

**AMENDMENT TO SUBDIVISION AGREEMENT RELATING TO
THE FINAL MAP OF TRACT 5224 TO REDUCE
THE REQUIRED AMOUNT OF PERFORMANCE SECURITY**

THIS AMENDMENT TO THE SUBDIVISION AGREEMENT ("Amendment") made and entered into as of this 24th day of July, 2009, amends the Subdivision Agreement previously entered into on May 5th 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 May 5th 2005, for completion of certain improvements as Conditions of Approval for Vesting Tentative Map No. 5224, April 21st 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, on May 6 2008, the Council for the City of Fresno adopted Resolution No. 2008-100 which authorizes the Director of Public Works or the City Engineer to enter into amendments to subdivision agreements to provide for a one-time reduction in the amount of the required performance security, to an amount totaling 200% of the cost estimate for the remaining improvements the Subdivider is required to construct pursuant to the terms of the Agreement.

WHEREAS, the City and Subdivider understands that by entering into this Amendment and complying with its terms, the Subdivider is exercising its one opportunity to reduce the required amount of performance security as permitted by Council Resolution 2008-100 and that Subdivider will not be permitted to request any subsequent reductions in performance security; and,

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.

Certified Copy Qm
City Clerk's Office

Date 8/18/09

AGREEMENT

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

1. The following language replaces the language of Subsection 5(a) of the Agreement:

PERFORMANCE SECURITY. Total amount to equal 200% of the cost estimate for all remaining work and improvements required under the Subdivision Agreement as set forth in Exhibit "C" to be conditioned upon the faithful performance of the Agreement.

i. 195% of the cost estimate for all remaining work and improvements shall be in the form of a bond or irrevocable instrument of credit; and

ii. 5% of the cost estimate for all remaining work and improvements shall be in the form of cash or a certificate of deposit made payable only to the City.

2. Exhibit "A" is replaced with Amended Exhibit "A" which is Attachment A to this Amendment. Amended Exhibit "A" sets forth the new amounts for the performance security. In all other respects Amended Exhibit "A" does not modify Exhibit "A."

3. Exhibit "C", entitled Estimate for Cost of Remaining Work and Improvements, which is Attachment B to this Amendment, is added to the Agreement and incorporated by reference.

4. 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 Section 1 and Amended Exhibit "A" and the warranty security required by the Agreement in the amount required by Fresno Municipal Code, section 12-1016(d) and set forth in Amended Exhibit "A."

5. Except as otherwise provided herein, the Agreement remains in full force and effect.

* * *

Certified Copy _____
City Clerk's Office _____
Date 8/18/09

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

Public Works Department
Patrick Wiemiller, Director

By: 

SUBDIVIDER

DeYoung Properties 5224 LP
A California Limited Partnership

By: 
Jerry DeYoung

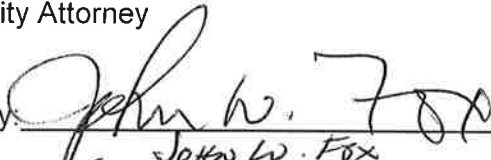
ATTEST:

Rebecca E. Klisch, CMC
City Clerk, City of Fresno

By: 
Deputy 8/18/09

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

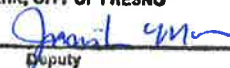
By: 
John W. Fox
Sr Deputy City Attorney

Date: 8/17/2009

Attachment:

Attachment "A" – Amended Exhibit "A"
Attachment "B" – Exhibit "C" entitled
Estimate for Cost of Remaining Work
and Improvements

(Attach Notary Acknowledgments)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, County of Fresno State of California, do hereby certify the foregoing to be a full, true and correct copy of the original Agreement with DeYoung Properties; Effective August 18, 2009;
now on file in my office.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Fresno, California, this 18th day of August 2009
REBECCA E. KLISCH
CLERK, CITY OF FRESNO
BY: 
Deputy

Certified Copy 
City Clerk's Office
Date 8/18/09

Amended Exhibit A Subdivision Agreement for Tract 5224

A. ESTIMATE OF DESCRIPTION AND COST OF THE REMAINING WORK AND IMPROVEMENTS					
DESCRIPTION	ESTIMATED QUANTITY	UNIT	ESTIMATED UNIT COST	UNIT	EXTENSION
Concrete Sidewalks	21458	Sq Ft	\$3.15	Sq ft	\$67,592.70
Drive Approaches	56	ea	\$590.00	Sq ft	\$33,040.00
Return with ramp	6	ea	\$905.00	ea	\$5,430.00
Landscape and Irrigation	138351	Sq Ft	\$4.00	ea	\$553,404.00
					\$659,466.00
	SUB-TOTAL (estimate)(see EXHIBIT C)				\$659,466.00
	200% of total				\$1,318,932.00
	Total performance security required				\$1,318,932.00
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. IMPROVEMENT SECURITY REQUIREMENTS (due with amended subdivision agreement)					
	** Amounts rounded to nearest \$100				\$1,318,900.00
Performance Security (100% of Final Cost Estimate)**					
195% of cost estimate shall be in the form of a bond by duly authorized corporate sureties or irrevocable letter of credit					\$1,285,958.00
5% of cost estimate shall be in cash or a Certificate of Deposit					\$32,973.00
Payment Security (50% of Original Final Cost Estimate)**					
100% of amount shall be in the form of a bond by duly authorized corporate sureties or irrevocable letter of credit					\$1,819,000.00
C. WARRANTY SECURITY (due as condition of acceptance of the work)**					
Per original subdivision agreement					\$24,700

Certified Copy _____ 
 City Clerk's Office
 Date 8/18/09

R. W. GREENWOOD ASSOCIATES, INC.

CIVIL ENGINEERING • LAND SURVEYING • PLANNING

2558 EAST OLIVE AVENUE • FRESNO, CALIFORNIA 93701-1217
PHONE (559) 268-7831 • FAX (559) 268-3120 • EMAIL: rwgassoc@pacbell.net

MARK W. GREENWOOD, C.E. 47332, L.S. 6945
C.P.A. 37451
MATTHEW G. GREENWOOD
CARL RICHARD ANDERSON, L.S. 4853
RONALD W. GREENWOOD, C.E. 12406

MEMBER
AMERICAN SOCIETY
CIVIL ENGINEERS

Exhibit C

Updated: July 13, 2009
*Estimate for Cost of
Remaining work and
Improvements.*

City of Fresno
Construction Management
1721 Van Ness
Fresno, CA 93721

Attn: Kenneth Turner
Re: Tract No. 5224, Brentwood Ranch
Update

Dear Mr. Turner,

The purpose of this letter is to notify you that Tract No. 5224 is substantially complete and to request that the initial construction bonds be reduced to the items remaining to be done.

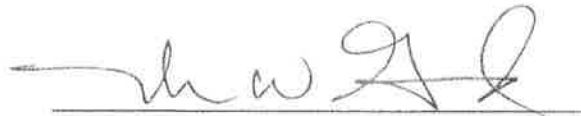
Our estimate of work remaining is as follows:

1.	Concrete Sidewalk	21,458	SF	@	3.15	SF	\$ 67,592.70
2.	Concrete Drive Approach	56	EA	@	590.00	EA	33,040.00
3.	Concrete Handicap Ramp & Landing	6	EA	@	905.00	EA	5,430.00
4.	Landscape & Irrigation	138,351	SF	@	4.00	SF	553,404.00
	Total						\$659,466.70

If you have any questions and/or require additional information, please let us know.

Sincerely,

R. W. GREENWOOD ASSOCIATES, INC.



Mark W. Greenwood

MWG/llk
D-03123.bonds.updated.III
Cc: De Young Properties-Team 5

Certified Copy
City Clerk's Office



Date 8/18/09