

**SECOND AMENDMENT TO SUBDIVISION AGREEMENT RELATING TO  
Tract 5224 TO REDUCE  
THE REQUIRED AMOUNT OF PERFORMANCE SECURITY**

THIS AMENDMENT TO THE SUBDIVISION AGREEMENT ("Amendment") made and entered into as of this 3<sup>rd</sup> day of December 2019, amends the Subdivision Agreement entered into on March 5, 2005, between the City of Fresno, a municipal corporation, ("City") and, DeYoung Properties 5224 LP, A California Limited Partnership ("Subdivider") relating to the Final Map of Tract 5224.

**RECITALS**

WHEREAS, City and Subdivider entered into a Subdivision Agreement, dated March 5<sup>th</sup>, 2005, for completion of certain improvements as Conditions of Approval for Vesting Tentative Map No. 5224, dated April 21<sup>st</sup> 2004 and acceptance of offers of dedication of the streets, highways, public ways, easements and facilities in consideration of a finding of substantial compliance with such Tentative Map, ("Agreement"); and,

WHEREAS, Section 5(a) states that prior to the approval by Fresno City Council of the Final Map, the Subdivider shall furnish performance security totaling 100% of the Final Cost Estimated to construct the public works of improvement set forth in the Agreement. 95% of the Final Cost Estimate shall be in the form of a bond or irrevocable instrument of credit and 5% of the Final Cost Estimate was to be in the form of cash or a certificate of deposit; and,

WHEREAS, Subdivider provided the performance security required by the Agreement; and,

WHEREAS, City and Subdivider entered into an amendment to the subdivision agreement, dated July 24, 2009, that reduced the amount of the required performance security to an amount totaling 100% of the cost estimate for the remaining improvements that the subdivider is required to construct pursuant to the terms of the agreement.

WHEREAS, Subdivider has now completed all of the required improvements except for landscaping on Veterans Boulevard and desires to delay the installation of the landscaping until Veterans Boulevard is opened to everyday traffic; and,

WHEREAS, on September 28<sup>th</sup>, 2017, the Council for the City of Fresno authorized the Director of Public Works or the City Engineer to enter into a second amendment with Subdivider to provide for a second reduction in the amount of the required performance security, to an amount totaling 100% of the cost estimate for the remaining landscaping improvements on Veterans Boulevard that the Subdivider is required to construct pursuant to the terms of the Agreement.

WHEREAS, the Subdivider warrants that any and all parties having record title interest in the Final Map which may ripen into a fee have subordinated to this instrument and that all such instruments of subordination, if any, are attached hereto and made a part of this Amendment.

## **AGREEMENT**

NOW, THEREFORE, the parties agree that the Agreement be amended as follows:

1. Amended Exhibit "A" to the Subdivision Agreement is replaced with Exhibit "A2" attached hereto as Attachment "1."
2. Exhibit "C" to the Subdivision Agreement is replaced with Exhibit "C2" attached hereto as Attachment "2."
3. Prior to the Director of Public Works or the City Engineer executing this Amendment, Subdivider shall provide to the City the performance security required in Exhibit "A2" and the warranty security required by the Agreement in the amount required by Fresno Municipal Code, section 15-3806 and set forth in Exhibit "A2."
4. Except as otherwise provided herein, the Agreement remains in full force and effect.

\* \* \*

IN WITNESS WHEREOF, the parties have executed this Amendment in Fresno, California, the day and year first above written.

**CITY OF FRESNO,**  
a Municipal Corporation

**SUBDIVIDER**  
DeYoung Properties 5224 LP  
A California Limited Partnership

Public Works Department  
Scott Mozier,  
Director

By:   
Jerry DeYoung

By: \_\_\_\_\_  
Andrew Benelli, P.E. Assistant Director

**ATTEST:**

Yvonne Spence, CMC  
City Clerk, City of Fresno

*(Attach Notary Acknowledgments)*

By: \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

Doug Sloan  
City Attorney

By:  12.4.19  
Raj Singh Badhesha  
Senior Deputy City Attorney

Date: \_\_\_\_\_

**Attachment:**

- Attachment "1" – Exhibit "A2"
- Attachment "2" – Exhibit "C2"

## Amended Exhibit A2 Subdivision Agreement for Tract 5224

<b>A. ESTIMATE OF DESCRIPTION AND COST OF THE REMAINING WORK AND IMPROVEMENTS 4224</b>					
	<b>DESCRIPTION</b>	<b>ESTIMATED QUANTITY</b>	<b>UNIT</b>	<b>ESTIMATED UNIT COST</b>	<b>EXTENSION</b>
	Landscape and Irrigation	72,800	Sq Ft	\$5.00	\$364,000.00
		SUB-TOTAL (estimate)(see EXHIBIT C)			\$364,000.00
		200% of total			\$728,000.00
		195%			\$709,800.00
		5%			\$18,200.00
		Total performance security required			\$728,000.00
	The work and improvements, quantities and costs are estimates. The actual extent of the work and improvements shall be established by the construction plans approved by the City Engineer.				
<b>B. IMPROVEMENT SECURITY REQUIREMENTS (due with amended subdivision agreement)</b>					
		** Amounts rounded to nearest \$100			\$728,000.00
	<b>Performance Security (100% of Final Cost Estimate)**</b>				
	195% of cost estimate shall be in the form of a bond by duly authorized corporate sureties or irrevocable letter of credit				\$709,800.00
	5% of cost estimate shall be in cash or a Certificate of Deposit				\$18,200.00
	<b>Payment Security (50% of Original Final Cost Estimate)**</b>				
	100% of the original payment security to remain in place				
<b>C. WARRANTY SECURITY (due as condition of acceptance of the work)**</b>					<b>\$24,700</b>
	Per original subdivision agreement				



October 23, 2019

## Amended Exhibit 2C Subdivision Agreement for Tract 5224

Andy Benelli  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721

**Subject: Tract 5224 – Veterans Boulevard  
Remaining Landscaping and Irrigation Cost Estimate**

Dear Mr. Benelli:

As the Veterans Boulevard Corridor project is still a few years away to completion, the Developer of Tract 5224, De Young Property, would like to reduce the amount of bond currently in place to install the landscape and irrigation along the frontage of the tract on Veterans Boulevard. Furthermore, as the development fees have been paid for this project and the right-of-way have been dedicated, we would like to explore the possibility of the bond to be released.

Reviewing the approved Landscape and Irrigation Plans for the project, the total landscape area on both sides of Veterans Boulevard and the median island is 72,800 square feet. The average cost estimate for landscape and irrigation improvements, which complies with the latest California Water Code, is around \$5.00 per square foot.

Our opinion of probable improvement cost for the landscape and irrigation installation along Veterans Boulevard as part of Tract 5224 improvements is \$364,000.

We look forward to continue working with the City on this matter. If you have any questions, please feel free to contact us. Thank you for your help.

Best Regards,

Yohanes Makmur, P.E.  
Senior Associate Engineer