

ORDINANCE NO. 2011- 022

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

Adopted by the City of Sacramento City Council on April 12, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Sheedy, and Mayor Johnson.

Noes: None.

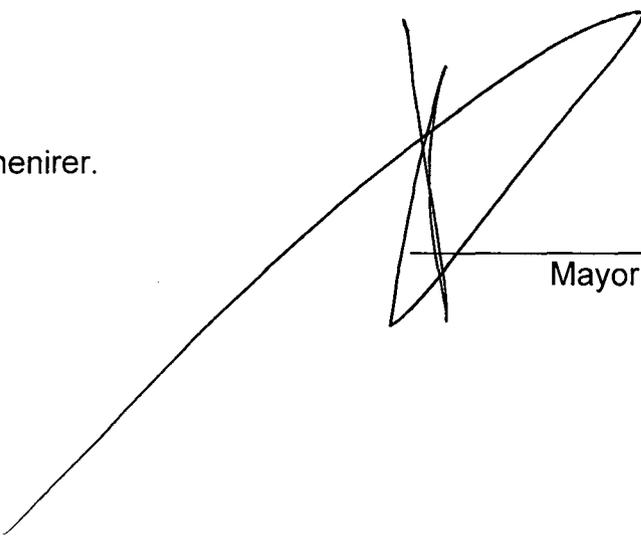
Abstain: None.

Absent: Councilmember Schenirer.

Attest:


Shirley Concolino, City Clerk

Effective: May 11, 2011



Mayor Kevin Johnson

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

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.

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

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