City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

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Meeting Date: **4/5/2011** **Report Type:** Consent

Title: (Pass for Publication) Development Agreement Amendment for Truxel 3 PUD (P11-021)

Report ID: 2011-00318

Location: Northeast corner of Truxel Roadd & Gateway Park Boulevard, District 1

Recommendation: Review a Resolution re-adopting the previously adopted Mitigated Negative Declaration (MND) per the California Environmental Quality Act and previously adopted Monitoring Mitigation Plan (MMP); 2) review an Ordinance approving a Development Agreement Amendment to extend the term of an approved Development Agreement. 3) pass for Publication the Ordinance title as required by Sacramento City Charter 32c to be adopted on April 12, 2011.

Contact: Greg Bitter, Principal Planner, AICP, (916)808-7816; David Kwong, Planning Director, AICP, (916)808-2691, Community Development Department

Presenter: None

Department: Community Development Dept
Division: Planning
Dept ID: 21001221

Attachments:

1- Description/Analysis
2 - Background for P11-021
3 - CEQA Reso for P11-021
4 - Exhibit A of CEQA resolution for P11-021
5 - DA Ordinance for P11-021
6 - Exhibit A of DA Ordinance for P11-021

City Attorney Review
Approved as to Form
Sabina D. Gilbert
3/25/2011 5:07:20 PM

City Treasurer Review
Prior Council Financial Policy Approval or Outside City Treasurer Scope
Russell Fehr
3/21/2011 11:33:43 AM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 3/24/2011 12:02:59 PM

Assistant City Manager: Patti Bisharat - 3/25/2011 2:14:31 PM

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Description/Analysis

Issue: The subject property is currently entitled to allow the development of a sit-down restaurant and a fast-food restaurant with an associated drive through (P05-022). The subject property is also subject to a development agreement (DA) that was approved on April 15, 1996, and became effective on May 15, 1996 (City Agreement 96-051). Although the initial term of this DA expires on May 15, 2011, the DA allows for three extensions of five years each, with a provision that a letter requesting an extension be submitted to the City 180 days prior to the expiration of the DA. Because the property was the subject of bankruptcy proceedings, the ownership of the property was in flux and the right to extend the initial term expired on November 15, 2010, approximately two months after A.J. Ventures, Inc., acquired title to the property. The applicant is now requesting to extend the term of the DA by five years.

Extending the term of the DA will provide the City with a continuing contractual obligation that development of the Truxel 3 PUD will fulfill the original obligations imposed on this property. This amendment will also give the landowner, A. J. Ventures, Inc., certainty as to continuing obligations that must be satisfied to complete development of the property.

The applicant has coordinated with the City Attorney's Office to complete this amendment to the DA.

Policy Considerations: This proposal extends the term of a DA for a parcel with an approved commercial project that has been determined to be consistent 2030 General Plan Land Use designation of Regional Commercial.

Committee/Commission Action: On March 24, 2011, the City Planning Commission considered the proposed resolution and ordinance and voted to forward a recommendation of approval to the City Council.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Environmental Services Manager has reviewed the project for compliance with the requirements of the California Environmental Quality Act (CEQA). The project falls within the scope of the mitigated negative declaration for Truxel 3 PUD (P00-123) which the City Council approved on September 23, 2003, and amended (P05-022) on December 13, 2005. The proposed amendment will not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects considered in the approved mitigated negative declaration. Pursuant to CEQA Guideline 15162, a subsequent mitigated negative declaration is not required.

The adopted Mitigated Negative Declaration for the Truxel 3 PUD project is available at the Community Development Department's webpage located at the following link: http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/

Sustainability Considerations: This proposal extends the term of a DA for a parcel with an approved commercial project. There are no effects or changes to sustainability impacts.

Rationale for Recommendation: Staff recommends that the City Council approve the proposed amendment to the DA. Staff finds that the proposed amendment is consistent with (1) the policies of the General Plan and the North Natomas Community Plan; and (2) the North Natomas Processing Protocols.

Financial Considerations: This proposal ensures the landowners' continuing obligation to participate in the North Natomas Finance Plan through the end of the new timeframe, May 15, 2016.

Emerging Small Business Development (ESBD): No goods or services are requested for this service.

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Background

On April 16, 1996, the City Council approved various entitlements for the Natomas Marketplace project (P95-074). One of these entitlements was a standard North Natomas Development Agreement (DA), approved by Ordinance 96-014, that covered not only the property developed as the Natomas Marketplace but also the property currently known as the Truxel 3 Planned Unit Development.

On September 23, 2003, the City Council adopted (1) an ordinance amending the districts established by the Comprehensive Zoning Ordinance (title 17 of the City Code) from 5.0± gross acres of Manufacturing Research and Development-20 Planned Unit Development (MRD-20 PUD) to 5.0± gross acres of Highway Commercial Planned Unit Development (HC-PUD) and (2) a resolution to designate the 5.0± gross acre (2.8± net acre) site as the Truxel 3 Planned Unit Development with a Planned Unit Development Schematic Plan and Guidelines for the site (P00-123). The approved PUD Guidelines state the uses allowed on this site include a fast-food restaurant with drive-through facility.

On October 13, 2005, the City Planning Commission (1) approved a tentative map to subdivide one parcel into two in the Truxel 3 Planned Unit Development, (2) approved special permits to develop a 7,308± square-foot sit-down restaurant and a fast-food restaurant, and (3) denied a special permit for a drive-through service facility on 3.2± gross acres in the Highway Commercial Planned Unit Development (HC-PUD) zone. The denial of the special permit for the drive-through service facility was subsequently appealed, and the City Council approved the permit on December 13, 2005.

Construction of the approved project commenced with site preparation in 2007. But the project was slowed by economic conditions, and the initial construction of the buildings did not commence until late 2008. Ultimately, construction was put on hold, and the current conditions of the site include a completed parking area and two partially constructed structures. These structures are now scheduled for demolition due to an active dangerous-buildings case.

Beginning in 2009, the land known as the Truxel 3 Planned Unit Development was the subject of bankruptcy proceedings and was ultimately placed in the ownership of A.J. Ventures, Inc. During this time, the landowner's rights to extend the term of the DA expired (on November 15, 2010). A. J. Ventures, Inc. is now requesting an amendment to the DA that would extend the initial term by five years and would grant the right to two additional five-year extensions. The total term of the DA will remain as it is now, 30 years.

Development Agreement Amendment

The Council-adopted North Natomas Processing Protocols require all development in the North Natomas Community Plan area to enter into a standard Development Agreement (DA) with the City. The City Council approved the standard DA format on

August 9, 1994 (Resolution No. 94-494). On April 16, 1996, the City Council approved various entitlements for the Natomas Marketplace project (P95-074). One of these entitlements was a DA (Ordinance 96-014, City Agreement 96-051) that included not only the property developed as the Natomas Marketplace but also the property currently known as the Truxel 3 Planned Unit Development.

The standard DA allows termination upon the conclusion of development. Before a DA can be terminated, the City must find that a parcel has been fully developed and all of the landowner's obligations (e.g., land dedication, payment of fees) have been satisfied. In the case of the Truxel 3 PUD, development has not been completed, and all of the landowner's obligations have not been satisfied.

The DA allows for an initial term of 15 years and three extensions of five years each, with a provision that a letter requesting an extension be submitted to the City 180 days prior to the expiration of the DA. As described above, the landowner's right to extend the initial term of the DA expired on November 15, 2010. The applicant is now requesting to extend the initial term of the DA by five years and limit subsequent extensions to two terms of five years each. The maximum term of the DA will remain at 30 years.

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RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

RE-ADOPTING THE MITIGATED NEGATIVE DECLARATION AND ADDENDUM AND RE-ADOPTING THE MITIGATION MONITORING PLAN IN CONNECTION WITH AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR TRUXEL 3 PUD PROJECT (P11-021)

BACKGROUND

A. On March 24, 2011 the City Planning Commission conducted a public hearing on, and forwarded to the City Council a recommendation to approve with conditions the proposed amendment to the development agreement for the Truxel 3 PUD (City Agreement No. 96-051)(the "**Project**").

B. On April 12, 2011, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code section 17.200.010(C)(1) (a), (b), and (c) (publication, posting, and mail [500 feet]), and received and considered evidence and testimony concerning the Project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council finds as follows:

A. On September 23, 2003, pursuant to the California Environmental Quality Act (Public Resources Code §21000 et seq. ("CEQA"), the CEQA Guidelines (14 California Code of Regulations §15000 et seq.), and the City of Sacramento environmental guidelines, the City Council adopted a mitigated negative declaration (MND) and a mitigation-monitoring program and approved the Truxel 3 Planned Unit Development (P00-123)(Resolution 2003-666).

B. On December 13, 2005, pursuant to the California Environmental Quality Act (Public Resources Code §21000 et seq. ("CEQA"), the CEQA Guidelines (14 California Code of Regulations §15000 et seq.), and the City of Sacramento environmental guidelines, the City Council considered the adopted mitigated negative declaration (MND) as amended with an addendum for the Truxel 3 Planned Unit Development (P05-022)(Resolution 2005-914).

C. The Project does not require the preparation of a subsequent environmental impact report or negative declaration.

Section 2. In reviewing the Project, the City Council has reviewed and considered the information contained in the previously adopted MND, the addendum for the Truxel 3

Planned Unit Development, and all oral and documentary evidence received during the hearing on the Project. The City Council had determined that the previously adopted MND as amended constitutes an adequate, accurate, objective, and complete review of the proposed Project and finds that no additional environmental review is required based on the reasons set forth below:

A. The Project involves no substantial changes that will require major revisions of the previously adopted MND because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

B. No substantial changes have occurred with respect to the circumstances under which the Project will be undertaken which will require major revisions to the previously adopted MND because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

C. No new information of substantial importance has been found that shows any of the following:

1. The Project will have one or more significant effects not discussed in the previously adopted MND;

2. Significant effects previously examined will be substantially more severe than shown in the previously adopted MND;

3. Mitigation measures previously found to be infeasible would in fact be feasible and would substantially reduce one or more significant effects of the Project; or

4. Mitigation measures which are considerably different from those analyzed in the previously adopted MND would substantially reduce one or more significant effects on the environment.

Section 3. In connection with its consideration of the Project, and based on its review of the previously adopted MND, the addendum for the Truxel 3 Planned Unit Development, and all oral and documentary evidence received during the hearing on the Project, the City Council finds that the MND and addendum reflect the City Council's independent judgment and analysis and re-adopts the MND as amended.

Section 4. The mitigation monitoring program is adopted for the Project, and the mitigation measures shall be implemented and monitored as set forth in the program, based on the following findings of fact:

1. The mitigation monitoring program has been adopted and implemented as part of the Project;

2. The addendum to the MND does not include any new mitigation measures, and has not eliminated or modified any of the mitigation measures included in the mitigation monitoring program;

3. The mitigation monitoring plan meets the requirements of CEQA section 21081.6 and CEQA Guideline 15074.

Section 5. Upon approval of the Project, the City's Environmental Planning Services shall file or cause to be filed a Notice of Determination with the Sacramento County Clerk and, if the Project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to section 21152(a) of the Public Resources Code and the State EIR Guidelines adopted pursuant thereto.

Section 6. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

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Exhibit A: Mitigation Monitoring Program (Resolution 2003-666)

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RESOLUTION NO. 2003-666

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF SEP 2 3 2003

A RESOLUTION RATIFYING THE MITIGATED NEGATIVE DECLARATION AND ADOPTING THE MITIGATION MONITORING PLAN FOR TRUXEL 3 PLANNED UNIT DEVELOPMENT, LOCATED AT THE SOUTHEAST CORNER OF TRUXEL ROAD AND GATEWAY PARK BOULEVARD, SACRAMENTO, CALIFORNIA.

(APN: 225-0170-043)
(P00-123)

WHEREAS, the Environmental Coordinator has prepared an Initial Study and Mitigated Negative Declaration for the above identified project;

WHEREAS, the Initial Study and Mitigated Negative Declaration was prepared and circulated for the above-identified project pursuant to the requirements of CEQA;

WHEREAS, the proposed Negative Declaration and comments received during the public review process were considered prior to action being taken on the project;

WHEREAS, based upon the Negative Declaration and the comments received during the public review process, there is no substantial evidence that the project will have a significant effect on the environment, provided that mitigation measures are added to the above identified project.

WHEREAS, this Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis;

WHEREAS, the Environmental Coordinator has prepared a Mitigation Monitoring Plan for ensuring compliance and implementation of the mitigation measures as prescribed in the Initial Study for the above identified project; and

WHEREAS, in accordance with Section 21081.6 of the California Public Resources Code, the City of Sacramento requires that a Mitigation Monitoring Plan be developed for implementing mitigation measures as identified in the Initial Study for the project;

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-666

DATE ADOPTED: SEP 2 3 2003

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

1. The Negative Declaration for Truxel 3 Planned Unit Development (P00-1213) be ratified.

2. The Mitigation Monitoring Plan is approved for the proposed Truxel 3 Planned Unit Development project based upon the following findings:

   a. One or more mitigation measures have been added to the above identified project;

   b. A Mitigation Monitoring Plan, has been prepared to ensure compliance and implementation of the mitigation measures for the above identified project, a copy of which is attached as Exhibit 1.

Heather Fargo
MAYOR

ATTEST:

Virginia K. Hamm
CITY CLERK

P00-123

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-666

DATE ADOPTED: SEP 23 2003

EXHIBIT 1 – Mitigation Monitoring Plan

TRUXEL 3 PROJECT (P00-123)
MITIGATION MONITORING PLAN

This Mitigation Monitoring Plan (MMP) has been required by and prepared for the City of Sacramento Planning and Building Department, Environmental Planning Services, 1231 I Street, Room 300, Sacramento, CA 95814, pursuant to CEQA Guidelines Section 21081.6.

SECTION 1: PROJECT IDENTIFICATION

Project Name / File Number:	Truxel 3 Project (P00-123)
Owner/Developer- Name:	Armrod Charitable Foundation, Eleni Tsakopoulos
Address:	7700 College Town Drive, Suite 101 Sacramento, CA 95826

Project Location / Legal Description of Property (if recorded): The Project is located within the North Natomas Community Plan area. The project site is located at the southeast intersection of Truxel Road and Gateway Park Boulevard. (APN: 225-0170-043).

Project Description: The proposed Truxel 3 Project would consist of establishing a Planned Unit Development for developing approximately 5.0± gross acres (2.8 net acres) of vacant land for the purpose of constructing Highway Commercial uses. The Truxel 3 project would provide highway commercial uses for both the North Natomas Community and travelers of I-80. Appropriate off-street parking would be required in accordance with the City's Zoning Ordinance for projects being constructed within the Planned Unit Development.

Specific entitlements being requested for the proposed project include:

A. Development Agreement
B. Rezone - to Highway Commercial
C. Planned Unit Development (PUD) Establishment (PUD Guidelines and PUD Schematic Plan)

SECTION 2: GENERAL INFORMATION

The Plan includes mitigation for Seismicity, Soils, and Geology; Air Quality; Biological Resources; and Cultural Resources. The intent of the Plan is to prescribe and enforce a means for properly and successfully implementing the mitigation measures as identified within the Initial Study for this project. Unless otherwise noted, the cost of implementing the mitigation measures as prescribed by this Plan shall be funded by the owner/developer identified above. This Mitigation Monitoring Plan (MMP) is designed to aid the City of Sacramento in its implementation and monitoring of mitigation measures adopted for the proposed project.

The mitigation measures have been taken verbatim from the Initial Study and are assigned the same number they have in the document. The MMP describes the actions that must take place to implement each mitigation measure, the timing of those actions, and the entities responsible for implementing and monitoring the actions. The developer will be responsible for fully understanding and effectively implementing the mitigation measures contained with the MMP. The City of Sacramento will be responsible for ensuring compliance.

MITIGATION MONITORING PROGRAM

Introduction

The California Environmental Quality Act (CEQA) requires review of any plan or project that could have significant adverse effects on the environment. In 1988, CEQA was amended to require reporting on and monitoring of mitigation measures adopted as part of the environmental review process. This MMP is designed to aid the City of Sacramento in its implementation and monitoring of mitigation measures adopted for the Proposed Project.

MMP Components

The components of each monitoring form are addressed briefly, below.

Mitigation Measure: All mitigation measures that were identified in the Initial Study are presented, and numbered accordingly. The mitigation measures are presented by topic (e.g., Air Quality).

Implementing Responsibility: This item identifies the entity that will undertake the required action.

Monitoring Responsibility: This item identifies the entity that will monitor the required action.

Compliance Standards: This item identifies the specific actions that are required in each mitigation measure.

Timing: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction, or on an ongoing basis. The timing for each measure is identified.

Verification of Compliance: The individual assigned to assure compliance with identified mitigation measures will initial the form when the measure has been successfully implemented. The individual assigned to assure compliance will date the form when the measure has been successfully implemented.

TRUXEL 3 PROJECT (P00-123)
MITIGATION MONITORING PLAN

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	VERIFICATION OF COMPLIANCE: Compliance Standards	Timing	Verification of Compliance (Initials/Date)
3. Seismicity, Soils, and Geology:					
SSG-1. If groundwater were encountered during excavation activities, pumped water shall be channeled to an infiltration basin, located within an upland area of the construction activities and would eventually percolate into the groundwater. Upon percolation of all pumped water, the infiltration basin shall be backfilled and revegetated or developed per City and Regional Water Quality Control Board requirements.	Applicant	City Planning & Building Department, Department of Utilities, and Department of Public Works.	The listed measure shall be included on all construction plans.	Mitigation measures shall be implemented in the field during construction activities.	
5. Air Quality:					
AQ-1. Exposed soil shall be watered with adequate frequency to keep soil moist at all times. AQ-2. Loads of haul/dump trucks shall be covered securely. AQ-3. Any exposed piles of dirt, sand, gravel, or other construction debris shall be enclosed, covered, or watered twice daily. AQ-4. All dirt and mud which has been generated from or deposited by construction equipment going to and from the construction site along neighborhood streets shall be removed at a minimum of three times per week. AQ-5. Equipment idling shall be kept to a minimum when equipment is not in use. No piece of equipment shall be left to idle in one place for more than 30 minutes. AQ-6. On-site vehicle speeds shall be limited to 15 miles per hour on unpaved surfaces.	Applicant	City Planning & Building Department, Department of Public Works and SMAQMD	The applicant shall include the listed measures on all grading plans (the City shall not approve any construction plans without them).	Mitigation measures shall be implemented in the field during grading and construction activities	

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-666

DATE ADOPTED: SEP 23 2003

TRUXEL 3 PROJECT (P00-123)
MITIGATION MONITORING PLAN

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	VERIFICATION OF COMPLIANCE: Compliance Standards	Timing	Verification of Compliance (Initials/Date)
AQ-7. Revegetate disturbed areas immediately after the completion of construction to reduce wind erosion.					
7. Biological:					
BR-1. Prior to the issuance of a grading permit, the applicant shall either: (i) provide ½ acre of mitigation land that meets the requirements of the Natomas Basin Habitat Conservation Plan (NBHCP) for each acre of land authorized for disturbance; or (ii) pay the required NBHCP fees. No permit can be issued unless one of these has occurred. If the applicant acquires land and transfers it to the Conservancy, the applicant must pay that portion of the NBHCP fees other than the acquisition portion. Applicant land acquisitions must be approved in advance by the Conservancy.	Applicant	City Planning & Building Department; Department of Public Works, The Natomas Basin Conservancy. CA Dept. Fish & Game, U.S. Fish & Wildlife Service.	Mitigation Measures, including construction-timing restrictions shall be included on the Construction Specifications. Pre-construction biological surveys shall be completed as specified and submitted with grading/ building plans. The applicant shall comply with all requirements of the NBHCP.	Prior to issuance of any grading or building permit, measures identified on plans shall be verified for compliance. The Building Division and Dept of Public Works shall assure that measures are identified on construction plans and confirm compliance prior to issuance of any grading or building permit. Measures shall also be implemented concurrent with construction activities.	
BR-2. A pre-construction survey shall be completed by a qualified biologist in order to determine the presence and status of special-status species and their habitats within the project area, including Swainson's hawk, western burrowing owl, white-tailed kite, and tricolored blackbird. The results of the pre-construction surveys along with recommended take minimization measures shall be documented in a report and submitted to the USFWS and the CDFG. If necessary, the City shall implement specific take minimization measures as directed by the CDFG and the USFWS.					
BR-3. The project applicant/developer shall: (1) comply with all requirements of the NBHCP, together with any additional requirements specified in the North Natomas Community Plan EIR; (2) comply with any additional mitigation measures identified in the NBHCP EIR/EIS; and (3) comply with all conditions in the incidental take permits issued by the USFWS and CDFG.					

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-666

DATE ADOPTED: SEP 23 2003

TRUXEL 3 PROJECT (P00-123)
MITIGATION MONITORING PLAN

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	VERIFICATION OF COMPLIANCE		
			Compliance Standards	Timing	Verification of Compliance (Initials/Date)
11. Cultural Resources:					
CR-1. If subsurface archaeological, historical, or paleontological remains are discovered during construction, work in the area of the find shall stop immediately. A qualified archaeologist and a representative of the Native American Heritage Commission shall be consulted to develop, if necessary, further mitigation measures to reduce cultural resources impacts to a less-than-significant level before construction continues.	Applicant	City Planning & Building Department, Department of Public Works	Notes shall be included on the Construction Specifications.	Measures shall be implemented in field during grading and construction activities.	
CR-2. If human burials are encountered, all work in the area of the find shall stop immediately and the Sacramento County Coroner's office shall be notified. If the remains are determined to be Native American in origin, both the Native American Heritage Commission and any identified descendants would be notified and recommendations for treatment solicited (CEQA Section 15064.5; Health and Safety Code Section 7050.5; Public Resources Code Section 5097.94 and 5097.98).					

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-666

DATE ADOPTED: SEP 23 2003

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ORDINANCE NO.

Adopted by the Sacramento City Council

April 12, 2011

APPROVING A FIRST AMENDMENT TO CITY AGREEMENT NO. 96-051, A NORTH NATOMAS DEVELOPMENT AGREEMENT (TRUXEL 3 PLANNED UNIT DEVELOPMENT)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Hearing before the Planning Commission.

On March 24, 2011, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the Planning Commission conducted a noticed public hearing on an application to amend City Agreement No. 96-051 (the "**Original Agreement**") by extending the term. During the hearing, the Planning Commission received and considered evidence and testimony. After the hearing concluded, the Planning Commission forwarded to the City Council a recommendation to approve the proposed amendment.

Section 2. Hearing before the City Council; Findings.

On April 12, 2011, in accordance with Government Code section 65867 and Sacramento City Code chapter 18.16, the City Council conducted a noticed public hearing on the application to amend the Original Agreement. During the hearing, the City Council received and considered evidence and testimony concerning the proposed amendment. Based on the information in the application and the evidence and testimony received at the hearing, the City Council finds as follows:

(a) The proposed amendment to the Original Agreement is consistent with the City's general plan and the goals, policies, standards, and objectives of any applicable specific or community plan.

(b) The proposed amendment will facilitate Landowner's development of the property subject to the amendment, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the applicable specific or community plan.

(c) Without the amendment, Landowner would be unlikely to proceed with development of the property subject to the amendment in the manner proposed.

(d) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.

(e) Landowner will participate in all programs established or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation-monitoring plan) and has agreed to the financial participation required under the applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public.

(f) Landowner has made commitments to a high standard of quality and has agreed to all applicable land-use and development regulations.

Section 3. Approval and Authorization.

The City Council hereby approves the *First Amendment to City Agreement No. 96-051*, a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the Mayor to sign on the City's behalf, on or after the effective date of this ordinance, the *First Amendment to City Agreement No. 96-051*. The foregoing approval and authorization are based upon the City Council's re-adoption of a previously adopted mitigated negative declaration and a previously adopted mitigation-monitoring plan, both of which are the subject of a resolution adopted by City Council before, or concurrently with, the enactment of this ordinance.

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Attachment A – First Amendment to City Agreement No. 96-051

Recorded for the benefit of the City of Sacramento and thus exempt from documentary-transfer tax under Revenue and Taxation Code section 11928 and from recording fees under Government Code section 6103.

When recorded, return to—

Office of the City Clerk
Historic City Hall
915 "I" Street, First Floor
Sacramento, CA 95814

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SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

First Amendment to City Agreement No. 96-051
North Natomas Development Agreement
Truxel 3 Planned Unit Development

This amendatory agreement, dated April 12, 2011, for purposes of identification, is between the City of Sacramento, a California municipal corporation (the "**City**"); and A. J. Ventures, Inc., a California corporation ("**Landowner**").

Background

A. On June 12, 1996, the City and Gateway Truxel Partners, a California general partnership ("**Gateway**"), entered into a North Natomas Development Agreement that is designated as City Agreement No. 96-051 and is recorded with the Sacramento County Recorder in Book 19960701 at Page 0470 (the "**Original Agreement**"). The Original Agreement covers the real property described in Exhibit A to this amendatory agreement.

B. Landowner is the successor in interest to Gateway with respect to the real property described in Exhibit A (the "**Landowner's Parcel**"). Landowner acquired title to the Landowner's Parcel on September 17, 2010, by way of a *Trustee's Deed Upon Sale* that is recorded with the Sacramento County Recorder in Book 20100917 at Page 0216.

C. The initial fifteen-year term of the Development Agreement expires on May 15, 2011. Section 3 in article II of the Original Agreement grants Gateway and its successors in interest the right to extend the initial term by giving the City notice at least 180 days before the initial term expires. But neither Gateway nor Landowner has exercised that right, which expired on November 15, 2010.

D. Landowner nevertheless desires to extend the initial term as if notice had been given, and the City is willing to agree to that extension by amending section 3 in article II of the Original Agreement as set forth below.

With these background facts in mind, the City and Landowner agree as follows:

1. **Amendment of Section 3, Article II.** Section 3 in article II of the Original Agreement is amended to read in its entirety as follows, but only with respect to the Landowner's Parcel:

3. **Term**.

a. **Initial Term.** The term of this Agreement shall commence on the Effective Date, which is May 15, 1996, and shall extend for a period of twenty (20) years thereafter, that is, until May 15, 2016, unless it is sooner terminated or modified by the mutual consent of the parties.

b. **Renewal Options.** Subject to the provisions of this subparagraph, LANDOWNER shall have the right to renew this Agreement on its same terms and conditions, taking into account any amendments hereto mutually agreed upon after the Effective Date. The term of this Agreement shall mean and include the initial term, plus any renewal periods. The specific conditions for exercise of the renewal options are as follows:

(1) On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto. For purposes of this subsection, "Exercise Date" shall mean the date that LANDOWNER or LANDOWNER's successor in interest gives written notice of intention to exercise the option to renew this Agreement, in accordance with the provisions of Section 20 hereof.

(2) The option to renew shall be exercisable by giving CITY written notice of LANDOWNER's intention to exercise the option on or before the Exercise Date, which notice shall be given not later than one hundred eighty (180) days prior to expiration of the initial term or any renewal term.

(3) LANDOWNER shall be limited to two (2) renewal periods of five (5) years each; the parties specifically intend that under no circumstances shall the term of this Agreement extend beyond thirty (30) years, unless this Agreement is amended in accordance with the procedures set forth herein for Agreement amendments.

2. All Other Terms Remain in Force. Except as amended by sections 1 above, the Original Agreement remain in full force.

3. Effective Date. This amendatory agreement takes effect on the effective date of the ordinance that approves it (Government Code, § 65868; Sacramento City Code, §§ 18.16.120 & 18.16.130).

4. Recording. Either party may record this amendatory agreement with the Sacramento County Recorder.

5. Counterparts. The parties may execute this amendatory agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

6. **Entire Agreement and Modification.** This amendatory agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties. This amendatory agreement will control if any conflict arises between it and the Original Agreement.

(*Signature Page Follows*)

City of Sacramento

By: _____
John Dangberg, Assistant City Manager,
for Gus Vina, Interim City Manager
Date: _____, 2011

Approved as to Legal Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

A. J. Ventures, Inc.

By: _____
Signature

_____
Name

_____
Title

Date: _____, 2011

Approved as to Legal Form

By: _____
Signature

_____
Name

Attorneys for A. J. Ventures, Inc.

Exhibit A
Description of Landowner's Parcel

EXHIBIT "A"

THE LAND REFERRED TO IN THIS GUARANTEE IS SITUATED IN THE **STATE OF CALIFORNIA, CITY OF SACRAMENTO, COUNTY OF SACRAMENTO** AND IS DESCRIBED AS FOLLOWS:

PARCEL 1, OF THAT LOT LINE ADJUSTMENT RECORDED JANUARY 3, 2007, IN BOOK 20070103, PAGE 1161 IN THE OFFICIAL RECORDS OF SACRAMENTO COUNTY, CITY OF SACRAMENTO, STATE OF CALIFORNIA.

TOGETHER WITH A PORTION OF LOT 24 AND LOT 22, AS SHOWN ON THAT MAP ENTITLED "PROMENADE AT NATOMAS" FILED IN BOOK 341 OF MAPS, PAGE 12, SACRAMENTO COUNTY RECORDS; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 24, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF LOT 26 OF AFORESAID MAP; THENCE NORTH 89 DEGREES 21 MINUTES 57 SECONDS EAST 31.00 FEET ALONG A COMMON BOUNDARY LINE BETWEEN LOT 24 AND LOT 26, SAID LINE BEING THE NORTHERLY BOUNDARY LINE OF LOT 24; THENCE LEAVING SAID COMMON BOUNDARY LINE SOUTH 00 DEGREES 22 MINUTES 36 SECONDS EAST 378.83 FEET TO A POINT ON A COMMON BOUNDARY LINE BETWEEN LOT 24 AND LOT 22, SAID LINE BEING A SOUTHERLY BOUNDARY LINE OF LOT 24; THENCE LEAVING SAID BOUNDARY LINE SOUTH 31 DEGREES 29 MINUTES 39 SECONDS EAST 29.88 FEET; THENCE SOUTH 55 DEGREES 49 MINUTES 40 SECONDS WEST 55.89 FEET TO THE SOUTHWEST CORNER OF LOT 22; THENCE NORTH 00 DEGREES 22 MINUTES 36 SECONDS WEST 435.36 FEET ALONG THE WESTERLY BOUNDARY LINES OF LOT 22 AND LOT 24 TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS IDENTICAL WITH THAT FINAL MAP FILED IN BOOK 341 OF MAPS, AT PAGE 12, SACRAMENTO COUNTY OFFICIAL RECORDS. ROTATE THE BEARINGS DESCRIBED HEREIN 00 DEGREES 00 MINUTES 09 SECONDS COUNTER-CLOCKWISE TO ACHIEVE THOSE AS SHOWN ON 146 PM 2. BEING PARCEL 1 AS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED JANUARY 3, 2007 IN BOOK 20070103 PAGE 1164, OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, INERT GASES, MINERALS AND METALS, LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND AND REAL PROPERTY, WHETHER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING BUT NOT LIMITED TO THE RIGHTS TO EXPLORE FOR, DEVELOP, AND REMOVE SUCH OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, INERT GASES, MINERALS, AND METALS WITHOUT, HOWEVER, ANY RIGHT TO USE THE SURFACE OF SUCH LAND AND REAL PROPERTY OR ANY OTHER PORTION THEREOF ABOVE A DEPTH OF 500 FEET FROM THE SURFACE OF SUCH LAND AND REAL PROPERTY FOR ANY PURPOSE WHATSOEVER, AS RESERVED IN DEED RECORDED FEBRUARY 25, 2004, BOOK 20040225, PAGE 2291, OFFICIAL RECORDS.

APN: 225-2110-048-000 (fka 225-0170-043-000)

T.S. #10064-EB / KOBRA PROPERTIES