agent shall promptly send a copy thereof to the party that made the written demand for the Deposit.

(c) In the event of any dispute between the parties regarding the Deposit, Escrow Agent shall disregard all instructions received and either (i) hold the Deposit until the dispute is resolved and Escrow Agent is advised of this fact in writing by both Seller and Purchaser, or Escrow Agent is otherwise instructed by a final judgment of a court of competent jurisdiction, or (ii) deposit the Deposit into a court of competent jurisdiction (whereupon Escrow Agent will be released and relieved of any and all liability and obligations hereunder from and after the date of such deposit).

(d) If Escrow Agent is uncertain as to its duties or rights hereunder or receives conflicting instructions, claims or demands from the parties hereto, or instructions which conflict with any of the provisions of this Agreement, Escrow Agent will be entitled (but not obligated) to refrain from taking any action other than to keep safely the Deposit until Escrow Agent is instructed otherwise in a writing signed by both Seller and Purchaser, or by final judgment of a court of competent jurisdiction.

(e) Escrow Agent may rely upon, and will be protected in acting or refraining from acting upon, any written notice, instruction or request furnished to it hereunder and believed by Escrow Agent to be genuine and to have been signed or presented by the proper party or parties.

(f) Seller and Purchaser shall jointly and severally hold Escrow Agent harmless against any loss, damage, liability or expense incurred by Escrow Agent not caused by its willful misconduct or gross negligence, arising out of or in connection with its entering into this Agreement and the carrying out of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim of liability or participating in any legal proceeding. Escrow Agent may consult with counsel of its choice, and will have full and complete authorization and protection for any action taken or suffered by Escrow Agent hereunder in good faith and in accordance with the opinion of such counsel.

(g) Escrow Agent may resign at will and be discharged from its duties or obligations hereunder by giving notice to Purchaser and Seller in writing of such resignation specifying a date when such resignation will take effect, provided that (i) prior to such resignation a substitute escrow agent is approved in writing by Seller and Purchaser, which approval shall not be unreasonably withheld, conditioned or delayed and delivery of the Deposit to such substitute escrow agent, or (ii) Escrow Agent deposits the Deposit with a court of competent jurisdiction. After such resignation and delivery of the Deposit to such substitute escrow agent or to a court of

competent jurisdiction, as the case may be, Escrow Agent will have no further duties or liability under this Agreement.

(h) Purchaser and Seller, together, will have the right to terminate the appointment of Escrow Agent hereunder by giving to Escrow Agent notice of such termination, specifying the date upon which such termination will take effect and designating a replacement Escrow Agent, who shall sign a counterpart of this Agreement. Upon demand of such successor Escrow Agent, the Deposit shall be turned over and delivered to such successor Escrow Agent, who will thereupon be bound by all of the provisions hereof.

(i) Escrow Agent's agreements and obligations hereunder will terminate and Escrow Agent will be discharged from further duties and obligations hereunder upon final payment of the Deposit in accordance with the terms of this Agreement.

ARTICLE II TITLE TO REAL PROPERTY

2.1 Title to Real Property. Title to the Real Property shall be insurable at regular rates by the Title Company, subject only to the matters set forth on Exhibit B attached hereto and all other matters to which Purchaser does not object in accordance with Section 2.3 (collectively, the ***"Permitted Exceptions"***). In no event shall Permitted Exceptions include any Mandatory Cure Items (as hereinafter defined).

2.2 Right to Pay Off Monetary Encumbrances. Seller will have the right to pay off any monetary encumbrances against the Property on the Closing Date (as hereinafter defined) out of the cash then payable provided (i) recordable instruments of release or discharge of such encumbrances in form and substance reasonably satisfactory to Purchaser's counsel are delivered to the Title Insurer at the Closing and the Title Insurer agrees to remove such encumbrances from the title policy that will be issued to Purchaser for the Real Property at no additional premium, or (ii) if the holder of the monetary encumbrance is an institutional lender, a payoff letter in form and substance reasonably satisfactory to Purchaser's counsel is delivered to the Title Insurer at the Closing and the Title Insurer agrees to remove such encumbrance from the title policy which will be issued to Purchaser for the Real Property.

2.3 Title Defects. No later than ten (10) business days prior to the Closing Date (as hereinafter defined), Purchaser shall furnish to Seller a copy of Purchaser's title commitment and all documents listed as exceptions therein (the ***"Title Report"***), together with a copy of Purchaser's survey (the Survey"), if any obtained by Purchaser at Purchaser's expense, and a statement specifying any defects in title and/or survey which are objected to by Purchaser (***"Purchaser's Statement"***). Seller shall notify Purchaser within three (3) business days after receipt of Purchaser's Statement whether Seller will remove any defects identified therein. If Seller agrees in writing to remove any defects identified in Purchaser's Statement, Seller will be entitled to one or more extensions of the Closing Date (not to exceed sixty (60) days in the aggregate) in order to remove such defects. If Seller fails to respond to Purchaser's Statement within such three (3) business day period, Seller will be deemed to have elected not to remove such defects. If Seller does not agree to remove any defects (or, pursuant to the preceding sentence, Seller is deemed to

have elected not to remove any defects), Purchaser will have the right to terminate this Agreement by written notice given to Seller and Escrow Agent on or prior to the Closing Date. If Purchaser elects to terminate this Agreement pursuant to the immediately preceding sentence, Escrow Agent shall return the Deposit to Purchaser and this Agreement and all rights and obligations of the parties hereunder will be null and void, except for those rights and obligations that expressly survive the termination of this Agreement. If Purchaser fails to timely terminate this Agreement pursuant to this Section 2.3, Purchaser will be deemed to have waived such defects and agreed to close title without abatement or reduction of the Price. Notwithstanding anything to the contrary contained in this Agreement or in any document contemplated herein, citation to Permitted Exceptions may be omitted in whole or in part in the deed for the Real Property without giving rise to any liability on Seller's part, irrespective of any covenant or warranty by Seller that may be contained in such deed. Purchaser hereby acknowledges that **TIME IS OF THE ESSENCE** with respect to the timely delivery of any termination notice pursuant to this Section 2.3. If, for any reason, Purchaser fails to timely deliver a termination notice to Seller pursuant to this Section 2.3, Purchaser will be deemed to have irrevocably waived any right to terminate this Agreement pursuant to this Section 2.3. Notwithstanding anything herein to the contrary, Seller shall not have the right to elect not to cure any Mandatory Cure Items (as hereinafter defined) affecting the Property. Purchaser is not required to object to any Mandatory Cure Items, and, irrespective of whether Purchaser objects to any Mandatory Cure Items, Seller is required to cure (and remove of record) all of the Mandatory Cure Items at or prior to Closing and Seller covenants to remove the same. The phrase "**Mandatory Cure Items**" as used herein means (w) any memorandum of lease or other recorded evidence of a lease, license or other occupancy agreement encumbering the Property, (x) encumbrances or defects to title which by their terms require the payment of money, whether in installments or at a fixed time or otherwise, including, without limitation, mortgages, deeds of trust, mechanic's or materialmen's liens, judgments, liens, created by or with the consent of Seller, including those associated with public improvement districts, and special assessments or (y) any lien or encumbrance placed (or suffered or incurred) upon the Property on or subsequent to the date hereof with Seller's consent or as a result of Seller's action or omission. For the avoidance of doubt, Purchaser shall have all its remedies set forth in Section 9.3(c) hereof upon Seller's failure to cure by the Closing Date any title matter that Seller is obligated to cure pursuant to the terms and application of this Section.

ARTICLE III INSPECTION OF THE PROPERTY

3.1 Right of Entry. Subject to the terms and conditions of this Agreement, Seller shall provide Purchaser and its consultants and contractors reasonable access to the Real Property from time to time from and after the date hereof through the Closing Date for the purpose of inspecting the Real Property, provided, however Purchaser shall not undertake any tests and studies, provided further that (a) Purchaser promptly repairs any damage to the Real Property caused by such entry, and (b) Purchaser restores the Real Property to the condition that existed immediately prior to such entry. Notwithstanding anything to the contrary contained in this Agreement, Purchaser and each of Purchaser's consultants and contractors (i) shall not disclose to Seller, any governmental agency or any other third party (other than attorneys, lenders and insurers who agree to keep the information confidential) its findings from its environmental inspections or investigations, unless

requested in writing by Seller or required by any law, regulation, rule or ordinance, and (ii) shall not collect any soil borings, soil vapor, surface or groundwater samples or undertake any other intrusive or invasive physical investigations of any portion of the Property. Purchaser's obligations under clause (i) of the immediately preceding sentence will survive any termination of this Agreement. Access to the Real Property will at all times be during regular business hours, undertaken with not less than forty-eight (48) hours prior notice to Seller and with a representative of Seller present, if so requested by Seller. Prior to entering upon the Real Property, Purchaser shall deliver to Seller certificates satisfactory to Seller in all respects evidencing that Purchaser's consultants and contractors, including any subcontractors, maintain commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) aggregate and workers' compensation insurance, in form and substance adequate to insure against all liability of Purchaser and its consultants and contractors, respectively, and each of their respective agents, employees and contractors, arising out of inspections and testing of the Real Property or any part thereof made by or on Purchaser's behalf. Such insurance certificates must name Seller and any other parties designated by Seller as an additional insured with respect to the foregoing coverage. Purchaser shall not suffer or permit any lien to be filed against any portion of the Property in connection with the rights granted to Purchaser in this ARTICLE III. Purchaser shall indemnify, hold harmless and defend Seller, its affiliates, and their respective officers, directors, employees and agents from and against all suits, actions, proceedings, losses, damages, liens, expenses and costs, including, without limitation, reasonable counsel fees, arising out of or in any way related to the exercise of the rights granted to Purchaser in this Section 3.2. The foregoing commercial general liability insurance policy must include a contractual liability endorsement evidencing coverage of Purchaser's indemnification obligations under this Section 3.2. Purchaser's indemnification obligation under this Section 3.2 will survive any termination of this Agreement and the Closing of the transactions contemplated herein.

3.2 Property Materials. Purchaser acknowledges that Seller has delivered or made available to Purchaser copies of the documents listed on Schedule 3.3 attached hereto, in each case, to the extent the same are in Seller's possession (all of the foregoing being collectively referred to herein as the "**Property Materials**"). If this Agreement is terminated for any reason, Purchaser shall promptly return (or certify as having destroyed) all copies of materials furnished by Seller or Seller's agents or representatives relating to the Property, including, without limitation, the Property Materials. If this Agreement is terminated for any reason, upon Seller's request, Purchaser shall deliver to Seller copies of any reports, investigations, studies and/or tests obtained by Purchaser in connection with Purchaser's investigation of the Property. Purchaser's obligations under this Section 3.2 will survive any termination of this Agreement.

3.3 Due Diligence Period. Notwithstanding anything to the contrary contained in this Agreement, it is agreed that Purchaser's obligations hereunder are conditioned upon Purchaser being satisfied, within the period commencing on the Opening of Escrow and expiring at 5:00 p.m. (EST) on the sixtieth (60th) day (or the next succeeding business day) after the Opening of Escrow (the "**Due Diligence Period**"). If Purchaser, for any reason or for no reason, is not satisfied with the Property or any other matter, then Purchaser, in Purchaser's sole and absolute discretion, may elect, by delivery of written notice (which may be delivered electronically) from Purchaser or

Purchaser's counsel to Seller and Escrow Agent on or before the expiration of the Due Diligence Period to terminate this Agreement, whereupon the Initial Deposit shall be refunded by Escrow Agent to Purchaser and this Agreement shall be null and void and of no further force or effect with Purchaser and Seller having no further rights, obligations or liabilities hereunder except as otherwise set forth herein. If Purchaser fails to deliver any such termination notice to Seller and Escrow Agent on or before the expiration of the Due Diligence Period, then Purchaser shall be deemed to be proceeding with the transaction and the Deposit shall be non-refundable to Purchaser, except (x) in the event of a default by Seller, (y) due to the non-satisfaction of any of the conditions precedent to Purchaser's obligation to close, or (z) as otherwise set forth in this Agreement. Purchaser shall have the right to deliver such termination notice in its sole and absolute discretion.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Representations and Warranties. As an inducement to Purchaser to enter into this Agreement, Seller hereby represents and warrants to Purchaser as of the Effective Date and the Closing Date, as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller has the power and authority to enter into this Agreement and to consummate the transactions contemplated herein. The execution and delivery of this Agreement by Seller and the performance of Seller's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Seller is a party or by which Seller or the Property is bound.

(b) All proceedings required to be taken by or on behalf of Seller to authorize it to make, deliver and carry out the terms of this Agreement have been taken and this Agreement is the legal, valid and binding obligation of Seller enforceable in accordance with its terms.

(c) Lease Termination. Seller hereby represents that, as of the Effective Date, the Property is presently affected by that certain unrecorded Lease, as disclosed by Short Form Lease by and between Trinity-Forest Parkway LLC, a Georgia limited liability company and Eckerd Corporation, dated August 15, 1997, filed February 13, 1998, and recorded in Deed Book 3322, page 45; as affected by a First Amendment to Lease, by and between Trinity-Forest Parkway, LLC and Eckerd Corporation, dated April 1, 1998, filed April 30, 1998 and recorded in Deed Book 3410, page 176, as thereafter from time to time amended, modified and assigned (the "**Lease**"). Seller acknowledges and agrees that it shall be a condition precedent to Purchaser's obligation to close on the Closing Date that Seller obtain from the tenant under the Lease (the "**Tenant**"), at Seller's sole cost and expense, an irrevocable and unconditional release and termination of the Lease (with termination effective on or prior to the Closing Date) in the form and substance approved by Purchaser (in Purchaser's sole and absolute discretion) on or prior to the Closing Date (such condition, the "**Lease Termination Condition**"). Within three (3) business days of the Tenant's execution and delivery to Seller of such irrevocable and unconditional release and termination of the Lease (but in any event no earlier than the end of the Due Diligence Period and the deposit by Purchaser of the Additional Deposit with the Escrow Agent and no later than the Closing Date), Seller shall deliver the same to Purchaser. If Seller fails to satisfy the Lease

Termination Condition prior to the Closing Date, whether due to the failure or refusal of Purchaser to approve the form or substance of the lease termination or otherwise, then, notwithstanding anything to the contrary contained in this Agreement, such failure on the part of Seller will not be deemed a default by Seller, it being agreed that the sole remedy of Purchaser for Seller's failure to satisfy the Lease Termination Condition will be to terminate this Agreement upon written notice to Seller. If this Agreement is terminated pursuant to this Section 4.1, Escrow Agent shall promptly return the Deposit to Purchaser and the parties will have no further rights and obligations hereunder, except for those rights and obligations that expressly survive the termination of this Agreement.

(d) Except for the Lease, as hereinafter defined, any publicly recorded documents, and agreements that have expired or been terminated, Seller has not entered into any agreement granting any rights of possession to any third party with respect to the Real Property.

(e) To Seller's knowledge, there are no proceedings at law or in equity before any court, grand jury, administrative agency or other investigative agency, bureau or instrumentality of any kind pending or threatened, against or affecting Seller or the Property that (i) involve the validity or enforceability of this Agreement or any other instrument or document to be delivered by Seller pursuant hereto, or (ii) enjoin or prevent or threaten to enjoin or prevent the performance of Seller's obligations hereunder.

(f) Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act of 198, Section 1445 of the Internal Revenue Code of 1986, as amended.

(g) Seller has not made an assignment for the benefit of creditors or filed, or had filed against it, any petition in bankruptcy.

(h) Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively referred to herein as the "**Orders**"). Neither Seller nor, to Seller's knowledge, any beneficial owner of Seller: (1) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"), (2) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders, or (3) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(i) Except as set forth in the Title Report or the Property Materials, to Seller's knowledge, Seller has received no written notice from any governmental authority of any currently uncorrected violation of applicable building, zoning, safety or fire ordinances or other laws applicable to the Real Property, including, without limitation, environmental laws. The Property

and its present use and condition does not violate any applicable deed restrictions or other covenants, restrictions or agreements, site plan approvals, zoning or subdivision regulations or urban redevelopment plans applicable to the Property, provided, however, this representation shall not survive Closing.

(j) To Seller's knowledge, there is no pending or threatened condemnation of any part of the Property.

(k) To Seller's knowledge, all bills and claims for labor performed and materials furnished at the Real Property by or on behalf of Seller have been paid, and if not paid, shall be paid in full on or before the Closing Date.

(l) Seller has not received written notice of any pending or threatened condemnation, litigation or other court proceeding against or relating to the Property or Seller. There are no actions, investigations, suits, or proceedings (other than tax appeals or protests) pending or, to Seller's knowledge, threatened, that affect the Property, the ownership or operation thereof, or the ability of Seller to perform its obligations under this Agreement, and there are no judgments, orders, awards, or decrees currently in effect against Seller with respect to the ownership or operation of the Property that have not been fully discharged prior to the Opening of Escrow.

(m) The Property is currently vacant and there are no leases affecting any part of the Property that will be in place on the Closing Date. There are no management agreements, service contracts or other agreements affecting the Property or the operation or maintenance thereof which will be binding upon Purchaser after the Closing. There are no leasing or brokerage commissions that could be due and payable by Seller, except as set forth herein. Seller is not holding (nor has Seller been paid) any security deposits pursuant to any lease or other form of occupancy agreement (whether oral or written).

4.2 Survival. The truth, accuracy and completeness of each of the representations and warranties of Seller as of the date hereof, and as of the Closing Date, will constitute a condition precedent to the obligations of Purchaser hereunder. Each such representation and warranty will survive the Closing Date for a period of three (3) months.

4.3 Seller's Knowledge. References to the "knowledge" of Seller means only the current actual knowledge of any person or firm who is designated to be the recipient of notice on behalf of the Seller (collectively, the "**Knowledge Parties**"). None of the Knowledge Parties has any duty (imposed or implied) to investigate, inspect or audit any files or documents in the possession or control of Seller, or make any other inquiries, pertaining to the representations or warranties made by Seller in Section 4.1. Purchaser hereby acknowledges and agrees that, in no event, will any of the Knowledge Parties have any personal liability arising from a default by Seller under this Agreement, including, without limitation, any breach of a representation or warranty by Seller.

4.4 Breach of Representations. To the extent that, prior to expiration of the Due Diligence Period, Purchaser is "deemed to know" (as such phrase is defined below) that any of

Seller's representations and warranties are inaccurate, untrue or incorrect in any way, then Seller's representations and warranties will be deemed modified to reflect Purchaser's deemed knowledge. If, prior to Closing, either Seller or Purchaser obtains actual knowledge that any of the representations or warranties made in this Agreement are untrue, inaccurate or incorrect, such party shall give the other party written notice as soon as reasonably possible (but, in any event, prior to the Closing). In the event of any breach of any of Seller's representations and warranties, Seller will have the right (but not the obligation) to cure such misrepresentation or breach and Seller will be entitled to a reasonable extension of the Closing Date, not to exceed thirty (30) days, for purposes of such cure. If any of Seller's representations and warranties are untrue, inaccurate or incorrect but the aggregate damages do not reasonably exceed the Materiality Threshold (as hereinafter defined), Purchaser will be deemed to have waived such misrepresentation or breach of warranty, and Purchaser shall consummate the purchase of the Property without any reduction in or credit against the Price. If any of Seller's representations and warranties are untrue, inaccurate or incorrect and the aggregate damages reasonably exceeds the Materiality Threshold, Purchaser will be entitled to the remedies set forth in Section 10.2. ***"Materiality Threshold"*** means that Purchaser's aggregate damages resulting from the untruth, inaccuracy or incorrectness of Seller's representations and warranties are reasonably estimated to exceed Five Thousand Dollars (\$5,000.00). For purposes of this Agreement, Purchaser will be "deemed to know" if any fact, circumstance or information this Agreement, any documents delivered pursuant to Section 8.2, any documents or materials with respect to the Property actually delivered to Purchaser or any reports obtained by Purchaser in connection with Purchaser's due diligence discloses a particular fact or circumstance or contains information that, in any such event, is indisputably inconsistent with any of Seller's representations and warranties. If Seller fails to comply with any obligation hereunder that survives the Closing, Seller will be liable only for direct, but not consequential or punitive damages, resulting from a breach of any provision of this Agreement that survives the Closing or representation or warranty expressly made by Seller. Notwithstanding anything to the contrary contained in this Agreement, (a) the total liability of Seller under this Agreement and any document delivered at Closing or otherwise delivered in connection with the transactions contemplated in this Agreement will in no event exceed Thirty Thousand and 00/100 Dollars (\$30,000.00) in the aggregate, and (b) the covenants, representations and warranties in this Agreement are personal to the Seller which such covenant, representation or warranty was made and may not be assigned to or enforced by the Purchaser other than a permitted assignee hereunder.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

4.5 Representations and Warranties of Purchaser. As an inducement to Seller to enter into this Agreement, Purchaser hereby represents and warrants that:

(a) Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. The execution and delivery of this Agreement by Purchaser and the performance of Purchaser's obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Purchaser is a party or by which it is bound.

(b) Purchaser has not made an assignment for the benefit of creditors or filed, or had filed against it, any petition in bankruptcy.

(c) Purchaser is in compliance with the Orders. Neither Purchaser nor to, to Purchaser's knowledge, any beneficial owner of Purchaser: (1) is listed on the Lists, (2) is a person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders, or (3) is owned or controlled by, or acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

4.6 Survival. The truth, accuracy and completeness of each of the representations and warranties of Purchaser as of the date hereof, and as of the Closing Date, will be a condition precedent to the obligations of Seller hereof. Each such representation and warranty will survive the Closing Date for a period of three (3) months.

ARTICLE V OTHER COVENANTS AND AGREEMENTS

5.1 Liens. After the date hereof, Seller shall not create any liens or encumbrances against the Property which will not be cured at Closing, without the prior written consent of Purchaser, which consent, may be withheld in Purchaser's sole and absolute discretion.

ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION

6.1 Casualty. The risk of loss or damage to the Improvements by fire or other casualty before the delivery of the deed hereunder is assumed by Seller. In the event of any damage to or destruction of the Improvements due to fire or any other cause or hazard, Seller shall promptly give written notice thereof to Purchaser describing such damage and indicating the estimated cost and period required for restoration to substantially the same condition as existed prior to the damage. At Closing, (i) Seller shall assign to Purchaser all of Seller's right, title and interest in and to any casualty insurance proceeds due to Seller with respect to such casualty (but only to the extent that the proceeds do not exceed the Price), and (ii) Purchaser will receive a credit against the Price in an amount equal to the deductible and the casualty insurance proceeds actually

received by Seller in connection with such casualty, less any repair or restoration costs actually incurred by Seller in connection with such casualty.

6.2 Condemnation. If any proceedings are instituted which do or may result in a taking by condemnation of any portion of the Real Property, Seller shall promptly notify Purchaser in writing thereof, describing the nature and extent thereof. If such taking is a Material Taking (as hereinafter defined), Purchaser may, at any time within fifteen (15) days after receipt by Purchaser of notice from Seller of such Material Taking, terminate this Agreement by written notice to Seller, whereupon Escrow Agent shall promptly refund the Deposit to Purchaser and all rights and obligations of the parties hereunder will be null and void, except for those rights and obligations that expressly survive the termination of this Agreement. In the event Purchaser does not terminate this Agreement by reason of any such Material Taking, or, in the event of any other taking that is not a Material Taking, then the sale of the Property shall be consummated as herein provided and Seller shall assign to Purchaser on the Closing Date all of Seller's right, title and interest in and to all awards payable by reason thereof and shall pay over to Purchaser all amounts theretofore received by Seller in connection with such taking, less any repair or restoration costs actually incurred by Seller in connection with such taking. "**Material Taking**" means a taking exceeding twenty percent (20%) of the Land or the Improvements, or any taking which eliminates direct access to the Property from a public street or road.

ARTICLE VII CLOSING DATE AND DELIVERY OF DOCUMENTS

7.1 Closing Date. The closing of the transactions contemplated herein (the "**Closing**") shall be conducted at 10:00 A.M. Eastern Time on the date which is thirty (30) days after the end of the Due Diligence Period, or on such other earlier date as the parties may agree in writing (the "**Closing Date**") through an escrow closing with the Title Company serving as the closing agent. The parties hereby acknowledge and agree that **TIME IS OF THE ESSENCE** with respect to each of Seller's and Purchaser's obligation to close the transactions contemplated herein on the Closing Date (as the same may have been extended in accordance with the terms and conditions of this Agreement).

7.2 Documents to be Delivered by Seller. On the Closing Date, Seller shall deliver to Purchaser the following documents:

- (a) duly executed Special Warranty Deed for the Real Property;
- (b) termination of the Lease, in accordance with Section 4.1(c) hereof;
- (c) duly executed affidavit of title in form reasonably acceptable to the Title Company;
- (d) duly executed FIRPTA Affidavit of Seller;
- (e) duly executed Assignment and Assumption Agreement in the form of Exhibit C attached hereto (the "**Assignment**");

- (f) duly executed Bill of Sale in the form of Exhibit D attached hereto
- (g) duly executed statement showing all closing prorations (the “*Closing Statement*”);
- (h) documentation to establish to the Title Company’s reasonable satisfaction the due authorization of Seller’s execution and delivery of all documents contemplated by this Agreement;
- (i) evidence of termination of any and all leases, or other occupancy, operational, or other arrangements in effect (and any corresponding buyout or lease termination payment), including, without limitation, between Seller and any affiliate of or party related to Seller;
- (j) any applicable transfer tax forms or conveyance forms; and
- (k) such other documents and instruments as Purchaser or the Title Company may reasonably request to consummate the transactions contemplated by this Agreement.

7.3 Documents to be Delivered by Purchaser. On the Closing Date, Purchaser shall deliver to Seller the following documents:

- (a) duly executed Assignment;
- (b) duly executed Closing Statement;
- (c) documentation to establish to the Title Company’s reasonable satisfaction the due authorization of Purchaser’s execution and delivery of all documents contemplated by this Agreement; and
- (d) such other documents and instruments as Seller or the Title Insurer may reasonably request to consummate the transactions contemplated by this Agreement.

7.4 Form 1099-S. On the Closing Date, Seller and Purchaser shall instruct the Title Insurer to file a Form 1099-S with the Internal Revenue Service.

7.5 Conditions to Seller’s Obligations. The obligation of Seller to transfer the Property to Purchaser and to otherwise consummate the transactions contemplated hereby shall be subject to the satisfaction of the following conditions precedent on and as of the Closing Date:

- (a) all representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date, and Purchaser shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Purchaser on or before the Closing;

(b) Escrow Agent or Seller shall have received all of Purchaser's Closing Documents (as set forth in Section 7.3); and

(c) Seller shall have received payment of the Price in accordance with Section 1.3, subject to apportionments and credits in accordance with the terms of this Agreement.

7.6 Conditions to Purchaser's Obligations. Purchaser's obligation to pay the Price to purchase the Property, and otherwise consummate the transactions contemplated hereby shall be subject to the satisfaction of the following conditions precedent on and as of the Closing Date:

(a) all representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on the Closing Date, and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller on and as of the Closing Date; and

(b) Purchaser shall have received all of Seller's Closing Documents (as set forth in Section 7.2).

(c) Seller will deliver full, sole, vacant and exclusive possession of the Property to Purchaser, in its "As Is" condition, subject to no tenancies, leasehold interest, or similar interests. Seller shall deliver evidence to Purchaser that any and all leases and occupancy agreements have been terminated prior to Closing.

If any of the foregoing conditions are not satisfied on the Closing Date, Purchaser shall have the right (in addition to any right Purchaser may have under Section 9.3(c) hereof in the event that the non-satisfaction of a condition is as a result of a breach or default by Seller), to (x) terminate this Agreement by notice given to Seller, whereupon the entire Deposit shall be refunded to Purchaser and upon such refund, no party hereto shall have any rights or obligations hereunder except as otherwise set forth herein, or (y) at Purchaser's sole option, to waive any unsatisfied condition and consummate the transactions contemplated hereby.

ARTICLE VIII CLOSING ADJUSTMENTS

8.1 Adjustment Time. All apportionments and adjustments shall be made as of 12:01 A.M. local time on the Closing Date.

8.2 Description of Items to be Adjusted. The following apportionments and adjustments shall be made:

(a) Real estate taxes assessed against the Real Property.

(b) If there are any assessments against the Real Property on the Closing Date, Seller shall pay the portion of such assessment which has accrued prior to the Closing Date.

(c) Any other operating expenses or other items pertaining to the Property

which are customarily prorated between a purchaser and a seller in comparable commercial transactions in the area in which the Real Property is located shall be prorated according to local custom.

8.3 Closing Costs. Purchaser and Seller shall each pay their own legal fees related to the preparation of this Agreement and all documents required to settle the transaction contemplated hereby. Purchaser shall pay (i) all costs associated with Purchaser's due diligence, including, without limitation, the cost of appraisals, architectural, engineering, and environmental reports, (ii) all title insurance premiums and charges and all title examination costs, (iii) all survey costs for surveys performed at Purchaser's request, and (iv) one-half (1/2) of any reasonable escrow fees charged by the Title Company. Seller shall pay one-half (1/2) of any reasonable escrow fees charged by the Title Company; and (ii) all transfer taxes, documentary stamps or similar fees which are the obligation of a seller of real property, charged for the conveyance of real property. All other customary purchase and sale closing costs shall be paid by Seller or Purchaser in accordance with the customs with respect to title closings where the Real Property is located.

ARTICLE IX DEFAULT; REMEDIES

9.1 Default by Purchaser. Seller may terminate this Agreement by written notice to Purchaser in the event of (a) a material default by Purchaser under this Agreement (which remains uncured for ten (10) calendar days after Seller's written notice to Purchaser thereof, unless such material default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such ten (10) day period, in which case Purchaser will have such longer period as may be necessary to cure such default, so long as Purchaser proceeds promptly to cure such default within such ten (10) day period, prosecutes such cure to completion with due diligence within twenty (20) calendar days and advises Seller of the actions which Purchaser is taking and the progress being made) provided, however, that the foregoing cure periods will not apply to Purchaser's obligation to timely post any portion of the Deposit.

9.2 Default by Seller. Purchaser may terminate this Agreement by written notice to Seller in the event of (a) a material default by Seller under this Agreement (which remains uncured for ten (10) calendar days after Purchaser's written notice to Seller thereof, unless such material default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such ten (10) day period, in which case Seller will have such longer period as may be necessary to cure such default, so long as Seller proceeds promptly to cure such default within such ten (10) day period, prosecutes such cure to completion with due diligence within twenty (20) days and advises Purchaser of the actions which Seller is taking and the progress being made). For purposes of this Section 9.1, a material default shall mean the failure by Seller to comply with its covenants and obligations under this Agreement (as the same may have been extended in accordance with the terms and conditions of this Agreement).

9.3 Remedies.

(a) Purchaser and Seller agree that it would be impractical and extremely difficult to estimate the damages that Seller would suffer if the sale of the Property is not consummated because of a material default under or breach of this Agreement on the part of Purchaser. Accordingly, Purchaser and Seller agree that a reasonable estimate of such damages is an amount equal to the Deposit, which shall be disbursed by Escrow Agent to Seller as the full, agreed and liquidated damages for Purchaser's default under or breach of this Agreement. Such disbursement of the Deposit will be Seller's sole and exclusive remedy (whether at law or equity) for Purchaser's material default under or breach of this Agreement, and Seller hereby expressly waives all other claims to damages or other remedies, including any punitive, consequential or speculative damages. Notwithstanding the foregoing, none of the above liquated damages will be deemed to reduce or waive in any respect the obligations of Purchaser to indemnify Seller as provided in this Agreement, including, without limitation, Purchaser's indemnification obligations under Section 3.1.

(b) Intentionally omitted.

(c) If the sale of the Property is not consummated because of a default under or breach of this Agreement on the part of Seller, Purchaser will have the option, as its sole and

exclusive remedy at law or in equity, to either (i) terminate this Agreement by delivery of written notice of termination to Seller and Escrow Agent, in which event (1) Escrow Agent shall promptly refund the Deposit to Purchaser, or (ii) seek the equitable remedy of specific performance. The foregoing options are mutually exclusive and are the exclusive rights and remedies available to Purchaser at law or in equity in the event the sale of the Property is not consummated because of Seller's default under or breach of this Agreement. Purchaser hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any such breach or default by Seller, including, without limitation, loss of bargain, special, punitive, compensatory or consequential damages. Purchaser will be deemed to have elected its remedy under clause (i) of this Section 10.3(b) if Purchaser fails to file suit for specific performance against Seller in a court having jurisdiction in Georgia on or before sixty (60) days following the date upon which Closing was to have occurred. This Agreement confers no present right, title or interest in the Property to Purchaser and Purchaser agrees not to, and waives its right to, file a *lis pendens* or other similar notice against the Real Property except in connection with, and after, the filing of a suit for specific performance.

(d) Notwithstanding any provision of this Agreement to the contrary, if the Closing occurs, neither party shall have any recourse, claim, remedy or right against the other party, at law or in equity, to assert or maintain any action for damages, direct, consequential or otherwise, or any other remedy available at law or in equity, or to rescind this Agreement, as a result of any of the representations or warranties being untrue, inaccurate or misleading a party is "deemed to know" that such representation or warranty was untrue, inaccurate or misleading at the time of the Closing and did not elect to terminate this Agreement.

(e) Subject to Section 10.3(c), the parties agree that, after the Closing, a party will be liable only for direct, but not consequential or punitive, damages resulting from a breach of any provision of this Agreement that survives the Closing or any indemnity or representation or warranty expressly made by such party in any document delivered at Closing or otherwise delivered in connection with the transactions contemplated in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, (a) the total liability of either party under this Agreement and any document delivered at Closing or otherwise delivered in connection with the transactions contemplated in this Agreement will in no event exceed Twenty Thousand and 00/100 Dollars (\$20,000.00) in the aggregate, and (b) the covenants, representations and warranties in this Agreement are personal to the party which such covenant, representation or warranty was made and may not be assigned to or enforced by any party other than a permitted assignee hereunder.

ARTICLE X DISCLAIMERS AND WAIVERS

10.1 No Reliance on Documents. Except for the representations and warranties expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by or on behalf of Seller to Purchaser in connection with the transactions contemplated hereby. Purchaser acknowledges and agrees that all materials, data and information delivered by or on behalf of Seller to Purchaser in connection with the transaction contemplated hereby are provided to Purchaser as a convenience only and that

any reliance on or use of such materials, data or information by Purchaser will be at the sole risk of Purchaser. Without limiting the generality of the foregoing provisions, Purchaser hereby acknowledges and agrees that (a) any report with respect to the Property which is delivered by Seller to Purchaser will be for general informational purposes only, (b) Purchaser will not have any right to rely on any such report delivered by or on behalf of Seller to Purchaser and Purchaser shall rely on its own inspections and investigations of the Property and any reports commissioned by Purchaser with respect thereto, and (c) neither Seller, any affiliate of Seller nor the person or entity which prepared any such report delivered by or on behalf of Seller to Purchaser will have any liability to Purchaser for any inaccuracy in or omission from any such report.

10.2 Disclaimers. EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY DOCUMENT DELIVERED BY SELLER AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE STRUCTURAL ELEMENTS, FOUNDATION, ROOF, APPURTENANCES, ACCESS, LANDSCAPING, PARKING FACILITIES AND THE ELECTRICAL, MECHANICAL, HVAC, PLUMBING, SEWAGE, AND UTILITY SYSTEMS, FACILITIES AND APPLIANCES), THE DEVELOPMENT POTENTIAL OF THE PROPERTY, THE PRESENCE OF HAZARDOUS SUBSTANCES ON, IN, UNDER OR ABOUT THE PROPERTY OR ANY ADJOINING OR NEIGHBORING PROPERTY, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT, UPON CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER, AND PURCHASER SHALL ACCEPT, THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT DELIVERED BY SELLER AT CLOSING OR AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS AND EXPRESS TERMS OF THIS AGREEMENT AND ANY DOCUMENT DELIVERED BY SELLER AT CLOSING, PURCHASER HAS NOT RELIED AND SHALL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER, COUNSEL OR AGENT REPRESENTING

OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT DELIVERED BY SELLER AT CLOSING. PURCHASER REPRESENTS TO SELLER THAT PURCHASER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO THE EXPIRATION OF THE DUE DILIGENCE PERIOD, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OF CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND SHALL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT DELIVERED AT CLOSING.

10.3 Release. Subject to the representations and warranties of Seller expressly set forth in this Agreement or any document delivered by Seller at Closing, Purchaser, at and following Closing, on behalf of itself and all of Purchaser's Affiliates, as hereinafter defined, will be deemed to have waived, relinquished and released Seller from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees and costs) of any and every kind or character, known or unknown, which Purchaser might have asserted or alleged against Seller by reason of or arising out of any patent construction defects or physical conditions, environmental conditions, violations of applicable laws (including, without limitation, environmental laws) and any and all other acts, omissions, events, circumstances or matters with respect to the Property. "**Purchaser's Affiliate**" means any Person directly or indirectly controlling, controlled by, or under common control with Purchaser. "**Person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

10.4 Survival. The provisions of this ARTICLE XI will survive the Closing.

ARTICLE XI MISCELLANEOUS

11.1 Brokerage Commission and Finder's Fee. The parties agree that they have dealt with each other in connection with this transaction and not through any real estate broker, investment banker, person, firm or entity, who would by reason of such dealings be able to claim a real estate brokerage, business opportunity brokerage, finder's fee or other compensation as the procuring cause of this transaction other than CBRE, Inc. (Chris Sido) (the "**Broker**"). Each of the parties agrees to indemnify the other and hold the other harmless of and from any and all loss, cost, damage, injury or expense arising out of, or in any way related to, assertions, by any other person, firm or entity of a claim to real estate brokerage, business opportunity brokerage or finder's fee based on alleged contacts between the claiming party and the indemnifying party which have resulted in allegedly providing a broker or finder with the right to claim such commission or

finder's fee. Seller shall pay Broker a commission in connection with this transaction pursuant to Seller's separate agreement with Broker.

11.2 Notices. All notices or other communications required or permitted to be given hereunder must be given in writing and delivered personally or mailed, certified or registered mail, postage prepaid, or by a reputable overnight delivery service, or sent by e-mail addressed as follows:

If to Seller:

c/o SPC Associates, L.L.C.
195 North Street, Suite 100
Teterboro, NJ 07608
Attention: Michael Hanson
E-mail: mhanson@cpifunds.com

with a copy to:

Poley & Rich, LLC
195 North Street, Suite 100
Teterboro, NJ 07608
Attention: Lynnette Rich, Esq.
E-mail: lynnetterich@poleyrich.com

If to Purchaser:

COLLECTION CENTER PROPERTY COMPANY LLC
c/o Jadian Capital
4 Star Point, Suite 204
Stamford, Connecticut 06902
Telephone: (212) 503-5900
Email: legal@jadiancapital.com
jcridge@jadiancapital.com
nberk@ccpropco.com

FOR ANY DOCUMENTS WHICH WILL BE RECORDED, PLEASE USE THE FOLLOWING ADDRESS:

COLLECTION CENTER PROPERTY COMPANY LLC
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

With a copy to:

Loeb & Loeb LLP
 345 Park Avenue, 21st Floor
 New York, New York 10154
 Attention: Christopher Barbaruolo, Esq.
 Email: cbarbaruolo@loeb.com

To Escrow Agent:

National Land Tenure Company
 Attention: James P. Haggerty
 950 Franklin Avenue
 Garden City, NY 11530
 Telephone: (516) 227-0800
 E-mail: jhaggerty@nltco.com

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail will be deemed to have been delivered by the addressee on the third (3rd) business day after posting in the United States mail, or, if transmitted by overnight delivery service, on the first (1st) business day after transmittal, or, if delivered personally, on the date of delivery. A notice sent via e-mail will be deemed to be delivered when sent. Counsel for a party may give or receive notice to the other party with the same effect as if given or received by a party.

11.3 Attorneys' Fees. If any action is brought by any party to this Agreement to enforce or interpret its terms or provisions, the prevailing party in such action will be entitled to recover from the other party, in addition to any other relief awarded, all reasonable expenses that the prevailing party incurs in those proceedings, including, without limitation, reasonable attorneys' fees and expenses. For purposes of this Section 11.3, "prevailing party" means the party obtaining substantially the relief sought, whether by compromise, settlement or judgment.

11.4 Successors and Assigns. The terms, covenants and conditions herein contained will be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

11.5 Governing Law; Venue. This Agreement is governed by the laws of the state in which the Property is located (the "**State**"), without giving effect to principles of conflict of laws. A party may initiate in the courts of the State or, if it has or can acquire jurisdiction, in the United States District Court for the State, any proceeding seeking to enforce any provision of this Agreement. Each of the parties consents to the jurisdiction of those courts (and of the appropriate appellate courts in any such action or proceeding and wives any objection to venue laid therein.

11.6 Incorporation of Prior Agreements. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other written or oral agreement or undertaking pertaining to any such matter will be effective for any purpose.

11.7 Modification of Agreement. This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment or modification will be effective for any purpose unless it is in writing, signed by the party against whom enforcement thereof is sought.

11.8 Drafting Ambiguities; Interpretation. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Agreement, each party recognizing that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same. Unless otherwise specified (a) whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular, (b) the words “consent” or “approve” or words of similar import, mean the prior written consent or approval of Seller or Purchaser, (c) the words “include” and “including”, and words of similar import, shall be deemed to be followed by the words “without limitation”, and (d) the exhibits to this Agreement are incorporated herein by reference.

11.9 Interpretation. This Agreement shall be construed reasonably to carry out its intent without presumption against or in favor of either party. If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction contemplated herein to the extent possible. The captions and section headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

11.10 Counterparts. This Agreement may be executed in any number of counterparts, including facsimile or scanned PDF documents. Each such counterpart, facsimile or scanned PDF document will be deemed an original instrument, and all of such counterparts, together, constitute one and the same instrument.

11.11 Assignment. Each of Seller and Purchaser shall not assign this Agreement without the prior written consent of the other party. Any attempted assignment in violation of this Section 11.11 will be void *ab initio*. Notwithstanding the foregoing, Purchaser will have the right to assign this Agreement without Seller’s consent to an entity wholly owned by Purchaser; *provided, however*, that Purchaser will in no event be released from any of its obligations or liabilities hereunder as a result of any such assignment.

11.12 Like-Kind Exchange. Purchaser and Seller each hereby acknowledge that the sale and purchase of the Property pursuant to this Agreement may comprise part of independent like-kind (tax deferred) exchange under Section 1031 of the Internal Revenue Code, provided that same will not delay the Closing, cause additional expense to either party, increase either party’s liabilities or obligations or otherwise modify any of the terms or provisions of this Agreement. Seller’s and/or Purchaser’s rights, as the case may be, under this Agreement may be assigned to a qualified intermediary for the purpose of completing such an exchange. Each party agrees to reasonably cooperate with the other party and the other party’s qualified intermediary for the purpose of effectuating or facilitating such like-kind exchange, provided that neither party shall be required to incur any liability or costs, or take title to any other property, in connection therewith.

11.13 Business Days. When used in this Agreement, the term “business day” means any day other than Saturdays, Sundays, all days observed by the federal or State government as legal holidays and all days on which commercial banks in the State are required to be closed.

11.14 No Recordation. Purchaser shall not record this Agreement or any memorandum or notice hereof. Any recordation or attempted recordation by Purchaser will constitute a material default by Purchaser under this Agreement.

11.15 Confidentiality. Purchaser shall keep the Due Diligence Materials and all of Purchaser’s findings in connection with its investigations of the Property (collectively, the “**Confidential Information**”) confidential and shall not disclose the Confidential Information to any person, except that Purchaser may disclose the Confidential Information or portions thereof as follows (i) with the prior written consent of Seller, (ii) to Purchaser’s Representatives (as defined below) for the purpose of determining whether Purchaser will acquire the Property, or (iii) to the extent Purchaser is required to disclose the same pursuant to a court order or applicable law. Purchaser shall be responsible for any breach of this provision by any of Purchaser’s Representatives and Purchaser shall, at its sole cost and expense, take reasonable measures (including, but not limited to, court proceedings) to restrain Purchaser’s Representatives from prohibited or unauthorized disclosure or use of the Confidential Information. The obligations of Purchaser pursuant to this provision will not survive the closing of the acquisition of the Property by Purchaser, but will survive any termination of this Agreement. “**Purchaser’s Representatives**” means Purchaser, its lenders, and any officers, directors, employees, agents, consultants, representatives and attorneys of Purchaser or its lenders, or any direct or indirect owner of any beneficial interest in Purchaser who conducts due diligence or is otherwise involved in the transaction contemplated in this Agreement. This provision shall survive any termination of this Agreement.

11.16 Non-Binding Draft. This Agreement will not be effective, and none of the parties will have any rights hereunder, unless and until Seller and Purchaser have executed and delivered electronic counterpart signature pages of this Agreement to one another.

ARTICLE XII

12.1 Operation of Property; Seller Obligations Pending Closing. From and after the Opening of Escrow until the Closing or termination of this Agreement as herein provided, Seller covenants to perform in accordance with the following obligations:

(a) Sell or Encumber. Seller shall not sell, assign or convey any right, title or interest whatever in or to the Property to any third party or create or permit to exist any lien, encumbrance or charge on the Property which will not be paid in full at the Closing. To the extent that any easements or declarations are proposed that will affect the Property, Seller shall neither execute said easements and declarations, nor suffer the execution of same by or on behalf of Seller, without Purchaser’s prior written consent, which consent may be withheld by Purchaser in its sole discretion.

(b) Maintenance; Compliance. Seller shall continue to perform all maintenance work and ordinary repairs and pay all costs and expenses related thereto.

(c) Contracts. Seller will not enter into any renewal, extension, modification or replacement of any contract or enter into any new employment, maintenance service, supply or other agreement or contract relating to the Property which will remain in effect after the Closing without the express written permission of Purchaser, which approval may be withheld in Purchaser's sole and absolute discretion.

(d) Estoppels. If Seller is entitled to obtain an estoppel certificate with respect to any reciprocal easement agreements or other like recorded operating agreement with respect to the Property, Seller shall make a demand for the same from each applicable counterparty thereto on a form acceptable to Purchaser (the "**REA Estoppel Certificate**"). It shall be a condition of Closing that Seller shall have obtained any applicable REA Estoppel Certificate at least five (5) days prior to the Closing Date, and Seller shall use good faith efforts to obtain the same. To the extent Seller is not entitled to receive any REA Estoppel Certificate under the terms of such the applicable agreement therefor Seller will cooperate with any request from Purchaser to obtain such REA Estoppel Certificate from third parties and/or executing and providing to Purchaser such estoppel certificates, if any, as are contemplated under documents of record affecting the Property.

(e) Leases. Seller will not execute any new lease or other occupancy agreement with respect to the Property and shall terminate all existing leases and occupancy agreements affecting the Property. As of the Closing Date, there will be no leases or any other occupancy agreement for the Property binding on Purchaser following the Closing Date. Seller shall deliver to Purchaser vacant possession of the Property in its then "As Is" condition on the Closing Date.

(f) No Recordation. Except with respect to the termination of the Lease, Seller will not file, nor consent to the filing of, any instrument of record against title to the Property, nor enter into any agreement that would be binding upon Purchaser or the Property after the Closing. Seller will not commence (or cause or suffer to be commenced) any proceedings for rezoning, variance or other similar matters, without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

SUMMIT REALTY LLC (DE)
a Delaware limited liability company

By: SPC Associates, LLC, a
New Jersey limited liability company, its
Manager

By: 
Name: **MICHAEL M. HANSON**
Title: **Authorized Signer**

PURCHASER:

**COLLECTION CENTER PROPERTY
COMPANY LLC,**
a Delaware limited liability company

By: _____
Name: Doug Sanders
Its: Authorized Signatory

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

SUMMIT REALTY LLC (DE)
a Delaware limited liability company

By: SPC Associates, LLC, a
New Jersey limited liability company, its
Manager

By: _____
Name:
Title:

PURCHASER:

**COLLECTION CENTER PROPERTY
COMPANY LLC,**
a Delaware limited liability company

By: Joseph P. Cridge
Name: Joseph Cridge
Its: Authorized Signatory

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ACCEPTANCE BY ESCROW AGENT:

NATIONAL LAND TENURE COMPANY, LLC HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A FULLY EXECUTED COUNTERPART OF THE AGREEMENT AND AGREES TO ACT AS ESCROW AGENT THEREUNDER AND TO BE BOUND BY AND PERFORM THE TERMS THEREOF AS SUCH TERMS APPLY TO ESCROW AGENT.

NATIONAL LAND TENURE COMPANY, LLC

BY: 

NAME: James P. Haggerty

ITS: Managing Director + Counsel

SCHEDULE 3.3

PROPERTY MATERIALS

(to the extent in Seller's possession and not previously delivered to Purchaser

- Seller's Existing Title Policy
- Survey
- Seller's environmental, engineering and physical condition reports

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EXHIBIT A
LEGAL DESCRIPTION OF LAND

ALL OF THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 50 OF THE 13TH DISTRICT OF CLAYTON COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

COMMENCING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY OF FOREST PARKWAY (A.K.A. GEORGIA STATE HIGHWAY NO. 331) (VARIABLE R/W) AND THE EASTERLY RIGHT-OF-WAY OF PARK DRIVE (50' R/W);

THENCE PROCEEDING ALONG THE SOUTHERLY RIGHT-OF-WAY OF FOREST PARKWAY (A.K.A. GEORGIA STATE HIGHWAY NO. 331) (VARIABLE R/W) SOUTH 69°16'41" EAST, A DISTANCE OF 136.08 FEET TO THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING THUS ESTABLISHED;

THENCE PROCEEDING IN A SOUTHEASTERLY DIRECTION ALONG THE SOUTHERLY RIGHT-OF-WAY OF FOREST PARKWAY (A.K.A. GEORGIA STATE HIGHWAY NO. 331) (VARIABLE R/W) THE FOLLOWING COURSES AND DISTANCES:

- 1) SOUTH 69°15'41" EAST, A DISTANCE OF 166.78 FEET TO A POINT;
- 2) THENCE NORTH 20°58'19" EAST FOR A DISTANCE OF 9.25 FEET TO A POINT;
- 3) THENCE SOUTH 69°01'41" EAST FOR A DISTANCE OF 90.00 FEET TO A POINT FORMED BY THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY OF FOREST PARKWAY (A.K.A. GEORGIA STATE HIGHWAY NO. 331) (VARIABLE R/W) AND THE WESTERLY RIGHT-OF-WAY OF ASH STREET (VARIABLE R/W);

THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE WESTERLY RIGHT-OF-WAY OF ASH STREET (VARIABLE R/W) THE FOLLOWING COURSES AND DISTANCES:

- 1) SOUTH 20°58'19" WEST FOR A DISTANCE OF 64.00 FEET TO A POINT;
- 2) THENCE SOUTH 69°01'41" EAST FOR A DISTANCE OF 7.50 FEET TO A POINT;

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3) THENCE SOUTH 19°52'33" WEST FOR A DISTANCE OF 171.83 FEET TO A POINT;

THENCE DEPARTING THE WESTERLY RIGHT-OF-WAY OF ASH STREET (VARIABLE R/W) AND PROCEEDING NORTH 69°01'41" WEST FOR A DISTANCE OF 267.56 FEET TO A POINT;

THENCE NORTH 20°58'19" EAST FOR A DISTANCE OF 225.81 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF FOREST PARKWAY (A.K.A. GEORGIA STATE HIGHWAY NO. 331) (VARIABLE R/W) AND THE POINT OF BEGINNING. SAID TRACT OR PARCEL CONTAINING 1.38920 ACRES, OR 60,514 SQUARE FEET.

TOGETHER WITH:

PARCEL 2:

EASEMENTS AND OTHER INTERESTS IN REAL PROPERTY CONTAINED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT BETWEEN KRISTINE Y. BURKS AND MARY Y. COOPER AND TRINITY-FOREST PARKWAY, LLC DATED AUGUST 15, 1997, FILED FOR RECORD AUGUST 18, 1997, AND RECORDED IN DEED BOOK 3140, PAGE 12, CLAYTON COUNTY, GEORGIA RECORDS.

EXHIBIT B

PERMITTED EXCEPTIONS

Applicable zoning, subdivision, building and other land use laws and regulations affecting the Property.

All matters of record arising out of the actions of Purchaser or any of Purchaser's Representatives.

The lien of real estate taxes and assessments not yet due and payable, subject to adjustment as provided in this Agreement.

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EXHIBIT C**ASSIGNMENT OF WARRANTIES AND APPROVALS**

THIS ASSIGNMENT OF WARRANTIES AND APPROVALS (this "Assignment"), is made as of the _____ day of _____, 2022, by _____ and _____ between _____ ("Assignor"), and _____ ("Assignee").

WITNESSETH:

WHEREAS, Assignor has simultaneously herewith conveyed to the Assignee all of Assignor's right, title and interest in and to that certain property located at _____ (the "Property"), and in connection therewith, Assignor has agreed to assign to Assignee, at no cost to Assignee, all of Assignor's right, title and interest in and to (i) any warranties and/or guaranties relating to the Property to the extent assignable (collectively, "Warranties"), (ii) any governmental approvals or permits relating to the Property to the extent assignable (collectively "Approvals"), and (iii) all rights, privileges and easements appurtenant to the Property as well as all development rights, land use entitlements, if any, including, without limitation, building permits, licenses, permits and certificates, air rights, mineral rights, off-site parking rights, water, water rights, riparian rights and water stock relating to the Property, and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and all roads and alleys adjoining or servicing the Property, if any, to the extent assignable (collectively, the "Appurtenances").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby assigns unto Assignee, all of the right, title and interest, if any, of Assignor in and to the Warranties, Approvals and Appurtenances; TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns from and after the date hereof.
2. This Assignment shall be binding on Assignor and its successors, assigns and legal representatives and shall inure to the benefit of the Assignee and its successors, assigns and legal representatives.
3. This Assignment may be executed in separate counterparts, which, together, shall constitute one and the same fully executed Assignment.

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IN WITNESS WHEREOF, this Assignment has been duly executed as of the date first above written.

“ASSIGNOR”

_____,

By: Exhibit – Do Not Sign

Name: _____

Its: _____

“ASSIGNEE”

By: Exhibit – Do Not Sign

Name: _____

Its: _____.

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EXHIBIT D**BILL OF SALE**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, _____ (“Seller”), does hereby sell, transfer and convey to _____ (“Purchaser”), any and all personal property (the “Personal Property”) owned by Seller and used exclusively in connection with the operation of that certain real property as more particularly described in Exhibit A attached hereto.

PURCHASER ACKNOWLEDGES THAT SELLER IS SELLING AND PURCHASER IS PURCHASING SUCH PERSONAL PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER, ITS AGENTS, OR BROKERS AS TO ANY MATTERS CONCERNING SUCH PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Dated: _____, 2022

SELLER:

By: Exhibit – Do Not Sign

Name: _____

Its: _____

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Harold Buckley

From: Caitlyn Chandler <CChandler@forestparkga.gov>
Sent: Wednesday, August 31, 2022 4:27 PM
To: Nick Berk
Subject: Re: 833 Forest Parkway Zoning Verification Letter Request
Attachments: 833 Forest Pkwy - Zoning Verification Letter 8.31.2022.pdf

Good afternoon,

I believe this should suffice. Please let me know if you need anything else.

Thank you.

Caity Chandler

From: Nick Berk <nberk@ccpropco.com>
Sent: Wednesday, August 31, 2022 2:24 PM
To: Caitlyn Chandler <CChandler@forestparkga.gov>
Subject: 833 Forest Parkway Zoning Verification Letter Request

You don't often get email from nberk@ccpropco.com. [Learn why this is important](#)

CAUTION: This email originated from outside of the organization. Please use caution when interacting with this email.

Hi Caity,

Thanks again for taking the time to speak a few minutes ago. We would really appreciate it if the letter would read similar to the below:

Re: Former Rite Aid – 833 Forest Parkway, Forest Park, GA // Parcel ID: 13050D B002

The above referenced property, 833 Forest Parkway, Forest Park, GA is zoned IC – Institutional Commercial in the City of Forest Park. Your proposed use, a Blood Plasma Collection Center, is an approved use within IC – Institutional Commercial and is considered “Clinics, Health, and Medical Centers”. As such, your property, 833 Forest Parkway, requires a parking ratio of 1 parking space per 200 square feet of Gross Leasable Area.

Thanks so much Caity!

Best,
 Nick



COLLECTION CENTER
 PROPERTY COMPANY

Nicholas Berk
 Vice President

330 Madison Avenue, 20th Fl
 New York, New York 10017
 O: (212) 259-0565
 M: (214) 232-4379



CITY OF FOREST PARK

Planning & Community Development Department
785 Forest Parkway
Forest Park, Georgia 30297
(404) 366-4720

August 31, 2022

Nick Berk
Collection Center Property Company
330 Madison Avenue, 20th Fl
New York, New York 10017

RE: Zoning Verification for 833 Forest Parkway Forest Park, Georgia; Tax ID No. 13050D B002.

Mr. Berk,

The undersigned hereby certifies with respect to the property as follows:

1. The zoning classification of the property is IC (Institutional Commercial).
2. The proposed use, a Blood Plasma Collection Center, is an approved use within the Institutional Commercial District and falls under the “Medical offices, clinics, and physical therapy facility” category.
3. The parking classification category for this property would fall under “Clinics, health and medical centers” and as such, the parking requirement is 1 parking space per each 200 feet of gross floor area. After calculating the number of parking spaces needed for this location, 56 parking spaces will be required. The current configuration allows for 59 parking spaces. Thus, the requirement has been met.

Sincerely,

Caity Chandler

Caity Chandler, City Planner
City of Forest Park
Planning & Community Development Department

FIRST AMENDMENT TO AGREEMENT OF SALE

THIS FIRST AMENDMENT TO AGREEMENT OF SALE (this “Amendment”) is made as of this 16th day of September, 2022 (the “Effective Date”), by and between SUMMIT REALTY LLC (DE), a Delaware limited liability company (“Seller”) and COLLECTION CENTER PROPERTY COMPANY LLC, a Delaware limited liability company (“Purchaser”).

WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Agreement of Sale, dated as of July 18, 2022 (the “Agreement”), pursuant to which Seller agreed to sell and Purchaser agreed to purchase the Property (as such term is defined in the Agreement);

WHEREAS, Seller and Purchaser desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, Seller and Purchaser hereto agree that the Agreement is hereby amended as follows:

1. Defined Terms. All capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

2. Sole Order Escrow. Notwithstanding anything to the contrary contained in the Agreement, including, without limitation, the provisions of Section 1.4 and Section 3.3 of the Agreement, unless and until the conditions precedent to Purchaser’s obligations to close set forth in Section 7.6 of the Agreement (including, without limitation, the Lease Termination Condition (as defined in the Agreement)) (collectively, the “Purchaser Conditions”) have been satisfied or waived by Purchaser, in its sole and absolute discretion, the escrow established under the Agreement (as amended hereby) shall be a “sole order” escrow for the benefit of Purchaser (meaning that Escrow Agent shall act solely in accordance with the instructions of Purchaser in respect of the Deposit unless and until the Purchaser Conditions have been satisfied or waived by Purchaser, in its sole and absolute discretion). Without limiting the generality of the foregoing, in the event that, prior to the Purchaser Conditions being satisfied or waived by Purchaser, in its sole and absolute discretion, Purchaser delivers notice to Escrow Agent stating that Purchaser has elected to terminate the Agreement (as amended hereby) pursuant to the provisions of Section 4.1(c) and/or Section 7.6 of the Agreement, then Escrow Agent shall refund to Purchaser the Deposit without any requirement that Escrow Agent first notify or obtain any approval or consent of Seller as provided in Section 1.4 of the Agreement. In furtherance of the foregoing, in the event Purchaser so instructs Escrow Agent on or prior to such time, Escrow Agent agrees that it shall not be permitted to, and shall not, follow any conflicting instructions given by Seller or any third party as to the disposition of the Deposit but shall instead follow only the instructions of Purchaser in connection therewith. Seller agrees in such instance not to deliver any conflicting instructions to Escrow Agent for any reason and hereby instructs Escrow Agent to act in respect of the Deposit solely in accordance with Purchaser’s instructions as aforesaid, including instructions of Purchaser to return the Deposit to Purchaser.

3. Walgreens Lease Termination. Seller acknowledges that the Lease Termination Condition has not been satisfied as of the Effective Date. Notwithstanding anything to the contrary contained in the Agreement, as amended hereby, promptly upon Seller's receipt, Seller shall deliver to Purchaser (for Purchaser's review and comment) an irrevocable and unconditional release and termination of the Lease (along with a termination (in recordable form) of the "short-form lease" (including restrictive covenant) currently encumbering title to the Property) to be executed, notarized and delivered by Seller and Tenant.

4. Modifications. Except as expressly set forth herein, the agreements, covenants and amendments contained in this Amendment shall not constitute any amendment or waiver of any term or condition of the Agreement, and all such terms and conditions shall remain in full force and effect and are hereby ratified and confirmed in all respects.

5. Captions. The section headings appearing in this Amendment are for convenience of reference only and are not intended, to any extent and for any purposes, to limit or define the text of any section or any subsection hereof.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original but all such counterparts together shall constitute one and the same instrument.

7. Governing Law. This Amendment shall be construed under the laws of the State of Georgia, without giving effect to any state's conflict of laws principles.

8. Electronic Signatures. Seller and Purchaser agree that facsimile or other electronic signatures (including .pdf signatures transmitted via electronic mail) shall be sufficient for purposes of executing and delivering this Amendment.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

SELLER:

SUMMIT REALTY LLC (DE),
a Delaware limited liability company

By: 

Name: **MICHAEL M. HANSON**
Title: **Authorized Signer**

[Signatures continue on the following page]

PURCHASER:

COLLECTION CENTER PROPERTY COMPANY LLC,
a Delaware limited liability company

By: 
Name: Joseph Cridge
Title: Authorized Signatory

[Signatures continue on the following page]

[Signature Page to First Amendment to Agreement of Sale – Forest Park, GA]

22740959 2
235271-10013

ACCEPTANCE BY ESCROW AGENT:

NATIONAL LAND TENURE COMPANY, LLC HEREBY ACKNOWLEDGES AND AGREES TO SECTION 2 OF THIS AMENDMENT AND AGREES TO PERFORM THE TERMS THEREOF AS SUCH TERMS APPLY TO ESCROW AGENT.

NATIONAL LAND TENURE COMPANY, LLC

By: 

Name:

Title:

Edward F. Dull
VP & Senior Counsel

[Signature Page to First Amendment to Agreement of Sale – Forest Park, GA]

22740959.3
235271-10013



National Land Tenure Company, LLC

950 Franklin Avenue, Garden City, New York 11530
Phone (516) 227-0800 • Fax (516) 227-1160

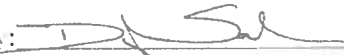
BUYER SETTLEMENT STATEMENT

Property: 833 Forest Parkway, Forest Park, Clayton County, Georgia
Buyer: 833 Forest Parkway LLC
Seller: Summit Realty LLC (DE)

NLT File No.: NLT-33309-GA-22
Fidelity File No.: NACS21-824
Closing Date: October 19, 2022

Buyer Charge	Buyer Credit	Charge Description	Seller Charge	Seller Credit
\$1,700,000.00		CONSIDERATION		\$1,700,000.00
		Total Consideration \$1,700,000.00		
	\$75,000.00	EARNEST MONEY DEPOSIT		
		ADJUSTMENTS		
\$4,078.45		2022 Taxes		\$4,078.45
		PAYOFF WITH SANTANDER BANK	\$47,701.10	
		GOOD-THRU 10/19/2022; 3:00 P.M. EST Wire Cutoff		
		Principal Balance \$45,555.31		
		Interest \$53.79		
		Mortgage & ALR Discharge Fee \$92.00		
		Swap Prepayment Fee \$2,000.00		
		TITLE / ESCROW FEES \$7,395.00		
\$3,570.00		Owner's Policy Premium (\$1,700,000.00) \$3,570.00		
\$750.00		Endorsements \$750.00		
\$250.00		Estimated Recording Fees \$250.00		
\$975.00		Search & Exam \$975.00		
\$500.00		Title Updates \$500.00		
\$75.00		Copies \$75.00		
\$25.00		Tax Reports \$25.00		
\$250.00		Out of Pocket Expense \$250.00		
\$500.00		NLT Escrow Closing Fee \$1,000.00		
		THIRD PARTY DISBURSEMENTS		
\$40,000.00		Loeb & Loeb		
\$3,540.00		Watts & Browning Engineers Inc. - Survey		
\$35,000.00		CBRE, Inc Consulting Fee		
\$10,820.00		CBRE, Inc.		
		Invoice No. 0086535-1-22 \$6,945.00		
		Invoice No. 0087028-1-22 \$2,750.00		
		Invoice No. 41465-PC212206 \$1,125.00		
\$2,050.00		Adams Hill, LLC		
	\$1,727,383.45	CASH FROM BUYER		
		CASH TO SELLER	\$1,856,377.35	
\$1,802,383.45	\$1,802,383.45	Totals	\$1,704,078.45	\$1,704,078.45

833 FOREST PARKWAY LLC,
a Delaware limited liability company

By: 
Name: Doug Sanders
Its: Authorized Signatory

[Settlement Statement – Forest Park, GA]



PO Box 1925
 Richmond, KY 40476
 Phone 859-624-3755
 Fax 859-624-3745

INVOICE

Invoice No: 22222-3
 Date: November 1, 2022

Bill To:
Immunotek Bio Centers Attn: Steven David

Project:
Immunotek Bio Centers Attn: Steven David 833 Forest Parkway Forest Park, GA

Customer ID	Purchase Order #	Payment Terms
Immunotek Bio Ctr		Net 15 Days

Description	Amount
Services this invoice:	
* LS Design Group	
1 - Preliminary design	3,500.00
2 - Minor site planning	2,500.00
3 - Building plans	42,000.00
TOTAL	48,000.00

Harold Buckley

From: Caitlyn Chandler <CChandler@forestparkga.gov>
Sent: Thursday, November 3, 2022 2:53 PM
To: Nick Berk
Subject: Resolution
Attachments: 22-23 Resolution on Applications for Blood Plasma.pdf

A copy of the Resolution that was passed is attached.

Thank you.

Caity Chandler

Exhibit H

RESOLUTION NO. 22-23

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF FOREST PARK, GEORGIA ESTABLISHING A MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR CERTAIN USES IN THE CITY; TO REPEAL CONFLICTING RESOLUTIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE AND EFFECTIVE DATE; TO PROVIDE A PENALTY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Forest Park has been vested with substantial powers, rights, and functions to generally regulate the practice, conduct or use of property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the City of Forest Park; and

WHEREAS, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where exigent circumstances warrant the same, pursuant to case law found at *City of Roswell et al v. Outdoor Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001); *Lawson v. Macon*, 214 Ga. 278, 104 S.E.2d 425 (1958); *Taylor v. Shetzen*, 212 Ga. 101, 90 S.E.2d 572 (1955); and

WHEREAS, the Courts take judicial notice of a local government's inherent ability to impose moratoria on an emergency basis; and

WHEREAS, the Georgia Supreme Court, in the case of *DeKalb County v. Townsend*, 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and

SIGNATURE PAGE – MORATORIUM RESOLUTION

second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." The City of Forest Park has found that the interests of the public necessitate the enactment of a moratorium for health, safety, morals, and general welfare purposes by means which are reasonable and not unduly oppressive; and

WHEREAS, the Mayor and Council of the City of Forest Park have, as a part of planning, zoning, and growth management, been in review of the City's Zoning Ordinances and have been studying the City's best estimates and projections of the type of development which could be anticipated within the City of Forest Park; and

WHEREAS, the Mayor and Council deem it important to develop a comprehensive plan which integrates all of these concerns and therefore considers this moratorium a proper exercise of its police powers; and

WHEREAS, the Mayor and Council therefore consider it paramount that land use regulation continue in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of the City of Forest Park. The Mayor and Council have always had a strong interest in growth management so as to promote the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community; and in particular the lessening of congestion on City streets, security of the public from crime and other dangers, promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the City including access to air and light, and facilitation of the adequate provision of transportation and other public requirements; and

WHEREAS, it is the belief of the Mayor and Council of the City of Forest Park that the concept of "public welfare" is broad and inclusive; that the values it represents are spiritual as well

SIGNATURE PAGE – MORATORIUM RESOLUTION

as physical, aesthetic as well as monetary; and that it is within the power of the City "to determine that a community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled," *Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98 (1954); *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005). It is also the opinion of the City that "general welfare" includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the City, making the most appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting the economic well-being of the community, facilitating adequate provision of public services, and the preservation of the resources of the City; and

WHEREAS, the Mayor and Council are, and have been interested in, developing a cohesive and coherent policy regarding certain uses in the City, and have intended to promote community development through stability, predictability and balanced growth which will further the prosperity of the City as a whole; and

NOW THEREFORE be it resolved by the Mayor and Council of the City of Forest Park and by the authority of the same:

SIGNATURE PAGE – MORATORIUM RESOLUTION

SECTION I.
FINDINGS OF FACT

The Mayor and Council of the City of Forest Park hereby make the following findings of fact:

(a) It appears that the City's development ordinances, Zoning Ordinance and/or Comprehensive Land Use Plan require an additional review by the City of Forest Park as they relate to blood and/or plasma donation centers or similar facilities;

(b) Substantial disorder, detriment and irreparable harm would result to the citizens, businesses, and City of Forest Park if the current land use regulation scheme in and for the above described uses in the City were to be utilized by property owners prior to a more thorough review;

(c) The City's ongoing revision of its code, comprehensive plan and zoning ordinances requires that a limited cessation of development and building permits, occupation tax permits, and other licenses, permits or variances, with respect to the above-described uses, be enacted;

(d) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any applications for such developments, to ensure that the design, development and location of the same are consistent with the long-term planning objectives of the City; and

(e) That the Georgia Supreme Court has ruled that limited moratoria are reasonable and do not constitute land use when such moratoria are applied throughout the City under *City of Roswell et al v. Outdoor Systems Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001)

SIGNATURE PAGE – MORATORIUM RESOLUTION

SECTION II.

IMPOSITION OF MORATORIUM

(1) There is hereby established a moratorium on the establishment of the following types of businesses and the acceptance by the staff of the City of Forest Park of applications of any kind for blood and/or plasma donation centers or similar facilities.

(2) The duration of this moratorium shall be until the City adopts a revision of the City Code of the City of Forest Park related to the above referenced uses or until 180 days has elapsed, whichever first occurs;

(3) This moratorium shall be effective as of the date of adoption of this Resolution;

(4) This moratorium shall have no effect upon approvals or permits previously issued or as to development plans previously approved by the City. The provisions of this Resolution shall not affect the issuance of permits or site plan reviews that have received preliminary or final approval by the City or for which consultations have been had with the City staff on or before the effective date of this Resolution;

(5) As of the effective date of this Resolution, no applications for development or permits for the above described uses will be accepted by any agent, employee or officer of the City with respect to any property in the City of Forest Park, and any permit so accepted for filing will be deemed in error, null and void and of no effect whatsoever and shall constitute no assurance whatsoever of any right to engage in any act, and any action in reliance on any such permit shall be unreasonable;

(6) The following procedures shall be put in place immediately. Under *Cannon v. Clayton County*, 255 Ga. 63, 335 S.E.2d 294 (1985); *Meeks v. City of Buford*, 275 Ga. 585, 571

SIGNATURE PAGE – MORATORIUM RESOLUTION

S.E.2d 369 (2002); *City of Duluth v. Riverbroke Props.*, 233 Ga. App. 46, 502 S.E.2d 806 (1998), the Supreme Court stated, "Where a landowner makes a substantial change in position by expenditures and reliance on the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to this case, the City of Forest Park recognizes that, unknown to the City, de facto vesting may have occurred. The following procedures are established to provide exemptions from the moratorium where vesting has occurred:

A written application, including verified supporting data, documents, and facts, may be made requesting a review by the Mayor and Council at a scheduled meeting of any facts or circumstances which the applicant feels substantiates a claim for vesting and the grant of an exemption.

SECTION III.

EXEMPTION

(1) During the term of this moratorium, any person may file an application for exemption from this moratorium with the Mayor and Council. The Mayor and Council may grant such exemption where the proposed establishment(s) is/are deemed to be in conformity with the proposed development ordinances, proposed Zoning Ordinance and/or the proposed Comprehensive Land Use Plan that are to be considered during the term of this moratorium. The Mayor and Council shall consider the general terms of the proposed development, the proposed

use, the proposed development plans, the benefits of the proposed development to the City, and the comprehensive land use plan for the City in deciding upon a requested exemption.

(2) Should the Mayor and Council grant such exemption, the staff of the City of Forest Park may accept an application for the proposed use. However, the grant of an exemption from this moratorium in no way confers any rights upon the applicant or the exempted plans, applications, or requests.

(3) Any exemption granted by the Mayor and Council shall not constitute final approval of such plans or requests by the City. Any granted exemption shall merely grant the City staff the ability to accept and process the subject application in accordance with all City laws.

SECTION IV.

(a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Resolution. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause, or phrase of this Resolution is mutually dependent upon any other section, paragraph, sentence, clause, or phrase of this Resolution.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise

SIGNATURE PAGE – MORATORIUM RESOLUTION

unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Resolution and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Resolution shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION V.

All Resolutions or parts of Resolutions in conflict with this Resolution are, to the extent of such conflict, hereby repealed.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

SIGNATURE PAGE – MORATORIUM RESOLUTION

SECTION VI.

The preamble of this Resolution shall be considered to be and is hereby incorporated by reference as if fully set out herein.

RESOLVED this 3rd day of October 2022.



Mayor Angelyne Butler

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney



SIGNATURE PAGE – MORATORIUM RESOLUTION



CITY COUNCIL REGULAR SESSION

Monday, October 03, 2022 at 7:00 PM
Council Chambers and YouTube Livestream

MISSION STATEMENT

It is the mission of the City of Forest Park to enhance, strengthen, and grow our city by collaborating with our community to provide the highest level of service. Striving to be recognized as a diverse community that values and respects all members. We will strive to provide fair, professional, and courteous service through transparency and open communication. As we work to achieve this mission, we will have integrity beyond reproach while employing fiscal discipline and innovation. In this work there are no praises and raises for mediocrity.

Website: www.forestparkga.gov

YouTube: <https://bit.ly/3c28p0A>

Phone Number: (404) 366.4720

FOREST PARK CITY HALL

745 Forest Parkway
Forest Park, GA 30297

The Honorable Mayor Angelyne Butler, MPA

The Honorable Kimberly James

The Honorable Hector Gutierrez

The Honorable Allan Mears

The Honorable Dabouze Antoine

The Honorable Latresa Akins-Wells

Dr. Marc-Antonie Cooper, City Manager

S. Diane White, City Clerk

Mike Williams, City Attorney

AGENDA

VIRTUAL MEETING NOTICE

DISCLAIMER: For in-person attendance, all CDC requirements of Masks and Social Distancing is recommended.

To watch the meeting via YouTube - <https://bit.ly/3c28p0A>

The Council Meetings will be livestream and available on the City's

YouTube page - "**City of Forest Park GA**"

CALL TO ORDER/WELCOME:

INVOCATION/PLEDGE:

ROLL CALL - CITY CLERK:

PRESENTATIONS:

1. **Presentation Ward 4 Yard of the Quarter Award – Legislative Offices**

Background/History:

Presentation of the Ward 4 Yard of the Quarter Award

PUBLIC HEARINGS:

2. **Council Approval to De-Annexation Request of Parcel# 13014D A002Z – Department of Planning & Community Development - PUBLIC HEARING**

PUBLIC COMMENTS: (All Speakers will have 3 Minutes)

ADOPTION OF THE AGENDA WITH ANY ADDITIONS / DELETIONS:

APPROVAL OF MINUTES:

3. **Council Approval of Council Work Session from September 5, 2022 and Work Session and Regular Meeting Minutes from September 19, 2022 - City Clerk**

NEW BUSINESS:

4. **Council Approval of Emergency Light & Siren Package for Fire Training Chief Vehicle – Fire & EMS Department**
5. **Council Approval of an Intergovernmental Agreement with the DDA - Legal**
6. **Council Approval of an Intergovernmental Agreement with the URA - Legal**
7. **Council Approval of the 2nd Round of ARPA Funding – Chief Executive Offices**
8. **Council Consideration of Pay Increase for Council - Legal**

CLOSING COMMENTS BY GOVERNING BODY:

EXECUTIVE SESSION: (When an Executive Session is required, one will be called for the following issues: Personnel, Litigation or Real Estate)

ADJOURNMENT:

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 404-366-1555.



CITY COUNCIL REGULAR SESSION

Monday, October 03, 2022, at 7:00 PM
Council Chambers and YouTube Livestream

MISSION STATEMENT

It is the mission of the City of Forest Park to enhance, strengthen, and grow our city by collaborating with our community to provide the highest level of service. Striving to be recognized as a diverse community that values and respects all members. We will strive to provide fair, professional, and courteous service through transparency and open communication. As we work to achieve this mission, we will have integrity beyond reproach while employing fiscal discipline and innovation. In this work there are no praises and raises for mediocrity.

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FOREST PARK CITY HALL

745 Forest Parkway
Forest Park, GA 30297

The Honorable Mayor Angelyne Butler, MPA

The Honorable Kimberly James

The Honorable Hector Gutierrez

The Honorable Allan Mears

The Honorable Dabouze Antoine

The Honorable Latresa Akins-Wells

Dr. Marc-Antonie Cooper, City Manager

S. Diane White, City Clerk

Mike Williams, City Attorney

APPROVED MINUTES

CALL TO ORDER/WELCOME: The meeting was called to order at 7:07pm by Mayor Butler and she read the Mission Statement

INVOCATION/PLEDGE: The invocation and pledge were led by Minister Justin Cook.

ROLL CALL - CITY CLERK: A quorum was established

Attendee's Name	Title	Absent	Present
Angelyne Butler, MPA	Mayor, At-Large		✓
Kimberly James	Council Member, Ward 1		✓
Dabouze Antoine	Council Member, Ward 2		✓
Hector Gutierrez	Council Member, Ward 3		✓
Latresa Akins-Wells	Council Member, Ward 4		✓
Allan Mears	Council Member, Ward 5		✓

Javon Lloyd, Public Information Officer, LaShawn Gardiner, Director Planning & Community Development, Shalonda Brown, HR Director, Letasha Clemmons, Fire Chief, David Halcome, Deputy Fire Chief, Bruce Abrahams, Economic

Development Director, Bobby Jinks, Director Public Works, Nathaniel Clark, Police Chief, and Arthur Geeter, Purchasing Manager

PRESENTATIONS:

1. Presentation Ward 4 Yard of the Quarter Award – Legislative Offices

Background/History:

Presentation of the Ward 4 Yard of the Quarter Award

Comment/Discussion from Governing Body:

Councilmember Wells – I initiated the keep Ward 4 Beautiful program, about 5 or 6 years ago, it was about beautifying the community and the city. Mr. Homero Arredondo has a beautiful home with an immaculate yard. She wanted to thank him and his family for helping to keep Ward 4 beautiful and presented him with a Yard of the month sign and a \$25.00 gift certificate. She also thanked Ms. Wright for helping to choose the yard.

PUBLIC HEARINGS:

2. Council Approval to De-Annexation Request of Parcel# 13014D A002Z – Department of Planning & Community Development - PUBLIC HEARING

It was moved to open the Public Hearing for De-Annexation of Parcel #13014D A002Z-PU

Motion made by Councilmember Mears, Seconded by Councilmember Akins-Wells.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

There were no speakers for or against the de-annexation

It was moved to close the Public Hearing for De-Annexation of Parcel #13014D A002Z-PU

Motion made by Councilmember James, Seconded by Councilmember Akins-Wells.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was moved to table this item until the next Council meeting.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

PUBLIC COMMENTS: (All Speakers will have 3 Minutes)

There were three (3) Public Comment speakers:

Trudy Smith - The mayor read Mrs. Smith's comments - Is against the proposed rates for mayor and council because they are part-time positions and do not merit these raises. There are citizens working 2 and 3 jobs and do not receive this level of compensation. Also, this is not sustainable a fiscal action, the bonuses the employees received were

appropriate and were part of the Covid response money. Setting this type of increase in expenditure for years to come on an annual basis is inappropriate and you should be ashamed of yourselves as public servants for considering this.

Carl Evans - Wanted to thank the governing body and city employees for what they did on behalf of Mrs. Sandra passing. They went above and beyond, and he is thankful. All the disagreements over all the years, is because they all have a different vision for the city, but all love the city and want to see it move forward. Again, he appreciates all that attended the service and for sending such beautiful flowers.

LaWanda Folami - First off is the Edge project, the budget is supposed to be 350k, but the governing body has not had a conversation about the first fund of 400k that has been allocated, which is a disappointment, because no one is at the table talking. Second the De- Annex for property 110 should be a conversation, because if it is turned over to the county we could end up with another landfill. Lastly, there are the raises for the city council, I think consideration of what you are deciding on is the answer. No one is saying that you cannot get a raise, but the amount that you want is outrageous. 38k for council and 50k for the mayor, you know when you got out there and campaigned this is what you signed up for.

You all did not go to the table; you all went to the city manager and got some numbers. One thing for sure is the chain of command for this city is out of order. The mayor, council, city manager, this whole administration is out of order. When you cannot sit at the table to produce a solution, then you are out of order. You can say what you want about the citizens out here, but at the end of the day, veto power does not override the taxpayers. There are a lot of people here today because they were invited. Some people here just want money, and not here because they are passionate. We send you to be training, and pay for it, so it is not like you are not being compensated.

Laverne Mitchell - Is a regular walker in the park and notice people not picking up after their dog. There was poop on the walking track, and she thought that dogs were not allowed on the track. She also wants to know why nothing is being done about people popping fireworks, anytime they want to. If people are paying taxes it seems like this should be able to be minimized, it is not good and makes her angry, because there is nothing she can do. It seems like no one around here wants to do anything. It is disturbing, she does not like it, and something needs to be done about it.

ADOPTION OF THE AGENDA WITH ANY ADDITIONS / DELETIONS:

It was moved to adopt the Council agenda with adding an Item #9 - Approval to give the Police Department a \$5,000 pay increase.

Motion made by Councilmember James, Seconded by Councilmember Akins-Wells.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

APPROVAL OF MINUTES:

3. Council Approval of Council Work Session from September 5, 2022, and Work Session and Regular Meeting Minutes from September 19, 2022 - City Clerk

It was moved to approve the Council Work Session Minutes from Sept. 5, 2022, and the Work Session/Regular Meeting Minutes from Sept. 19, 2022

Motion made by Councilmember Mears, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

NEW BUSINESS:

4. Council Approval of Emergency Light & Siren Package for Fire Training Chief Vehicle – Fire & EMS Department

It was moved to approve the Emergency Light & Siren Package for Fire Training Chief's Vehicle

Motion made by Councilmember Antoine, Seconded by Councilmember James.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

5. Council Approval of an Intergovernmental Agreement with the DDA - Legal

There was no action taken on the IGA with the Downtown Development Authority

6. Council Approval of an Intergovernmental Agreement with the URA - Legal

It was moved to approve the IGA with the Urban Redevelopment Authority.

Comment/Discussion from Governing Body:

Councilmember James - The item 2b, what is the amount going to be for the funding and the appropriations?

City Attorney - For the URA 24,673.00

Councilmember James - We can always come back if we choose to go higher.

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells

Voting Abstaining: Councilmember Mears

7. Council Approval of the 2nd Round of ARPA Funding – Chief Executive Offices

Mayor Butler- Is there a motion to direct staff to prepare a budget amendment to the priorities established by council?

Motion made by Councilmember Antione, Seconded by Councilmember James.

Comment/Discussion from Governing Body:

Councilmember James - Are we talking about the priorities that are already outlined, are we going to continue and just add to it?

Mayor Butler - The ones in the agenda?

Councilmember James – Yes, the ones in the agenda.

Mayor Butler - That could be a part of it in the work session.

City Manager - That can be a part of it, or it can be added to it.

Councilmember James - We will come back?

City Manager - Yes, we will bring it back.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

8. Council Consideration of Pay Increase for Council - Legal

It was moved by Councilmember Antoine to approve the pay increase for Council.

The motion failed for lack of a second.

9. Council Consideration of \$5,000 Increase for Police Department - Legislative

It was moved to approve the \$5,000 increase for Police Department.

Motion made by Councilmember James, Seconded by Councilmember Mears.

Comment/Discussion from Governing Body:

Councilmember James - If you recall, I am working to increase both police and fire. I had put it on the table to give public safety, a 15% increase and a 10 percent increase for fire. In doing research it was found that there is such a difference in the lowest paid \$33,000 to the highest paid which is \$119,000 and that does not include the chief and deputy chief.

To do an across the board 15% increase will be disproportionate, \$5,000 to lowest paid employee and \$17,000 for the highest paid employee. Knowing the money is there to give a 15% increase across the board, I went to the 15% for the lowest paid which is \$5,000, and we can let that be the across-the-board amount. So, I propose a 5,000 increase to the members of the police department, and I will be coming back with fire. Just know there are others around the state that is giving an increase to the public safety department. This is something we need to do to remain competitive; we have great recruits coming in and we want them to stay.

Councilmember Antione - I am for it, but I will go with it if it is across the board.

Mayor Butler - Across the board for all employees.

Councilmember Antione - Yes mam.

Councilmember Gutierrez - Did you say the lowest paid employee is 33,000 and we are voting on a potential of 17.00, to put us at 38,000. How is that possible Dr. Cooper, I would like to know the numbers, how is someone getting 33,000 in our city.

City Manager – That was the last pay scale, they all have been bumped up to 35k, but 33,000 was the lowest.

Councilmember Gutierrez - But they are not anymore, right.

City Manager – No, they are at 35k now, all city employees are at 17.00.

Councilmember Gutierrez - I am not opposed to giving the public safety department raises, but like Councilmember James investigation, we are also working on some other stuff. I do not feel now is the time for that.

Councilmember Wells - I agree, if it was across the board, then yes. The fire and the police department are no better than each other, I say across the board for all employees. We must get out of doing it for one department like one is better than the other. I would like to see all our employees successful and making enough to not have to go out and get 2 and 3 jobs. Then 33,000 a year and we want 38 and 55, I do not agree with that.

Councilmember Mears - I agree with the numbers, but we must understand we are in good times right now. To bring wages up to livable or better. You must want to do this job from the heart, because we may not always have the money to give. So, you really want to pick the employees that really want to do the job and reward them.

Councilmember Wells - What happened with the merit system we spoke about this about years ago. Some employees do not deserve raises, and we keep giving the same amount to everyone. There are people that are really working and putting their all into it and we are putting them on the same level as people that do absolutely nothing or the bare minimum. Is there an update on the merit system?

City Manager – When you say merit system what do you mean? Well got the evaluation and HR and I are working to get the plan. This year was to get the evaluation. Next year in the budget we were talking about a pool of money, we will come to the council and discuss pay increases across the board and how they would come about. We are not at that point yet and keep producing ways of wanting to give more money throughout the year.

Councilmember Wells -That is what we need to put a stop to by putting the merit system in place. When they do the evaluations, are the employees deserving the raises getting them?

City Manager – The evaluations were done this year, and we gave an across the board pay increase this year, but next year when we talk about budget that is one of the things we will talk about at the retreat, the merit system that will be put in place. That is what H.R. and I have been working on since we discussed this

last year. That is why we proposed an across-the-board increase instead of implementing a merit system that was not there.

Councilmember Wells - Do an across the board raise for everyone and then implement the merit system in place.

Voting Yea: Councilmember James, Councilmember Mears

Voting Nay: Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells

Motion failed

10. Council Consideration of a Moratorium on Blood & Plasma Collection Centers - Legal

This item was discussed in Executive Session

CLOSING COMMENTS BY GOVERNING BODY:

Councilmember James – I wanted to say I had the pleasure to attend the Arnold Fountain Road naming ceremony. I learned so much history and was impressed by the information. The Clayton County Public School had a listing when you walk into the room, of the African American schools named by people of color; William Alfred Fountain Elementary, John William Arnold Elementary, M. D. Roberts Middle School, Roberta T. Smith Elementary, Alfretta A. Harper Elementary, James A. Jackson Elementary, Eula Ponds Perry Career Academy, Eddie J. White Middle Academy and Kay R. Pace Elementary School of the Arts. I learned the William Alfred Fountain High School, was built in 1952, located in Forest Park, Georgia, located near the Forest Park Chapel Elementary School, and Susie Perkins was the principal. Fountain High School started with grades 1-12 with approximately 1200 students attending. Mr. M.D. Roberts was appointed the first principal in June 1952 and retired in 1983.

I was able to take a picture of Mr. Eddie White, one of the speakers. He started working at 12 years old and worked at Hapeville Colored Elementary School. In 1961 he was 25 years old when he became a teacher with Clayton County Public School. I was blown away to know this was the colored school that Black people had to attend, until they integrated. The largest class was in 1965, with 100 students and one of our senators, Gail Davenport was a student there. The last class held at Fountain High School was in 1969.

Councilmember Antoine – Thank you all for coming out and thank you for all the birthday emails. I wish you all a safe ride home and God Bless you all.

Councilmember Gutierrez – Thank you all for coming out, it is nice to see everybody. We have had a few successful events and I would like to shout out Economic Development, for the business breakfast, I was able to meet a lot of people. It is not only bringing businesses but connecting the current businesses here that we have with one another. It was a great networking opportunity.

We have a few events coming up, and I am excited our Atlanta teams are doing good. We have tailgate at the Starr Park coming up at our Fall Festival, for the Georgia vs Florida game. This Friday, our Food Truck Friday theme will be Spanish Heritage Month and we will be showing a movie at Leigh Park. Bring the family so you all can enjoy some of the local vendors. This Saturday we will have Hispanic Heritage Month, hosted by the city, to celebrate the cultures that we have here.

Councilmember Wells – Mr. Evans, again my deepest condolences to you on your loss of Councilwoman Bagley, thank you for being here. We as a council never agree on everything, and we are all different and that is why we are here. I stand firm on what I said the hitting of the gavel or being threatened to be put out do not bother me. How I feel, you know what you signed up for when you signed up for it. We serve the community, which is what we were elected to do, at the pay that we get.

Some people may agree that they need raises, I am one of those that do not. When I wanted to do better and I wanted better, I went out and got me a job. That is what I think others should do, even Councilmember Mears is working. Some people have made this their job and do nothing but the city business, but I am not one of those people. So, I will not vote for myself a raise, in the past yes, I did, because I felt like and still feel like I am one of the hardest working councilmembers up here. However, I had to look in the mirror and ask myself what did you sign up for? Who is your commitment to, is it about the community or is it about you?

There have been times when I have spent nights crying from having to argue with people up here, about giving back to my community; and I do not feel like that is something that I should do, when I am serving my community. Some people are selfish, all about themselves and all about money. Everyone knows that I am transparent, I am going to say what I have to say, get a job. You want more money to get a job, yes, I will say you are not from here and you do not have to be to serve the people. That is why you do not come into the community, and that is why you do not fellowship with the people, but I said what I said.

To our employees, I do not want you to feel like Councilwoman Wells do not care, I want you to have more money. I would rather give you the money they are trying to give themselves. That is something we should consider, give the 5,000 raises to everyone and I will support it. Again, this is not our full-time job and we do not deserve full-time pay. We were voted in to do a job, so do what the people elected you to do. Thank you all for coming out.

Councilmember Mears – I appreciate you all for coming and remember this is where you take care of your business. It is sometimes like live Atlanta Wrestling, sometimes it gets hot, sometimes it does not. You all come on out and see the show. Thank you for coming and we expect to see more of you this year.

Mayor Butler – it was Denzel Washington, who said “you will never be criticized by someone who is doing more than you, you will always be criticized by someone doing less.” The very nature of Economic Development is the creation of wealth in which a community can benefit and that is what we have been doing. Whether you choose to see it or not is your prerogative, but as I said before the momentum that this administration has generated over the last 4 years will not stop. A party is not economic development, anyone can throw a party. Talk to me when you are sitting at a table making multi-million-dollar deals.

Councilmember James - The name of the highway is Arnold Fountain Professional Club Highway. This Wednesday, coming up the Forest Park High School softball team will have their senior night and they will have their home game on the field here, so come out and cheer our team on. We are celebrating Hispanic Heritage at the High School all week and then Friday, there will be a dance.

As far as the fireworks that were being talked about, there is a noise ordinance, so we need to crack down on that. Don't we also have signs that say no dogs allowed in the park? We will find out and make sure that is enforced. Even if you are walking your dog in the neighborhood, please clean up after them. Check out the website, make sure you go to Ward 1, the neighborhood meetings are recorded, that I host every month. They are posted online, and you can go there and get information.

City Manager – I would like to ask everyone to keep our city clerk in your thoughts and prayers. She experienced the loss of her mom and brother, within weeks of each other.

EXECUTIVE SESSION: (When an Executive Session is required, one will be called for the following issues: Personnel, Litigation or Real Estate)

It was moved to recess into Executive Session for Personnel, Litigation or Real Estate matters at 7:48pm

Motion made by Councilmember James, Seconded by Councilmember Antoine.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was moved to reconvene back into Regular session at 9:21pm

Motion made by Councilmember James, Seconded by Councilmember Gutierrez.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was moved to approve the terms of agreement with Clear Channel as discussed in Executive Session

Motion made by Councilmember James, Seconded by Councilmember Gutierrez.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was moved to amend the agenda to add Item #10 "Consideration of a Moratorium of Blood & Plasma Centers collection".

Motion made by Councilmember Mears, Seconded by Councilmember James.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

It was motion to adopt a Moratorium on the Collection of Blood & Plasma Centers Collection as discussed in Executive Session.

Motion made by Councilmember James, Seconded by Councilmember Gutierrez.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

ADJOURNMENT:

It was moved to adjourn the Council Regular meeting at 9:22pm

Motion made by Councilmember James, Seconded by Councilmember Gutierrez.

Voting Yea: Councilmember James, Councilmember Antoine, Councilmember Gutierrez, Councilmember Akins-Wells, Councilmember Mears

File Attachments for Item:

3. Council Approval of Resolution of the Appointment of Mayor Pro-Tem for 2023 - Legislative

**STATE OF GEORGIA
COUNTY OF CLAYTON**

RESOLUTION NO. 23-02

A RESOLUTION APPOINTING THE MAYOR PRO TEM (MAYOR PRO TEMPORE). AUTHORIZING THE EXECUTIVE OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE PURPOSE OF THIS RESOLUTION. AUTHORIZING THE CITY CLERK TO ATTEST SIGNATURES AND AFFIX THE OFFICIAL SEAL OF THE CITY, AS NECESSARY, PROVIDING FOR A EFFECTIVE DATE OF THIS RESOLUTION, AND FOR OTHER PURPOSES.

WHEREAS the City of Forest Park (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia and is charged with being fiscally responsible concerning the use and expenditure of all public funds; and

WHEREAS the City Council desires to appoint a Mayor Pro Tem (mayor pro tempore); and

WHEREAS the City Council finds that the foregoing appointment is necessary and beneficial to its citizens and to the efficient operation of the City.

THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOREST PARK GEORGIA AS FOLLOWS:

SECTION 1 Appointment – The City Council hereby appoints

_____ as the Mayor Pro Tem (mayor pro tempore) for the 2023 calendar year.

SECTION 2 Approval of Execution – The Mayor of Mayor Pro Tem is hereby authorized to sign all documents and to perform all other necessary acts necessary to effectuate this Resolution on behalf of the City of Forest Park. The City Clerk is authorized to execute, attest to, and seal any document which may be necessary to effectuate this Resolution.

SECTION 3 Severability – To the extent any portion of this Resolution is declared to invalid, unenforceable, or non-binding, that shall not affect the remaining portions of this Resolution.

SECTION 4 Repeal of Conflicting Provisions – All City Resolutions inconsistent with this Resolution are hereby repealed.

SECTION 5 Effective Date - This resolution shall become effective immediately upon its adoption by the Mayor and City Council of the City of Forest Park as provided in the City Charter.

SO RESOLVED, this _____day of January 2023.

Mayor Angelyne Butler

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

File Attachments for Item:

4. Council Approval of Resolution to Set and Publish the Qualifying Fees for Nov. 2023 - Executive Office

**STATE OF GEORGIA
COUNTY OF CLAYTON**

RESOLUTION NO. ____

**A RESOLUTION TO SET AND PUBLISH THE QUALIFYING FEES FOR
THE NOVEMBER 7, 2023 ELECTIONS**

WHEREAS the duly elected governing authority of the City of Forest Park, Georgia (“the City”) will hold a General Municipal Election on Tuesday, November 7, 2023, for Councilmembers of Wards 3, 4 and 5

WHEREAS the qualification fee for these offices must be set and published no later than February 1, 2023, for the elections held on November 7, 2023

WHEREAS the qualification fee shall be 3% of the total gross salary for each office in the preceding year.

NOW THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Forest Park, Georgia as follows:

Section 1 – Setting of Qualifying Fees: The qualifying fee for the office of Councilmember is \$432.00.

Section 2 – Public Record: This document shall be maintained as a public record by the City Clerk and shall be accessible to the public during all normal business hours of the City of Forest Park.

Section 3 – Authorization of Execution: The Mayor is hereby authorized to sign all documents necessary to effectuate this Resolution.

Section 4 – Attestation: The City Clerk is authorized to execute, attest to, and seal any documents which may be necessary to effectuate this resolution, subject to approval as to form by the City Attorney.

Section 5 – Effective Date: This Resolution shall be effective immediately upon its adoption by the Mayor and City Council.

SO RESOLVED, this _____day of January 2023.

Mayor Angelyne Butler

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

NOTICE FOR SETTING OF QUALIFYING FEES FOR
NOVEMBER 7, 2023, GENERAL MUNICIPAL ELECTIONS

Pursuant to O.C.G.A. §21-2-131(a)(1)(A) notice is hereby given that the City of Forest Park, Georgia has adopted a Resolution setting the qualifying fees for the November 7, 2023, General Municipal Election, to elect three (3) City Councilmembers. The qualifying fee for the offices of City Councilmembers Ward 3, 4 and 5 is Four Hundred Thirty-Two Dollars (\$432.00).

Qualifying dates will be announced later.

This 2nd day of January 2023.

S. Diane White
City Clerk

