

After Recording Return To:
Community Development Department
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

SUBDIVISION AGREEMENT
(THIRD AMENDMENT)

This Third Amended SUBDIVISION AGREEMENT ("Agreement") is made and entered into on _____, at Stockton, California by and between the CITY OF STOCKTON, A Municipal Corporation ("City"), K. HOVNANIAN AT CHARTER WAY, LLC, ("Subdivider") (collectively "the parties") with reference to the following facts:

WITNESSETH:

On May 30, 2006, K. Hovnanian Forecast Homes, Inc. filed a Certificate of Amendment to its Articles of Incorporation amending its corporate name from K. Hovnanian Forecast Homes, Inc. to K. Hovnanian Forecast Homes Northern, Inc; and

On March 20, 2007, City and K. Hovnanian Forecast Homes, Inc. entered into an Agreement in which City approved a final subdivision map entitled **MOSS GARDEN EAST - TRACT NO. 3632 (TM24-05)**, hereby referred to as "Subdivision;" and

Said Agreement was recorded on April 20, 2007 as Document No. 2007-076881, in the office of the San Joaquin County Recorder; and

On October 23, 2007, City and Subdivider amended the original Agreement, herein referred to as "First Amended Agreement," to extend the time for performance because K. Hovnanian Forecast Homes, Inc. could not, in a timely manner, fully comply with the provisions of certain tentative map conditions of approval; and

The First Amended Agreement was recorded on December 4, 2007 as Document No. 2007-204665, in the office of the San Joaquin County Recorder; and

On October 23, 2009, K. Hovnanian Forecast Homes Northern, Inc. transferred via Grant Deed, ownership of certain real property to K. Hovnanian at Charter Way, LLC, a California Limited Liability Company; and

On July 21, 2016, City and Subdivider executed an amendment referred to as "Second Amended Agreement," to extend the time for performance because K. Hovnanian Forecast Homes, Inc. could not, in a timely manner, fully comply with the provisions of certain tentative map conditions of approval; and the parties desire the ratification of the assignments and assumptions that took place on May 30, 2006 from K. Hovnanian Forecast Homes, Inc. to K. Hovnanian Forecast Homes Northern, Inc. and on October 23, 2009 from K. Hovnanian Forecast Homes Northern, Inc. to Subdivider via grant deed; and pursuant to Section 25 of the original agreement, all assignments require the written consent of the City and Subdivider desires to accept the assignment and assume all rights, duties, obligations, and benefits under the contract; and

The Second Amended Agreement was recorded on July 28, 2016 as Document No. 2016-087604, in the office of the San Joaquin County Recorder; and

The parties desire to amend the Second Amended Agreement to allow for an additional 16 residential units to be built within the Phase 1 allowance to meet the demand of increasing home sales within the development, and that the additional 16 residential units will complete the production of certain lot type, thereby keeping sales price affordable; and

This Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Title 16, Division 6 of the Stockton Municipal Code.

NOW THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. All of the tentative map conditions in TM24-05 as shown in Exhibit A shall apply to this subdivision agreement.
2. The Subdivider is currently in the process of participating in specific infrastructure improvements commonly referred to as Projects 1, 2, and 3 as more particularly described and attached hereto as Exhibit B and incorporated by this reference. Subdivider shall be entitled to 136 residential unit Final Building Permit Inspection/occupancies upon the commencement of construction of Project 1. Subdivider shall be entitled to an additional 65 residential unit Final Building Permit Inspection/occupancies upon the commencement of construction of Project 2. Subdivider shall be entitled to an additional 42 residential unit Final Building Permit Inspection/occupancies upon the commencement of construction of Project 3. The City shall provide, as appropriate, partial acceptance of the improvements within the subdivision and adjacent to as well as in Projects 1, 2, and 3 to provide for the Final Building Permit Inspection/occupancies identified above.
3. This Agreement shall apply to bind and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and assigns.

//
//
//
//
//

- 4. All other terms and conditions of the Agreement, including the original, First and Second Amendments, shall remain unchanged and remain in full force and effect unless modified in writing by both parties.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

ATTEST:

ELIZA R. GARZA, CMC
CITY CLERK

By _____

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY _____
CITY ATTORNEY

CITY OF STOCKTON:

HARRY BLACK
CITY MANAGER

By _____

(PRINT NAME)

BY _____
(SIGNATURE)
K.HOVNANIAN AT CHARTER WAY, LLC

APPROVED BY CITY COUNCIL RESOLUTION NO. _____, ON _____,
20__.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of)

On before me,

(insert name and title of the officer)

personally appeared
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

(NOTARY FOR SUBDIVIDER)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of)

On before me, (insert name and title of the officer)

personally appeared who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

(NOTARY FOR CITY MANAGER)



CITY OF STOCKTON

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997

(209) 937-8444

February 23, 2006

Ronald A. and Janet Marchetti 2005 Trust, et al.
4511 Gnekow Drive
Stockton, CA 95212

MOSS GARDEN (TM24-05)

At its regular meeting of January 12, 2006, the City Planning Commission approved your request to subdivide a 49.8-acre site into 372 lots, including a proposed 1.9-acre commercial site in the northwest corner of the project site. The overall project site is generally located on the south side of Charter Way and east of Fresno Avenue. This approval is subject to the following conditions:

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.
2. Pursuant to Section 15074 of the State CEQA Guidelines, the project shall be subject to all applicable mitigation measures identified in the approved Final Initial Study/Mitigated Negative Declaration (IS16-05) and in the City-adopted "Findings and Mitigation Monitoring Program for the Moss Gardens General Plan, Rezoning, Tentative Map and Planned Development Permit Residential Project".
3. The ODS shall be responsible for the establishment of Covenants, Conditions and Restrictions (CC&Rs) for the maintenance of landscaping, structures and walls/fences on the private properties and common areas within the subdivision area. The CC&Rs shall be subject to review and approval by the City Attorney and the Community Development Director prior to their recordation. The ODS shall be responsible for recordation of the CC&Rs and payment of recording expenses prior to or in conjunction with the recordation of any Final Map for this subdivision. The City shall be declared to be a third-party beneficiary of the CC&Rs and shall be entitled, without obligation, to take appropriate legal action to enforce the CC&Rs.
4. Approval of this Tentative Map shall not be effective until the requested General Plan amendment and Rezoning applications are both effective.



5. The final design plans for single-family residences, masonry walls and other structures and facilities constructed within the project site shall be subject to review and approval by the Community Development Director for consistency with the approved PD7-05 and the Citywide Design Guidelines prior to the issuance of any building permit in the subdivision area.
6. In order to minimize any adverse financial impact on the City of Stockton (COS) associated with development and/or use of the subject site, the ODS agrees that it will not challenge or protest any applicable fees associated with the development of the site, but if such fees are amended or modified, the ODS agrees to pay such fees as they may be amended or modified from time to time.
7. The ODS shall be responsible for removal of a recorded 40-foot wide landscape/access easement along the southern property line from Lots D and 4 through 15 prior to the recordation of any Final Map.
8. The ODS shall be responsible for the installation of a six to ten-foot high combination berm/masonry wall and landscaped strip along the north, east, and west property lines of the entire residential project site. The wall shall be subject to review and approval by the Community Development Director prior to the issuance of any building permit.
9. The ODS shall be responsible for the City's legal and administrative costs associated with defending any legal challenge of the approvals for this project or its related environmental document.
10. All walls/fences, the private street system, the open space area and landscaping within the subdivision area shall be maintained by a homeowners' association. If the owners' association defaults, the City reserves the right to form a mandatory maintenance district.
11. Prior to recordation of any Final Map, the ODS shall form a new zone of the Stockton Consolidated Landscape Maintenance District 96-2, and approve an assessment providing for the subdivision's proportionate share of the costs to maintain any public parks within the service area for this subdivision or serving this subdivision. ODS may request to annex to an existing zone of the Stockton Consolidated Landscape Maintenance District 96-2 provided the subdivision is within the service area of a park for which a zone of the Stockton Consolidated Landscape Maintenance District 96-2 has already been formed.
12. Prior to recordation of any Final Map (or concurrent when forming an owner's association), the ODS shall establish a maintenance entity acceptable to the Community Development Director, the Parks and Recreation Director and the Public Works Director to provide funding for the maintenance of, and if necessary replacement at the end of the useful life of, improvements including but not limited to common area landscaping, landscaping in the right-of-way, soundwalls and/or

back-up walls, and all "improvements" serving or for the special benefit of this subdivision and landscaped medians in roads and/or landscaped undercrossings adjacent to the subdivision.

If the ODS elects to provide maintenance for the improvements through a maintenance assessment district, the ODS shall form a new zone of the Stockton Consolidated Landscape Maintenance District 96-2 that includes the entire subdivision. The entire subdivision may be considered for annexation to an existing zone of the Stockton Consolidated Landscape Maintenance District 96-2, provided the type, intensity and amount of the improvements to be maintained are similar to improvements in the zone to which annexation is proposed. Formation/annexation shall result in an assessment being approved that shall be levied on all properties in the subdivision to ensure that all property owners pay their proportionate share of the costs of maintaining, in perpetuity, the improvements as described in the previous paragraph.

13. All landscaped areas on the site shall comply with applicable requirements of the Stockton Municipal Code. Landscaping and irrigation plans for the entire subdivision area and public streets shall be submitted to the Community Development Department, Planning Division, for review and approval by the Community Development Director and the City Landscape Architect prior to the issuance of any residential building permits. Landscaped areas, including a timed/automatic irrigation system, shall be installed at the time that the combination of berm and masonry walls along public streets are constructed and be maintained by the homeowners' association.
14. All walls shall be located on private property and a separate maintenance easement shall be recorded for such walls. Such easement shall be sufficient to allow for regular maintenance (i.e. graffiti removal) and shall include the width of the support footing as it extends from both sides of the wall.
15. The removal of any oak trees shall be avoided. The developer shall coordinate the layout of project plans with the City Arborist and City Parks Facility Planner/Landscape Architect to minimize or eliminate oak tree removals. If particular oak tree removals are unavoidable, and are permitted, replacement oak trees shall be planted as required by the City Parks and Recreation Department and be consistent with the Heritage Oak Tree Ordinance. No oak tree removal shall occur until the requirements of the City Oak Heritage Tree Ordinance have been met. The ODS shall submit a tree removal application which may be obtained through the City Street Tree Division (937-8317). A permit will be required prior to any removal or "effective removal."
16. As required by the Stormwater Quality Control Criteria Plan, the ODS must establish a maintenance entity acceptable to the City to provide funding for the operation, maintenance, and replacement costs of the storm water best management practices (bmp). In addition, an agreement between the City of Stockton and the ODS shall

- be executed guaranteeing the continued and appropriate maintenance (as prescribed by the manufacturer) of the bmp for the life of the subdivision.
17. The ODS shall demonstrate that sanitary sewer and storm drainage discharges into the City's public systems are not exceeded by the values shown on the approved Bridgeport Master Plans.
 18. Storm drainage improvements shall be extended to Charter Way and sized to accommodate storm drainage along the frontage of the subject subdivision project.
 19. Point of connections for sanitary sewers shall be located on Lot M.
 20. Provide temporary construction easement, approximately 40 feet (E-W) by 90 feet (N-S), adjacent to the west property line and contiguous to the north property line of the proposed commercial site for the future City storm drainage project.
 21. The ODS shall dedicate access rights to the City of Stockton along the following streets:
 - a) Fresno Avenue, entire length 300 feet south of Charter Way.
 - b) Charter Way, entire length except at the approved opening which shall be restricted to right in/right out access only.
 22. The ODS shall dedicate and improve Charter Way to a 55 foot half-street section. City Municipal Code (Section 16-355) required street improvements, including but not limited to curb, gutter, sidewalk, street lighting, landscaping and pavement widening, shall be installed upon recordation of the first Final Map.
 23. The ODS shall dedicate right-of-way along the entire project frontage of Fresno Avenue, per the Fresno Avenue Precise Road Plan. City Municipal Code (Section 16-355) required street improvements, including but not limited to curb, gutter, sidewalk, street lighting, landscaping and pavement widening, shall be installed upon recordation of the first Final Map.
 24. The ODS shall obtain an easement across APN 163-740-87 to connect to existing sanitary sewer system at Pajaro Way and Kyburz Court.
 25. The ODS shall design and construct traffic signal modifications and intersection improvements at Charter Way (State Route No. 4) and Fresno Avenue, as identified in the approved Mitigated Negative Declaration (IS16-05).
 26. The ODS shall design and construct a traffic signal and intersection improvements at State Route 4/westbound ramp and Fresno Avenue as identified in the approved Mitigated Negative Declaration (IS16-05).

27. The ODS shall be responsible for 100 percent of the design and construction costs of on-site roadway and intersection improvements and public utilities identified on the tentative map and/or included in the project's Mitigated Negative Declaration, project description or as mitigation measures. Improvements include, but are not limited to, all sewer, water and storm drain lines, street lighting, street paving, curb, gutter and sidewalk.
28. The ODS shall participate in any applicable Transportation Systems Management (TSM) programs established by the City of Stockton and pay their proportionate share of the cost to provide an appropriate area for a park and ride facility.
29. The ODS shall dedicate Lot M (private streets) as a public utility easement for underground facilities and appurtenances.
30. The ODS shall dedicate a ten-foot wide PUE along the perimeter of all streets of the subdivision.
31. The ODS shall record a Deed of Avigation and Hazard Easement. This easement shall grant San Joaquin County a perpetual, assignable easement permitting overflight of the property by aircraft, together with any inherent noise or other emissions, which are inherent in the operation of aircraft. This easement shall be recorded as a deed restriction flowing in perpetuity to all successor property owners.
32. Reflective materials, transmission and visual distractions to pilots shall not be permitted.
33. Radio transmissions that would interfere with aircraft communication and navigation equipment shall not be permitted.

The following information related to the Stockton Municipal Code is provided to the ODS for possible inclusion in the design and layout of the project, as applicable and warranted:

1. In accordance with the Stockton Municipal Code Section 16-630.030 B.10, subject tentative map is required to show proposed utility easements and widths on private streets for the public sanitary sewer.
2. This project comes under the requirements of the City of Stockton's Stormwater Quality Control Criteria Plan (SWQCCP), as outlined in the City's Phase 1 Stormwater NPDES permit issued by the California Water Quality Control Board, Central Valley Region (Order No. R5-2002-0181). The implementation of SWQCCP became effective on November 25, 2003.
3. The ODS shall comply with any and all requirements, and pay all associated fees, as required by the City's Storm Water Pollution Prevention Program as set forth in its NPDES Storm Water Permit.

4. A soils report shall be required prior to the issuance of a building permit.
5. The installation of any above ground utility structures within the ultimate City right-of-way is subject to City approval.
6. Any relocation or undergrounding of overhead utilities lines will be at the property owner's expense (SMC SEC. 16-004.1.2).
7. Any on-site wells and septic tanks shall be abandoned and destroyed as required by San Joaquin County Department of Environmental Health prior to the issuance of building permits (SMC SEC. 16-004-1.2.).
8. Comply with the requirements of Caltrans having jurisdiction over Charter Way (State Route 4).
9. Submit detailed subdivision improvement plans. These plans shall show all on- and offsite utilities necessary to provide water, storm and sanitary sewer utility service. These plans shall be designed in accordance with City's most recently adopted water, storm and sanitary collection system master plans and the City Public Works design standards.
10. Any phasing of this subdivision shall incorporate measures to accommodate vehicular traffic, sewer, water and storm drainage for the entire area.
11. Show 10-foot PUE along all lot frontages.
12. California Water service Company can serve the proposed project by a main extension from our existing facilities in the area. Further comments can be applied when complete plans are received and forwarded to the engineer.

It is recommended that the following measures that were provided by the Police Department be implemented during the construction of the project:

13. Contractors are responsible for providing licensed uniformed security guards for after hours and weekends to prevent damage or theft of building materials, equipment, and/or appliances. We recommend removal of doors to home appliances until after they are installed and secured in the new homes.
14. Construction site perimeter fencing is also essential to prevent criminal activity during construction.

Enclosed is a copy of the approved tentative parcel map, which will expire on January 12, 2008. Any request for an extension shall be made in writing, filed with this office and accompanied by the appropriate fees prior to expiration of the tentative map and clearly

Ronald A. and Janet Marchetti 2005 Trust, et al.
February 23, 2006
Page 7

stating the reasons for requesting the extension. In granting an extension, new conditions may be imposed and existing conditions may be revised.

If you have any questions, please contact Associate Planner Jenny Liaw at (209) 937-8316.


JEG
JAMES E. GLASER, SECRETARY
CITY PLANNING COMMISSION

JEG:cmf

Enclosure

cc: Moss Gardens, LLC
Attn: Edward Barkett
2800 West March Lane, Suite 250
Stockton, CA 95219

San Joaquin Valley Associates
24012 Calle de la Plata, Suite 405
Laguna Hills, CA 92653

Lorenzo Faustino and Delia Lenore Lopez
1998 Revocable Trust
4511 Gnekow Drive
Stockton, CA 95212

NOTICE. To protest the imposition of any development fee, dedication, reservation or other exaction imposed on your project, you must file written notice with the City Clerks' office within 90 days after approval of the project or imposition of the fees, dedications, reservations or other exactions stating that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest, along with a statement of the factual elements of the dispute and the legal theory forming the basis for the protest.

EXHIBIT B

Project 1 - Moss Gardens Frontage Improvements (southwest quadrant, more or less)

- SR-4 (Charter Way) east of Fresno Avenue - residential subdivision frontage improvements south of centerline: pavement widening; curb and gutter; sidewalk; landscaping; Silverton Drive entry returns, curb ramps, raised median
- Pavement widening to transition from residential subdivision frontage to existing SR-4 east of residential subdivision
- Stormwater runoff collection and conveyance for residential subdivision frontage only
- Interim striping and signing

Project 2 - Fresno Avenue/SR-4 (Charter Way) Traffic Signal and Intersection Improvements (southwest quadrant and northwest quadrant, more or less)

- SR-4 west of Fresno Avenue - pavement widening
- Southwest quadrant pork chop
- Stormwater runoff collection and conveyance for paved area only
- North and South legs of Fresno Avenue - pavement widening west of centerline
- Construct ultimate Traffic Signal at Fresno Avenue/SR-4 (Charter Way) [interim head placement may be necessary] activate/deactivate signal poles/heads as required for lane assignments
- Interim striping and signing

Project 3 - Charter Way SR-4 North Side Widening (northeast quadrant, more or less)

- SR-4 (Charter Way) east of Fresno Avenue - pavement widening on SR-4 (Charter Way) north of centerline
- Stormwater runoff collection and conveyance for paved area north of centerline only
- Northeast corner of Fresno Avenue at SR-4 (Charter Way)- pavement widening and curb return to match newly constructed improvements on the east side of Fresno Avenue north of SR-4 (Charter Way)
- Final striping and signing
- Place and activate/deactivate remaining signal heads for final lane assignments