



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.
COUNCIL MEETING: 06-19-2007

June 19, 2007

FROM: NICK P. YOVINO, Director
Planning and Development Department

APPROVED BY

DEPARTMENT DIRECTOR

BY: DARRELL UNRUH, Planning Manager *TDA*
Planning Division

CITY MANAGER

SUBJECT: AMENDMENT TO COVENANT LANGUAGE FOR FIVE PERCENT OPEN SPACE RELATED TO VESTING TENTATIVE TRACT MAP NO. 4957 APPROVED BY THE PLANNING COMMISSION ON SEPTEMBER 6, 2000 BY RESOLUTION NO. 11468

Vesting Tentative Tract Map No. 4957, was approved by the Fresno City Planning Commission on September 6, 2000, subject to compliance with the Roosevelt Community Plan Policy which required the project to provide 5 percent of the site as usable open space. The Developer, Peachtree Partners, entered into a covenant agreement with the City of Fresno to provide said open space. The covenant agreement language used at that time to authorize the release of the covenant was archaic and is no longer used. Said language would require the City to use a district amendment procedure to affect a release. Covenants no longer contain this language and allow the Planning and Development Department Director to release the covenants.

The attached resolution, if approved by the Council, will authorize the Planning and Development Director to release these older covenants with this archaic language in the same manner current covenants provided for.

Attachments: Amending Council Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, TO AUTHORIZE AMENDMENT OF
STATEMENT OF COVENANTS AFFECTING LAND
DEVELOPMENT TO PROVIDE THE FIVE PERCENT OPEN
SPACE REQUIRED BY THE ROOSEVELT COMMUNITY
PLAN FOR TRACT NO. 4957

WHEREAS, PEACHTREE PARTNERS; a California General Partnership,
("Covenantor") owns the certain property identified in Whereas paragraph "A" of the Statement
of Covenants Affecting Land Development To Provide the Five Percent Open Space Required
By the Roosevelt Community Plan for Tract No. 4957 ("Subject Covenant"); and,

WHEREAS, on or about May 30, 2003 Covenantor entered into the Subject Covenant,
attached as Exhibit "A", that designated the property described in the Subject Covenant as open
space in order to comply with the condition of approval placed on Vesting Tentative Tract Map No.
4957 to provide five-percent open space as then required by the Roosevelt Community Plan; and

WHEREAS, on or about November 30, 2004, the Council for the City of Fresno adopted an
amendment to the Roosevelt Community Plan that permitted the payment of a fee equal to five
percent of the subdividers acquisition cost for the project site, as an alternative to the dedication of
five percent of the project area to open space: and,

WHEREAS, the Covenantor has elected to comply with the condition of approval for Tract
No. 4957 by payment of the required fee equal to five percent of the Covenantor's acquisition cost
for Tract No. 4957; and,

WHEREAS, the Director of Planning has agreed to accept the fee instead of the dedication of
land described in the Subject Property and desire to release the Subject Covenant; and,

WHEREAS, paragraph 3 of the Subject Covenant contains the following antiquated language setting forth the procedure for releasing the Subject Covenant:

"3. 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;"
and,

WHEREAS, this language is also inappropriate to release a condition of approval for a vesting tentative tract map because it requires the use of the procedure for rezoning property as the means for releasing the covenant even though this condition of approval was not a condition of zoning but a condition placed on the approval of a vesting tentative tract map; and,

WHEREAS, the current language placed in covenants that establishes the procedure for releasing these types of covenants is as follows:

"The conditions and obligations of this Statement shall remain in full force and effect until such time as the Planning and Development Department Director of the City of Fresno issues a written release of such conditions and obligations and records such release with the Fresno County Recorder."

WHEREAS, to expedite the release of the Subject Covenant, the Director of Planning and Development seeks to amend the Subject Covenant to replace the language contained in Paragraph 3 of the Subject Covenant with the current language placed in covenants to release covenants.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Director of Planning and Development is hereby authorized to execute an amendment to the Subject Covenant that replaces the language contained in paragraph 3 with the following language:

"The conditions and obligations of this Statement shall remain in full force and effect until such time as the Planning and Development Department Director of the City of Fresno issues a written release of such conditions and obligations and records such release with the Fresno County Recorder."

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the ___ day of _____, 2007.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

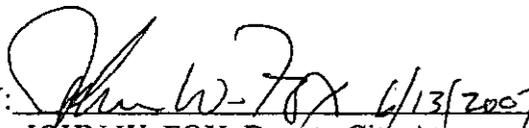
Mayor Veto: _____, 2007

Council Override Vote: _____, 2007

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY:  6/13/2007
JOHN W. FOX, Deputy City Attorney

JWF:sz[41371sz/jwf/RESO] -06/13/07

Attachment:

- Exhibit "A" - Statement of Covenants

Return To: Planning Development Dept
2600 Fresno Street
Fresno, Ca. 93721-3604



FRESNO County Recorder
Robert C. Werner
DOC- 2003-0121250

Acct 4-Fidelity National Title Company
Friday, MAY 30, 2003 08:00:00
FRE \$0.00

Ttl Pd \$0.00

Nbr-0001133931

gsf/R3/1-6



P.W. File No.

Planning and
Development Department
City of Fresno

**STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT
TO PROVIDE THE FIVE PERCENT OPEN SPACE REQUIRED BY THE
ROOSEVELT COMMUNITY PLAN FOR TRACT NO. 4957**

RECITALS

A. WHEREAS, PEACHTREE PARTNERS, a California General Partnership, 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 as:

A portion of Lot 56 of Tract No. 4224, according to the map thereon recorded in Volume 54 of Plats at Page 95 through 97, Fresno County Records, Fresno County, described as follows:

Beginning at the Northeast corner of said Lot 56; thence South 00°28'00" East, along the East line of said Lot 56, a distance of 122.01 feet, to the Southeast corner of said lot; then North 89°54'53" West, along the South line of said Lot 56, a distance of 165.05 feet; thence North 00°05'07" East, a distance of 122.00 feet, to a point on the North line of said Lot 56; thence South 89°54'53" East, a distance of 163.87 feet, to the Point of Beginning.

B. WHEREAS, 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; and,

C. WHEREAS, all such instruments of Subordination, if any, are attached

EXHIBIT A

STATEMENTS OF COVENANTS
To Provide the Five Percent Open Space
Required For Tract No. 4957
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hereto and made a part of this instrument; and,

D. WHEREAS, the Covenantor has applied to the City of Fresno for building permits to construct a single-family residence on each of four lots in Tract No. 4957; and,

E. WHEREAS, Lots 3, 5, 16 and 27 of Tract No. 4957 were designated by the Covenantor to be developed as open space as a condition of approval for Tract No. 4957; and,

F. WHEREAS the covenantor has entered in to an agreement and executed a covenant agreement recorded June 22, 2001, as Document No. 20010086859, Fresno County Records, Fresno County; and wishes to obtain a release of said agreement and,

G. WHEREAS, the Covenantor wishes to provide an equal amount of property for said open space and release the covenant recorded on Lots 3, 5, 16 and 27 of Tract No. 4957; and,

H. WHEREAS, the Covenantor wishes to provide the required open space on the subject property which is located adjacent to Tract No. 4957 as replacement to allow development of Lots 3, 5, 16 and 27 of Tract No. 4957, with single-family residential structures; and,

I. WHEREAS, the City of Fresno desires to obtain covenants from the Covenantor to insure that the Subject Property is developed as open space as required by the conditions of approval of Tract No. 4957 and is not developed, used, or maintained in such a way as to adversely affect adjoining properties.

J. WHEREAS, the Subject Property shall be conditioned pursuant to Policy No. 1-71.3 of the Roosevelt Community Plan that the Covenantor designate and develop the Subject Property to provide five percent of the total area Tract 4957 for open space use or provide an equivalent amount of additional area to an approved public or quasi-public open space within a quarter mile of the Subject Property.

COVENANTS, CONDITIONS, AND RESTRICTIONS

For favorable action on, and approval of, the Covenantor's application for building permits to construct a single-family residence on Lots 3, 5, 16 and 27 of Tract No. 4957,

STATEMENTS OF COVENANTS
To Provide the Five Percent Open Space
Required For Tract No. 4957
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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:

- A. The Covenantor shall develop the Subject Property pursuant to Policy No. 1-17.3 of the Roosevelt Community Plan and in accordance with improvement plans approved by the Fresno City Parks Department.
- B. The Covenantor shall maintain the Subject Property until such time as the site is annexed into City's Landscape and Lighting Maintenance District No. 2.
- C. The Covenantor shall allow access to the Subject Property, once the improvements are complete, by the general public for the use and enjoyment of the owners and/or residence of Tract No. 4957, as open space.
- D. The Covenantor may deed to the City of Fresno the Subject Property to be use and maintained as open space for the residence in the neighborhood.

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

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To Provide the Five Percent Open Space
Required For Tract No. 4957
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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. 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.

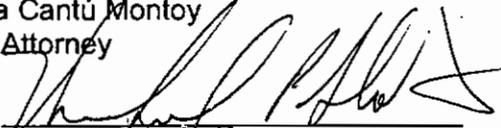
4. The provisions of this Statement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. Whenever the context so requires, any gender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

DATED: 27 May 2003

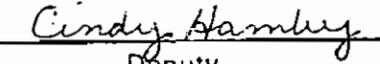
CITY OF FRESNO,
a Municipal Corporation

By: 
Nick P. Yovino, Director
Planning and Development
Department

APPROVED AS TO FORM:

Hilda Cantú Montoy
City Attorney
By: 
Deputy

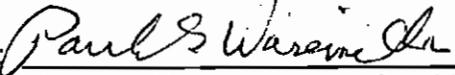
ATTEST:
REBECCA E. KLISCH
CITY CLERK

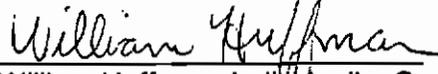
By: 
Deputy

COVENANTOR

PEACHTREE PARTNERS,
a California General Partnership

By: Valley Finest Products, Inc., a California
Corporation, General Partner

By: 
Paul G. Wasemiller, President

BY: 
William Huffman, Individually, General Partner

(Attach Notary Acknowledgment)

CLERK'S CERTIFICATE

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

On May 28, 2003 before me, Cindy Hambley
personally appeared **Nick P. Yovino**, Planning and Development Director, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the persons(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(s) the
person(s), or the entity upon behalf of the CITY OF FRESNO which the person(s) acted, executed
the instrument.

WITNESS my hand and official seal.

REBECCA E. KLISCH
CITY CLERK

By Cindy Hambley
DEPUTY

STATE OF California

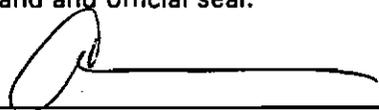
COUNTY OF Fresno

On March 28, 2003 before me, C.A. Henson, Notary Public
(Name, Title of Officer)

personally appeared Paul G. Wasemiller and William Huffman

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.

WITNESS my hand and official seal.



(Signature of Notary Public)



(This area for notarial seal)