

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Development Services Department
AGENDA DATE: CCA 10/16/07 Consent Resolution
CONTACT PERSON/PHONE: Eddie Garcia, Planner – 541-4627
DISTRICT(S) AFFECTED: 7

SUBJECT:

A RESOLUTION THAT THE CITY MANAGER BE AUTHORIZED TO SIGN A RELEASE, RESTATEMENT AND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR REAL PROPERTY MORE PARTICULARLY DESCRIBED AS LOT 1, BLOCK 13 AND LOT 1, BLOCK 15, COLONIA DEL CARMEN UNIT FOUR, AN ADDITION TO THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF ON FILE IN VOLUME 72, PAGE 3, REAL PROPERTY RECORDS, EL PASO COUNTY, TEXAS, TO ALLOW FOR RESIDENTIAL USE. APPLICANT: FRANCO CONSTRUCTION, INC., SUB07-00098 (District 7).

BACKGROUND / DISCUSSION:

See attached report.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) – Approval Recommendation
City Plan Commission (CPC) – Approval Recommendation

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: Kelly Carpenter, AICP

APPROVED FOR AGENDA:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Release, Restatement and Amendment to Declaration of Covenants, Conditions and Restrictions for real property more particularly described as Lot 1, Block 13 and Lot 1, Block 15, Colonia Del Carmen Unit Four, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 72, Page 3, Real Property Records, El Paso County, Texas, to allow for residential use.

ADOPTED THIS _____ DAY OF _____, 2007.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

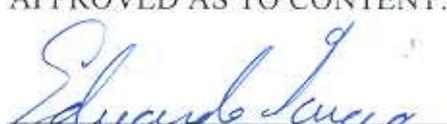
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Eduardo Garcia, Subdivision Coordinator
Development Services Department,
Planning Division

RELEASE, RESTATEMENT AND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Whereas, in November 1996, Franco Construction, Inc. ("*Franco*") proposed to develop property and submitted a plat for the development of such property; and,

Whereas, the plat was subject to the provisions of the Parkland Ordinance and Franco requested a waiver in connection with the application of the Ordinance; and,

Whereas, the Ordinance allowed a developer to ask for a waiver and the City Of El Paso agreed to grant such waiver to Franco, provided that covenants, conditions, and restrictions were placed on the Property to limit the subdivision to non-residential use; and,

Whereas, Franco Construction, Inc. ("*Franco*") executed and filed certain Declaration of Covenants, Conditions and Restrictions (the "*Original Declaration*"), recorded at Volume 3158, Page 558, Real Property Records, El Paso County, Texas, affecting the real property more particularly described as:

Lot 1, Block 13 and Lot 1, Block 15, Colonia Del Carmen Unit Four, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 72, Page 3, Real Property Records, El Paso County, Texas (the "*Property*")

Whereas, the Original Declaration, in pertinent part, limits the use of the Property to "non-residential" uses, and expressly prohibits "construction of single-family, two-family or multi-family units"; and

Whereas, Franco desires to develop the Property for multi-family apartment use and has requested that the City amend the Original Declaration to allow for residential use; and

Whereas, the City finds that amendment of the Original Declaration is in the best interest of the public, provided that Franco complies with the provisions of the requirements of the Subdivision Code as it applies to park fees;

Now, therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of El Paso hereby executes the following Release, Restatement and Amendment to the Original Declaration.

1. Release. The Original Declaration is hereby amended only with respect to the Property identified below:

Lot 1, Block 13 and Lot 1, Block 15, Colonia Del Carmen Unit Four, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 72, Page 3, Real Property Records, El Paso County, Texas (the "*Property*")

2. Consent to Build Multi-Family Housing. The Property may be used for the following multi-family apartment use and no other. The maximum number of units to be permitted shall be one hundred twenty eight (128).

3. **Payment of Park Fees.** As partial consideration for the execution of this instrument, Franco agrees to pay the following as park fees, prior to recordation hereof:

Eighty Seven Thousand Forty and 00/100ths Dollars (\$87,040.00), calculated on the basis of Six Hundred Eighty and No/100ths Dollars (\$680.00) per unit referenced above.

4. **Site Plan Review.** Prior to the issuance of building permits, a detailed site plan will be submitted to the City for review and approval.

5. **Covenant Running with the Land.** This is a covenant running with the land, affecting the Property and all successors in interest to Franco.

6. **City of El Paso to be Party to Future Amendments.** This instrument shall not be amended, except by written amendment signed by the then owner of the Property and the City of El Paso.

7. Except as expressly herein amended, all other provisions of the Original Declaration remain in full force and effect.

Signed and executed this 8th day of October, 2007.

FRANCO
Franco Construction, Inc

CITY
City of El Paso

By: Enrique Franco Jr.
Name: Enrique Franco Jr.
Title: President

Joyce Wilson, City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

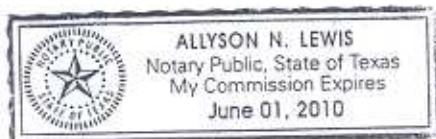
Eduardo Garcia
Eduardo Garcia, Subdivision Coordinator
Development Services Department

Lupe Cuellar
Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 8th day of October, 2007 by Enrique Franco (name), President (title) of Franco Construction, Inc., a Texas corporation, on behalf of said corporation.



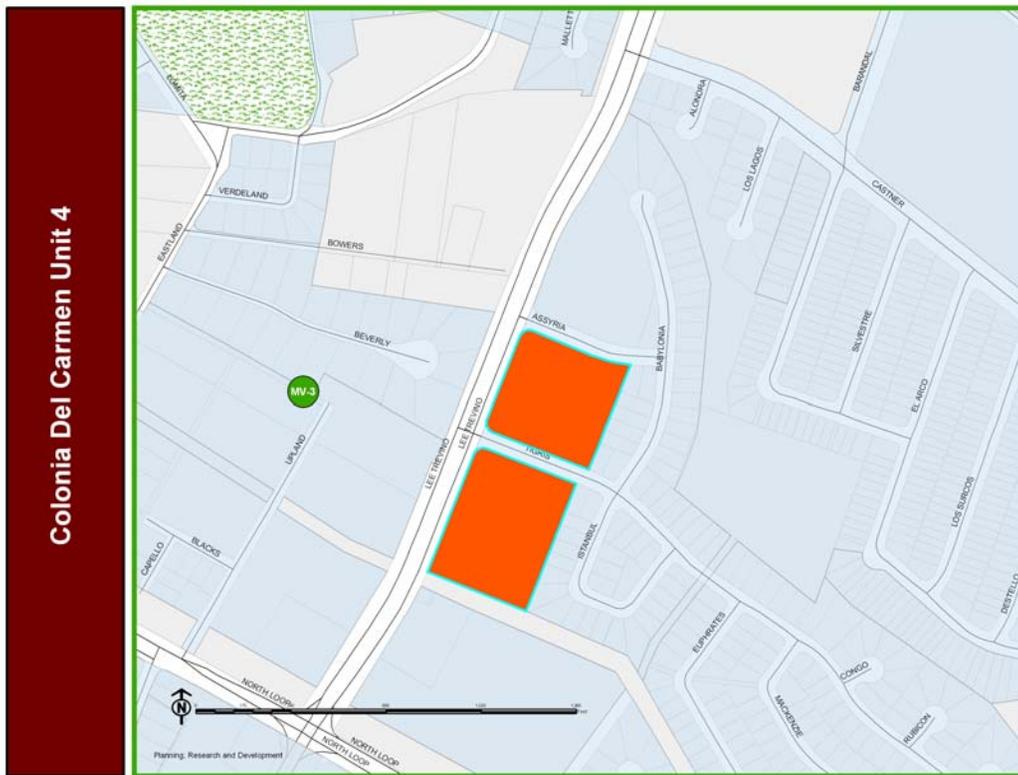
Allyson N. Lewis
Notary Public - State of Texas



SUB07-00098

Subdivision Name: Colonia Del Carmen Unit Four
Type Request: Amend Recorded Covenants
Property Owner: Enrique Franco Jr.
Developer: Franco Construction
Location: North of North Loop Drive and East of Lee Trevino Avenue
Acres: 22.571
Planning Area: Mission Valley
Park Fees Required: \$87,040

Representative District: 7
Present Zone: C-1
Park Zone: MV-3



CASE HISTORY

Colonia Del Carmen Unit Four subdivision was recorded at the County on January 27, 1997. At that time, the Subdivider also recorded restrictive covenants. The subdivision code in effect at the time of recording these covenants allowed the subdivider to be excluded from paying parkland fees as long as the property was restricted to commercial uses.

However, the only request is to amend the recorded covenants as set forth below.

The subdivider is requesting to amend the recorded covenants in order to allow for the construction of 128 multi-family dwelling units. The subdivider has agreed to make the following amendments to the covenants:

1. To define the number and type of residential dwelling units.
2. Fee amount to be paid for each residential dwelling.
3. That all park fees be paid prior to recording of amended covenants.
4. That the City be a party to any future amendments to the proposed covenants.

The subdivider will be required to pay \$680 per residential dwelling unit for a total of \$87,040.

GENERAL INFORMATION

This subdivision is within Park Zone MV-3. The nearest park is Lomaland Park, which is approximately 3,747 feet west of the subdivision. The nearest school is Mission Valley Elementary, which is approximately 6,000 feet east of the subdivision.

STAFF RECOMMENDATION

The Development Coordinating Committee recommends **approval** of amending covenants for Lot 1, Block 13 and Lot 1, Block 15 for Colonia Del Carmen Unit Four subject to the following requirements and conditions:

Additional Requirements and General Comments

Prior to recording of amended covenants, the subdivider shall be required to pay parkland dedication fees.

List of Attachments

- Attachment 1: Aerial
- Attachment 2: Amended Covenants
- Attachment 3: Recorded Covenants

Attachment 1



Colonia Del Carmen Unit 4

Attachment 2
**RELEASE, RESTATEMENT AND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

Whereas, Franco Construction, Inc. (“*Franco*”) executed and filed that certain Declaration of Covenants, Conditions and Restrictions (the “*Original Declaration*”), recorded at Volume 3158, Page 558, Real Property Records, El Paso County, Texas, affecting the real property more particularly described as:

Lot 1, Block 13 and Lot 1, Block 15, Colonia Del Carmen Unit Four, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 72, Page 3, Real Property Records, El Paso County, Texas (the “*Property*”)

Whereas, the Original Declaration was executed and filed, for the benefit of the City of El Paso, and specifically, to avoid the obligation to pay park fees pursuant to the parkland ordinance then in effect; and

Whereas, the Original Declaration, in pertinent part, limits the use of the Property to “non-residential” uses, and expressly prohibits “construction of single-family, two-family or multi-family units”; and

Whereas, Franco has requested and the City of El Paso has agreed to release, restate and amend the Original Declaration, as herein provided.

Now, therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of El Paso hereby executes the following Release, Restatement and Amendment to the Original Declaration.

- 1. Release.** The Original Declaration is hereby released with respect to the Property only.
- 2. Consent to Build Multi-Family Housing.** The Property may be used for the following multi-family apartment use and no other. The maximum number of units to be permitted shall be one hundred twenty eight (128).
- 3. Payment of Park Fees.** As partial consideration for the execution of this instrument, Franco agrees to pay the following as park fees, prior to recordation hereof:

Eighty Seven Thousand Forty and 00/100ths Dollars (\$87,040.00), calculated on the basis of Six Hundred Eighty and No/100ths Dollars (\$680.00) per unit referenced above.
- 4. Covenant Running with the Land.** This is a covenant running with the land, affecting the Property and all successors in interest to Franco.
- 5. City of El Paso to be Party to Future Amendments.** This instrument shall not be amended, except by written amendment signed by the then owner of the Property and the City of El Paso.

FRANCO

CITY

Franco Construction, Inc.

City of El Paso

By: _____

By: _____

John Cook, Mayor

Name: _____

Title: _____

Attest: _____

State of Texas §

§

County of El Paso §

This instrument was acknowledged before me on the ___ day of October 2007 by _____ (name), _____ (title) of Franco Construction, Inc., a Texas corporation, on behalf of said corporation.

Notary Public – State of Texas

- c. Property: That certain parcel of property located in El Paso County, Texas more fully described in Exhibit "A" attached hereto and incorporated herein by reference.
- d. Proposed Subdivision: COLONIA DEL CARMEN UNIT FOUR
as specified in the proposed plat dated _____.
- e. Parkland Ordinance: El Paso Municipal Code Chapter 19.26.
- f. Non-Residential Uses: For purposes of this document non-residential uses shall include all commercial or industrial uses lawfully permitted on the Property in accordance with all applicable ordinances, statutes, regulations and codes and not including single-family, two-family or multi-family development.
- g. Residence: Any structure used as a home or dwelling place either on a temporary or permanent basis.

II. SUBDIVIDER REPRESENTATIONS

- a. Ownership: The Subdivider warrants and represents that it is the current record title owner of the Property and will provide the City of El Paso with sufficient documentation to substantiate ownership.
- b. Authority: The individual executing this document has been duly authorized to execute this document on behalf of the Subdivider.

III. USE RESTRICTIONS

The proposed use of the Property is limited to non-residential uses. The construction of single-family, two-family or multi-family units on the Property is expressly prohibited. No structure either of a temporary or permanent character, trailer, or mobile home shall be located on the property and used a residence; provided however, that one caretaker's residence may be constructed and utilized in connection within each commercial or industrial use within the subdivision.

IV. WAIVER

By acceptance of this Declaration the City of El Paso hereby waives the requirement that the Subdivider dedicate parkland or pay fees in lieu thereof as prescribed by the Parkland Ordinance.

This Declaration shall not be deemed accepted by the City of El Paso until such time as the proposed subdivision plat is approved for filing. The waiver is made in consideration for the Subdivider's agreement to restrict the use of the property as specified herein.

V. LEGAL SERVITUDE

The covenants and conditions contained herein are imposed on the Property and are to run with the land as a servitude in favor of the City, as a municipal corporation, and the City as trustee of the real property dedicated to the public in abutting and nearby streets and rights-of-way. The covenants and restrictions are intended as an equitable servitude to bind the declarant, the devisees, heirs, assigns, grantees, personal and/or legal representatives or any other successors in interest of the subdivider.

VI. GENERAL PROVISIONS

- a. Remedies for Breach: The City of El Paso shall have the right to enforce, by any proceeding at law or equity, all restrictions and conditions now or hereafter imposed by the provisions of this Declaration. Failure or delay to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- b. Revisions: The covenants, conditions and restrictions of this Declaration may only be amended, revised or modified by a written instrument executed and approved by the City.
- c. Severability: Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provision and all other provisions shall remain in full force and effect. The City, the Subdivider or their respective heirs, Successors or assigns may amend and release the covenants or restrictions contained herein without the consent of any third party or parties who may be benefitted thereby.
- d. Applicable Law: This document shall be construed and interpreted by the laws of the State of Texas.

Subdivider: FRANCO CONSTRUCTION, INC.

By: Enrique L. Franco

ENRIQUE L. FRANCO SR.

(Print Name)

(Title)

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 30th
day of November, 1996, by Enrique Loya
Francisco.

Antonio Mendivil

Notary Public, State of Texas
Notary's Printed Name:

Antonio Mendivil

Notary's Commission Expires:

04-08-2000

