

**Exhibit K –
Ordinance 2005-100 and Statement of
Covenants**

Recording Requested by:
City Clerk, Fresno, California
No Fee-Govt. Code 6103

Return to City Clerk, Fresno

Space above this line reserved for Fresno County Recorder's Office



ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY Duncan SECONDED BY Perea

BILL NO. B-98

ORDINANCE NO. 2005-100

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING THE OFFICIAL ZONE MAP OF THE CITY OF FRESNO
HERETOFORE ADOPTED BY ARTICLES 1 TO 4.5 INCLUSIVE,
CHAPTER 12, OF THE FRESNO MUNICIPAL CODE, BEING THE
ZONING ORDINANCE OF THE CITY OF FRESNO

WHEREAS, Rezone Application No. R-04-79 has been filed by Edward and Janis Donaghy
with the City of Fresno to rezone property as described hereinbelow; and,

WHEREAS, pursuant to the provisions of Article 4, Chapter 12, of the Fresno Municipal Code,
the Planning Commission of the City of Fresno held a public hearing on the 20th day of July, 2005, to
consider Rezone Application No. R-04-79 and related Environmental Assessment No. R-04-79/C-04-
213/S-05-55, during which the Commission considered the environmental assessment and
recommended to the Council of the City of Fresno approval of the rezone application which proposes
to amend the City's Zoning Ordinance on real property described hereinbelow from the R-P/cz
(*Residential and Professional Office District/with conditions of zoning* [northern 5.55 acres]) and the
R-1(*Single Family Residential District* [southeasterly 0.19 acres]) zone districts to the C-P/EA/cz
(*Administrative and Professional Office District/Expressway Area Overlay District/with conditions of
zoning*) zone district. In addition, the subject application proposes to amend the conditions of zoning;
and,

Adopted 8/30/05
Approved 8/30/05
Effective 9/13/05

2005-100



WHEREAS, the Council of the City of Fresno, on the 30th day of August, 2005, received the recommendation of the Planning Commission.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, the adoption of the proposed rezoning is in the best interest of the City of Fresno. The Council finds in accordance with its own independent judgment that there is no substantial evidence in the record that the rezoning may have a significant effect on the environment as identified by the Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130) dated April 27, 2005, prepared for Environmental Assessment No. R-04-79/C-04-213/S-05-55. Accordingly, Environmental Assessment No. R-04-79/C-04-213/S-05-55 is hereby approved.

SECTION 2. The Council finds that the proposed C-P/EA/cz zone district is consistent with the existing office commercial planned land use designation of the 2025 Fresno General Plan and the Hoover Community Plan as specified in Section 12-403-B of the Fresno Municipal Code.

SECTION 3. The Council finds that the zone district of the real property described hereinbelow, located in the County of Fresno and shown on the Official Zone Map of the City of Fresno, is reclassified from the R-P/cz (*Residential and Professional Office District/with conditions of zoning*) and the R-1 (*Single Family Residential District*) zone districts to the C-P/EA/cz (*Administrative and Professional Office District/Expressway Area Overlay District/with conditions of zoning*) zone district. In addition, the subject application will amend the conditions of zoning as listed below.

From R-P/cz and R-1 to C-P/EA/cz:

Parcels A and B of Parcel Map No. 92-10, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in book 54 of Parcel Maps at Pages 89 and 90, Fresno County Records; and,

Parcels C and D of Parcel Map No. 82-02, in the City of Fresno, County



of Fresno, State of California, according to the map thereof recorded in Book 43 of Parcel Maps at Page 24, Fresno County Records.

SECTION 4. The development of the property described in Section 3 shall be conditioned upon the following conditions of zoning which are recorded and on file in the Fresno County Recorder's Office.

1. There shall be no direct access to the site from East Herndon Avenue.
2. A 30 foot landscape easement shall be placed along side the south property line.
3. A 20 foot building setback shall be established along the east property line.
4. No buildings shall exceed one-story in height within 90 feet of the east property line.
5. ~~Development of the property shall not exceed 175,000 square feet of gross building area.~~ (To be deleted per Rezone Application No. R-04-79.)
6. Direct access to the frontage road along North Fresno Street from the subject site shall be prohibited.
7. The proposed site plan shall be of a unified, integrated nature, and shall include all properties covered by this rezone.
8. The site plan review application or conditional use permit application shall be subject to review by the City of Fresno Planning Commission.
9. Access to East Magill Avenue shall be for emergency vehicles only.
10. Prior to the sale of any parcels or the subdivision of any property subject to this rezone district amendment, the record owner shall enter into and record against the property a cross-access easement, which shall be approved by the City.
11. No buildings shall exceed one-story in height within 90 feet of the south property line.

SECTION 5. This ordinance shall become effective and in full force and effect at 12:01 a.m.

on the thirty-first day after its passage.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 30th day of August, 2005, by the following vote:

Ayes: Calhoun, Duncan, Perea, Sterling, Westerlund, Dages
Noes: Boyajian
Absent: None
Abstain: None

REBECCA E. KLISCH
City Clerk

By Rebecca E. Klisch

APPROVED AS TO FORM:

HILDA CANTÚ MONTÓY
City Attorney

By [Signature]
Deputy

Rezone Application No. R-04-79
Filed by Edward and Janis Donaghy
Assessor's Parcel No. 408-070-16, 408-070-17, 408-070-18 and 408-070-19

93125249

Recording Requested by
City Clerk, Fresno, California
No Fee-Govt. Code 6103
Return to City Clerk, Fresno

RECORDED IN OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA	
AT 10 MIN PAST 11 M	
AUG 18 1993	
WILLIAM C. GREENWOOD County Recorder	FEE \$

-----ABOVE SPACE FOR RECORDER'S USE-----

STATEMENT OF COVENANTS
AFFECTING LAND DEVELOPMENT
(Rezoning Application No. R-93-07)

RECITALS

A. EDWARD J. DONAGHY AND JANIS M. DONAGHY, husband and wife, as community property, hereinafter referred to as "the Covenantor," is the owner of that certain real property in the City of Fresno, County of Fresno, State of California, hereinafter referred to as "the Subject Property" and more particularly described:

All those portions of Lot 133 of PERRIN COLONY NO. 2, according to the Amended Plat thereof recorded in Book 4 at Page 68 of Plats, Fresno County Records, and of the North half of the Northwest quarter of the Northeast quarter of Section 3, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, according to U.S. Government Township Plats, described as follows:

COMMENCING at the Northwest corner of said North half of the Northwest quarter of the Northeast quarter of Section 3; thence South 00° 28' 42" West, along the West line of said North half of the Northwest quarter of the Northeast quarter of Section 3, 364.55 feet; thence leaving said West line South 89° 56' 15" East, 190.35 feet; thence Southeasterly, along a tangent curve concave Southwesterly, with a radius of 460.00 feet, through a central angle of 30° 30' 34", an arc length of 244.95 feet; thence South 59° 25' 41" East, 104.39 feet; thence Southeasterly, along a tangent curve concave Northeasterly, with a radius of 385.00 feet, through a central angle of 30° 30' 34", an arc length of 205.01 feet; thence South 89° 56' 15" East, 2.65 feet; thence Northeasterly, along a tangent curve concave Northwesterly, with a radius of 550.00 feet, through a central angle of 18° 36' 42", an arc length of 178.66 feet; thence North 71° 27' 03" East, 76.73 feet; thence Northeasterly, along a tangent curve concave Southeasterly,

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with a radius of 1085.00 feet, through a central angle of 18° 36' 42", an arc length of 352.44 feet; thence South 89° 56' 15" East, 11.65 feet to a point on the East line of said Lot 133; thence North 00° 23' 20" East, along said East line of Lot 133 and the Northerly prolongation thereof, 424.59 feet to the Northeast corner of said North half of the Northwest quarter of the Northeast quarter of Section 3; thence North 89° 56' 22" West, along the North line of said North half of the Northwest quarter of the Northeast quarter of Section 3, 1317.88 feet to the Point of Commencement.

EXCEPTING THEREFROM those portions previously dedicated for street purposes.

R-A Zone District to R-P/cz Zone District:

All those portions of Lot 133 of PERRIN COLONY NO. 2 according to the Amended Plat thereof recorded in Book 4 at Page 68 of Plats, Fresno County Records, and of the North half of the Northwest quarter of the Northeast quarter of Section 3, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, according to U.S. Government Township Plats, described as follows:

COMMENCING at the Southwest corner of said North half of the Northwest quarter of the Northeast quarter of Section 3; thence North 00° 28' 42" East, along the West line of said North half of the Northwest quarter of the Northeast quarter of Section 3, 295.00 feet; thence leaving said West line South 89° 56' 15" East, 190.35 feet; thence southeasterly, along a tangent curve concave Southwesterly, with a radius of 460.00 feet, through a central angle of 30° 30' 34", an arc length of 244.95 feet; thence South 59° 25' 41" East, 104.39 feet; thence Southeasterly, along a tangent curve concave Northeasterly, with a radius of 385.00 feet, through a central angle of 30° 30' 34", an arc length of 205.01 feet; thence South 89° 56' 15" East, 2.65 feet; thence Northeasterly, along a tangent curve concave Northwesterly, with a radius of 550.00 feet, through a central angle of 18° 36' 42", an arc length of 178.66 feet; thence North 71° 27' 03" East, 76.73 feet; thence Northeasterly, along a tangent curve concave Southeasterly, with a radius of 1085.00 feet, through a central angle of 18° 36' 42", an arc length of 352.44 feet; thence South 89° 56' 15" East, 11.65 feet to a point on the East line of said Lot 133; thence South 00° 23' 20" West, along said

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East line of Lot 133, 235.00 feet to the Southeast corner thereof; thence North 89° 56' 15" West, along the South line of said Lot 133 and the Westerly prolongation thereof, 1318.91 feet to the Point of Commencement.

EXCEPTING THEREFROM the following described parcel:

COMMENCING at the Southeast corner of said Lot 133; thence North 89° 56' 15" West, along the South line of said Lot 133, a distance of 27.00 feet to the True Point of Beginning of this description; thence leaving said South line, North 00° 23' 20" East, along a line 27.00 feet West of and parallel with the East line of said Lot 133, a distance of 130.00 feet; thence North 89° 56' 15" West, 65.00 feet; thence South 83° 43' 35" West 90.16 feet; thence South 00° 23' 20" West, 120.20 feet to a point on the South line of said Lot 133; thence South 89° 56' 15" East, along the South line of said Lot 133, 155.00 feet to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM those portions previously dedicated for public street purposes.

B. The Covenantor hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument.

C. All such instruments of Subordination, if any, are attached hereto and made a part of this instrument.

D. The Covenantor has applied to the City of Fresno for a district amendment changing the R-A Zone District classification to the C-P/EA/cz and R-P/cz Zone District classification for the Subject Property.

E. The City of Fresno desires to obtain covenants from the Covenantor to insure that the Subject Property is not developed, used, or maintained in such a way as to adversely affect adjoining properties.

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COVENANTS, CONDITIONS, AND RESTRICTIONS

For favorable action on, and approval of, the Covenantor's application for an amendment to the Zone District classification of the Subject Property as referred to hereinabove, the Covenantor hereby covenants that the Subject Property shall be held, conveyed, encumbered, used, occupied, developed, maintained, and improved subject to the following covenants, conditions, and restrictions, which are for the purpose of enhancing attractiveness, usefulness, value, and desirability of the Subject Property, the surrounding property, and the public at large and to minimize possible adverse effects on the public health, safety, peace, and general welfare. Each of the covenants, conditions, and restrictions contained in this Statement will run with the Subject Property and shall be binding on each successive owner of the Subject Property and his heirs, administrators, successors, and assigns.

1. Covenantor hereby covenants as follows:

1. There shall be no direct access to the subject site from Herndon Avenue.
2. A 30-foot landscape easement shall be placed along side the south property line.
3. A 20-foot building setback shall be established along the east property line.
4. No buildings shall exceed one-story in height within 90-feet of the east property line.
5. Development of the property shall not exceed 175,000 square feet of gross building area.
6. Direct access to the frontage road along North Fresno Street from the subject site shall be prohibited.
7. The proposed site plan shall be of a unified, integrated nature, and shall include all properties covered by this rezoning entitlement.

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8. The proposed site plan review or conditional use permit shall be subject to review by the Planning Commission.
9. Access to Magill Avenue shall be for emergency vehicles only.
10. Prior to the sale of any parcels or the subdivision of any property subject to this Zone District Amendment, the record owner shall enter into and record against the property a cross-access easement, which shall be approved by the City Attorney's Office.

2. The conditions of this Statement are intended to benefit the public and public properties. Accordingly, the City of Fresno shall have the right to enforce this Statement by any legal or equitable means against the Covenantor and such person or persons in actual possession of Subject Property who directly or who through any agent violate the terms hereof. All obligations of the Covenantor under this Statement shall inure solely to the benefit of the City of Fresno. There are no third party beneficiaries of such obligations nor shall the right of the City of Fresno be transferable in any manner to any person other than to a successor municipal corporation whose geographic boundaries include the Subject Property.

3. Covenantor covenants that, in the event of failure to comply with the conditions set forth in this Statement, Covenantor will not object to the redistricting of the Subject Property to a land use zoning district which the Council of the City of Fresno determines is proper without compliance with such conditions. In such event, Covenantor waives any right to have any uses or improvements

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installed subsequently to the change of land use zoning district herein requested considered, or treated as non-conforming uses or improvements after such redistricting.

4. The foregoing conditions shall remain in full force and effect until such time as the City of Fresno, pursuant to the district amendment procedure of the Fresno Municipal Code, finds the enforcement of such condition is no longer equitable.

5. The provisions of this Statement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. Whenever the context so requires, any gender includes the

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
)
COUNTY OF FRESNO) ss.

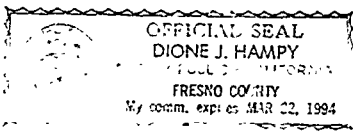
On August 13, 1993 before me, Cindy Hamby

personally appeared Alvin Solis, Development Director
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person whose name is subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature on the instrument the person, or the entity upon behalf
of the CITY OF FRESNO of which the person acted, executed the instrument.

WITNESS my hand and official seal.

JACQUELINE L. RYLE, CMC
CITY CLERK

By Cindy Hamby
DEPUTY

State of <u>CALIFORNIA</u>		} TOP OF THUMBPRINT (OPTIONAL) [] THUMBPRINT HERE
County of <u>FRESNO</u>		
On <u>June 16, 1993</u> before me, <u>DIONE J. HAMPY, NOTARY PUBLIC.</u> (DATE) (NAME, TITLE OF OFFICER - I.E., "JANE DOE, NOTARY PUBLIC")		
personally appeared <u>EDWARD J. DONAGHY AND JANIS M. DONAGHY</u> (NAME(S) OF SIGNER(S))		
☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.		
	☐ PARTNER(S) (TITLE(S))	
	☐ ATTORNEY IN FACT	
☐ TRUSTEE(S)		
☐ GUARDIAN/CONSERVATOR		
☐ OTHER:		
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		
Witness my hand and official seal. <u>Dione J. Hampy</u> (SIGNATURE OF NOTARY)		
ATTENTION NOTARY: The information requested below is OPTIONAL. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.		
THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:	Title or Type of Document: Number of Pages: Date of Document: Signer(s) Other Than Named Above: <u>7</u>	

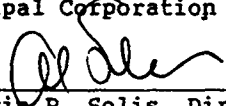
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other genders, the singular includes the plural, and the plural
includes the singular.

DATED: 6/16/93

CITY OF FRESNO,
a Municipal Corporation

By


Alvin P. Solis, Director
Development Department

ATTEST:

JACQUELINE L. RYLE
City Clerk

By

Cindy Hamby
Deputy

APPROVED AS TO FORM:

JAMES P. LOUGH
City Attorney

By

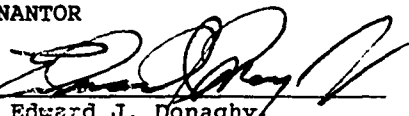
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COVENANTOR

By:


Edward J. Donaghy

By:


Janis M. Donaghy

(Attach Notary Acknowledgment)

FRESNO COUNTY RECORDERS OFFICE

AUG 18 1993