City of Sacramento
City Council

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

Meeting Date: **6/12/2012** **Report Type:** Consent

Title: (Pass for Publication) - Centerpointe at Natomas Crossing Development Agreement Amendments (P11-021)

Report ID: 2012-00474

Location: Southeast corner of Truxel Road and Del Paso Road, District 1

Recommendation: Review: a) a Resolution determining the project is exempt from California Environmental Quality Act (CEQA) review; b) an Ordinance approving the first amendment to the Centerpointe at Natomas Crossing Development Agreement (City Agreement No. 1997-099); c) an Ordinance approving the second amendment to the Centerpointe at Natomas Crossing Development Agreement (City Agreement No. 1997-099); d) an Ordinance approving the third amendment to the Centerpointe at Natomas Crossing Development Agreement (City Agreement No. 1997-099); and 2) pass for publication the Ordinance titles as required by the Sacramento City Charter 32c to be adopted June 19, 2012.

Contact: Gregory Bitter, Principal Planner, (916) 808-7816, Community Development Department

Presenter: None

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

Attachments:

01- Description/Analysis
02 - Background
03 - P12-014 CEQA Reso
04 - P12-014 First DA Ordinance (Centerpointe at Natomas Crossing)
05 - Centerpointe at Natomas First Amendment to DA
06 - P12-014 Second DA Ordinance (Centerpointe at Natomas Crossing)
07 - Centerpointe at Natomas Second Amendment to DA
08 - P12-014 Third DA Ordinance (Centerpointe at Natomas Crossing)
09 - Centerpointe at Natomas Third Amendment to DA
10 - Aerial and Zoning for P12-014

City Attorney Review

Approved as to Form
Joseph Cerullo
6/7/2012 9:48:57 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Janelle Gray
5/16/2012 3:18:23 PM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 6/7/2012 8:16:39 AM

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Description/Analysis

Issue: The subject property was entitled to allow the development of 11 office buildings, totaling approximately 190,694 square feet. Approximately 53,667 square feet of office space has been constructed on the site since 2003. The property is also subject to a North Natomas Development Agreement (DA) that was approved on June 24, 1997, and became effective on July 24, 1997 (City Agreement 97-099). Although the initial term of this DA expires on July 24, 2012, 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. The owners of the property did not submit the required letter prior to the 180-day deadline. In April 2012, City staff notified the property owners that the deadline was missed but that an amendment to extend the initial term could be processed. The owners are now requesting to extend the initial term of the DA by five years.

Extending the initial term of the DA will provide the City with the owners' continuing contractual obligation that development of the Centerpointe at Natomas Crossing project will fulfill the original obligations imposed on this property. This amendment will also give the owners 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: The proposal extends the initial term of a DA for property with an approved office development that has been determined to be consistent with the 2030 General Plan Land Use designation of Urban Center Low Rise.

Environmental Considerations: The Environmental Services Manager has reviewed the project for compliance with the requirements of the California Environmental Quality Act (CEQA). The Environmental Services Manager has determined the proposed amendments to the DA to be exempt from CEQA review, since the project has no potential for causing a significant effect on the environment. (Cal. Code Regs., tit. 14, §15061(b)(3).)

Sustainability: The proposal extends the term of a DA for three parcels within an approved office development. There are no effects on or changes to sustainability impacts.

Commission/Committee Action: On May 10, 2012, the Planning Commission forwarded to the City Council the recommendation for approval by a vote of eight ayes and zero nays (two absent and one vacancy).

Rationale for Recommendation: Staff recommends that the City Council approve the proposed amendments to the DA. Staff finds that the proposed amendments are 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 action has no fiscal impacts to the City's general fund or special funds.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

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Background

On June 24, 1997, the City Council approved a General Plan Amendment, Community Plan Amendment, and a Rezone (P96-082) of the subject and surrounding site, known as Natomas Crossing Planned Unit Development – Alleghany Area #1, along with development guidelines and a schematic plan for the PUD, a Tentative Master Parcel Map, Tentative Map, and a Subdivision Modification, with conditions. On the same day, the City Council also approved a standard North Natomas Development Agreement that became effective on July 24, 1997 (City Agreement 97-099) (the "**DA**"). The City Council's North Natomas Processing Protocols require such an agreement for all development in the North Natomas Community Plan area.

On November 20, 2001, the City Council approved a Community Plan Amendment and Rezone (P01-014) of the subject and surrounding site, known as Alleghany Area 1 – Fairfield Apartments. Also approved were a PUD Schematic Plan Amendment and PUD Guidelines Amendment to the Natomas Crossing Planned Unit Development (PUD). On September 27, 2001, the Planning Commission approved the Tentative Subdivision Map (to subdivide one parcel into six parcels) and a PUD Special Permit to develop a 384-unit apartment complex (P01-014), to the east and south of this project site.

On November 13, 2002, the property known as Centerpointe at Natomas Crossing was purchased and transferred to the Jack and Mary Meissner Family Revocable Trust (the "**Trust**"). The Trust subsequently formed two limited-liability companies to hold title to part of the property—Centerpointe at Natomas Crossing Phase I, LLC ("**LLC 1**") and Centerpointe at Natomas Crossing Phase II, LLC ("**LLC 2**"). The Trust also holds title to part of the property,

On January 22, 2004, the Planning Commission approved the necessary entitlements to allow the development of an 11-building office complex on approximately 12.47 acres on the subject site. The entitlements included a Special Permit for a Major Project to construct 11 buildings, for a total of approximately 190,694 square feet, a Special Permit for a stand-alone drive-thru ATM facility for the proposed banking facility (Building G), and a Variance to waive the required masonry wall adjacent to the apartment complex to the south and east and substitute it with a landscaping barrier and wrought iron fencing.

Since 2003, 6 of the 11 approved office buildings have been constructed and occupied, totaling approximately 53,667 square feet. The remaining 5 buildings cannot be constructed until there is a revision to the flood designation for the Natomas Basin.

Public/Neighborhood Outreach and Comments: The proposed amendments to the DA do not impact the current development entitlements for the site. This proposal was not subject to an early routing to neighborhood groups, however the public notice for the Planning Commission's meeting was routed to all property owners within a 500 foot radius of the project site and the various North Natomas neighborhood groups.

Development Agreement Amendment

Like all standard North Natomas Development Agreements, the DA has a 15-year initial term and grants the Trust, LLC 1, and LLC 2 the right to extend the term unilaterally, in 5-year increments, for up to 15 more years, as to the property they own. To exercise this right, the owners must notify the City, in writing, at least 180 days before the expiration date.

The DA's initial term expires on July 24, 2012, so the 180-day deadline for submitting a notice exercising the right to extend the term another 5 years passed in January 2012. When the Trust, LLC 1, and LLC 2 did not submit the required notice before the deadline, City staff notified them in April 2012 that the deadline had passed but offered to process formal amendments to extend the initial term. The Trust, LLC 1, and LLC 2 subsequently submitted applications to extend the initial term of the DA from 15 to 20 years. The maximum term of the DA will remain at 30 years, i.e., each of the owners will have the right to 2 more 5-year extensions.

Extending the term of the DA will benefit the City by keeping in force the owners' contractual obligations for development of the Centerpointe at Natomas Crossing project. This amendment will also provide certainty for the Trust, LLC 1, and LLC 2 as to continuing obligations that must be satisfied to complete development of the property.

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RESOLUTION NO. 2012-

Adopted by the Sacramento City Council

DETERMINING PROJECT EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (P12-014)

BACKGROUND

On June 19, 2012, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Sections 18.16.080 (A) (1, 2, 3, and 4), 18.16.080 (B) (1, 2, 3, and 4) and 17.200.010(C)(2) (a), (b), and (c) (publication, posting, and mail (500 feet)), and received and considered evidence concerning the **Centerpointe at Natomas Crossing Development Agreement Amendments.**

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

Section 1. Based on the determination and recommendation of the City's Environmental Planning Services Manager and the oral and documentary evidence received at the hearing on the Project, the City Council finds that the Project is exempt from review under Section 15061(b)(3) of the California Environmental Quality Act Guidelines as follows:

A. The amendments to the Centerpointe at Natomas Crossing Development Agreement are covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

B. It can be seen with certainty that there is no possibility that the amendments to the Centerpointe at Natomas Crossing Development Agreement may have a significant effect on the environment; approval of the amendments thus is not subject to CEQA.

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ORDINANCE NO.

Adopted by the Sacramento City Council

June 19, 2012

APPROVING A FIRST AMENDMENT TO CITY AGREEMENT NO. 97-099, A NORTH NATOMAS DEVELOPMENT AGREEMENT (CENTERPOINTE AT NATOMAS CROSSING)

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

Section 1. Incorporation of Agreement.

This ordinance incorporates the *First Amendment to City Agreement No. 97-099* between the City and Jack and Mary Meissner Family Revocable Trust. ("**Landowner**"), a copy of which is attached to this ordinance as Exhibit A (the "**Original Agreement**").

Section 2. Hearing before the Planning Commission.

On May 10, 2012, 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 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 3. Hearing before the City Council; Findings.

On June 19, 2012, 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 4. Approval and Authorization.

The City Council hereby approves the *First Amendment to City Agreement No. 97-099,* a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the Director of the Community Development Department to sign on the City's behalf, on or after the effective date of this ordinance, the *First Amendment to City Agreement No. 97-099*.

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Attachment A – First Amendment to City Agreement No. 97-099

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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First Amendment to City Agreement No. 97-099
North Natomas Development Agreement
Centerpointe at Natomas Crossing

This amendatory agreement, dated July 19, 2012, for purposed of identification, is between the City of Sacramento, a California municipal corporation (the "**City**") and the Jack and Mary Meissner Family Revocable Trust ("**Landowner**").

Background

A. On June 24, 1997, the City and Sacramento Properties Holdings, Inc., a California Corporation ("**Sacramento Properties**"), entered into a North Natomas Development Agreement that is designated as City Agreement No. 97-099 and is recorded with the Sacramento County Clerk/Recorder in Book 19970908, Page 0382 (the "**Original Agreement**"). The effective date of the Original Agreement was July 24, 1997. The Original Agreement covers the real property described in Exhibit A to this amendatory agreement.

B. Landowner is the successor in interest to Sacramento Properties with respect to the real property described in Exhibit A (the "**Landowner's Parcel**"). Landowner acquired title to the Landowner's Parcel on November 13, 2002, by way of a *Grant Deed* that is recorded with the Sacramento County Clerk/Recorder in Book 20021120 at Page 2795.

C. The initial fifteen-year term of the Development Agreement expires on July 24, 2012. Section 3 in article II of the Original Agreement grants Sacramento Properties 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 Sacramento Properties nor Landowner has exercised that right, which expired on January 26, 2012.

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 July 24, 1997, and shall extend for a period of twenty (20) years thereafter, that is, until July 24, 2017, 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: _____
Max Fernandez, Director
Community Development Department
Date: _____, 2012

Approved as to Legal Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Jack and Mary Meissner Family Revocable Trust

By: _____
Signature

_____
Name

_____
Title

Date: _____, 2012

Approved as to Legal Form

By: _____
Signature

_____
Name

Attorneys for Jack and Mary Meissner Family Revocable Trust

Exhibit A
Description of Landowner's Parcel

All that certain real property situate in the City of Sacramento, County of Sacramento, State of California, described as follows:

Parcel One:
Parcels 3 and 4 as shown on that certain Parcel Map entitled, "Natomas Crossing Area 1, Remainder" recorded on July 28, 2004, in Book 178 of Parcel Maps, at Page 1.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said land, but without the right of entry upon any portion of the surface above a depth of 500 feet as contained in that certain "Corporation Grant Deed", dated December 26, 1984, and recorded in Book 84-12-28, Page 1234, Official Records.

Parcel Two:
Easements for reciprocal ingress, egress, maneuvering and parking; storm drainage, water (including domestic, irrigation and fire) and sanitary sewer, as needed, per the requirements contained within the Agreement For Conveyance of Easements, recorded September 4, 2002, in Book 20020904, Page 739, Official Records of Sacramento County; on, over, below and across Lots 1 and 2 of Natomas Crossing Area 1, as shown on the Subdivision Map filed September 4, 2002, in Book 302 of Maps, Page 12, Sacramento County Records.

Parcel Three:
A non-exclusive easement for access, ingress and egress over the driveway area and utility facilities, on, over and across Lots 1 and 2 of Natomas Crossing Area 1, as shown on the Subdivision Map filed September 4, 2002, in Book 302 of Maps, Page 12, Sacramento County Records as set forth in that certain document entitled Declaration of Covenants, Conditions and Restrictions and Grant of Easements recorded on November 20, 2002, in Book 20021120, Page 2791, Official Records.

APNs: 225-0070-127-0000 (Parcel 3) and 225-0070-128-0000 (Parcel 4)

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ORDINANCE NO.

Adopted by the Sacramento City Council

June 19, 2012

APPROVING A SECOND AMENDMENT TO CITY AGREEMENT NO. 97-099, A NORTH NATOMAS DEVELOPMENT AGREEMENT (CENTERPOINTE AT NATOMAS CROSSING)

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

Section 1. Incorporation of Agreement.

This ordinance incorporates the *Second Amendment to City Agreement No. 97-099* between the City and Centerpointe at Natomas Crossing Phase I, LLC. ("**Landowner**"), a copy of which is attached to this ordinance as Exhibit A (the "**Original Agreement**").

Section 2. Hearing before the Planning Commission.

On May 10, 2012, 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 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 3. Hearing before the City Council; Findings.

On June 19, 2012, 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 4. Approval and Authorization.

The City Council hereby approves the *Second Amendment to City Agreement No. 97-099,* a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the Director of the Community Development Department to sign on the City's behalf, on or after the effective date of this ordinance, the *Second Amendment to City Agreement No. 97-099*.

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Attachment A – Second Amendment to City Agreement No. 97-099

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.

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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

Second Amendment to City Agreement No. 97-099
North Natomas Development Agreement
Centerpointe at Natomas Crossing

This amendatory agreement, dated July 19, 2012, for purposed of identification, is between the City of Sacramento, a California municipal corporation (the "**City**") and the Centerpointe at Natomas Crossing Phase I, LLC ("**Landowner**").

Background

A. On June 24, 1997, the City and Sacramento Properties Holdings, Inc., a California Corporation ("**Sacramento Properties**"), entered into a North Natomas Development Agreement that is designated as City Agreement No. 97-099 and is recorded with the Sacramento County Clerk/Recorder in Book 19970908, Page 0382 (the "**Original Agreement**"). The effective date of the Original Agreement was July 24, 1997. The Original Agreement covers the real property described in Exhibit A to this amendatory agreement.

B. Landowner is the successor in interest to Sacramento Properties with respect to the real property described in Exhibit A (the "**Landowner's Parcel**"). Landowner acquired title to the Landowner's Parcel on April 5, 2006, by way of a *Grant Deed* that is recorded with the Sacramento County Clerk/Recorder in Book 20060406 at Page 1663.

C. The initial fifteen-year term of the Development Agreement expires on July 24, 2012. Section 3 in article II of the Original Agreement grants Sacramento Properties 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 Sacramento Properties nor Landowner has exercised that right, which expired on January 26, 2012.

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 July 24, 1997, and shall extend for a period of twenty (20) years thereafter, that is, until July 24, 2017, 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: _____
Max Fernandez, Director
Community Development Department
Date: _____, 2012

Approved as to Legal Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Centerpointe at Natomas Crossing Phase I, LLC

By: _____
Signature

_____
Name

_____
Title

Date: _____, 2012

Approved as to Legal Form

By: _____
Signature

_____
Name

Attorneys for Centerpointe at Natomas Crossing Phase I, LLC

Exhibit A
Description of Landowner's Parcel

Exhibit A

All that certain real property situate in the City of Sacramento, County of Sacramento, State of California, described as follows:

Parcel One:

Parcel 1 as shown on that certain Parcel Map entitled, "Natomas Crossing Area 1, Remainder" recorded on July 28, 2004, in Book 178 of Parcel Maps, at Page 1.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said land, but without the right of entry upon any portion of the surface above a depth of 500 feet as contained in that certain "Corporation Grant Deed", dated December 26, 1984, and recorded in Book 84-12-28, Page 1234, Official Records.

Parcel Two:

Easements for reciprocal ingress, egress, maneuvering and parking; storm drainage, water (including domestic, irrigation and fire) and sanitary sewer, as needed, per the requirements contained within the Agreement For Conveyance of Easements, recorded September 4, 2002, in Book 20020904, Page 739, Official Records of Sacramento County; on, over, below and across Lots 1 and 2 of Natomas Crossing Area 1, as shown on the Subdivision Map filed September 4, 2002, in Book 302 of Maps, Page 12, Sacramento County Records.

Parcel Three:

A non-exclusive easement for access, ingress and egress over the driveway area and utility facilities, on, over and across Lots 1 and 2 of Natomas Crossing Area 1, as shown on the Subdivision Map filed September 4, 2002, in Book 302 of Maps, Page 12, Sacramento County Records as set forth in that certain document entitled Declaration of Covenants, Conditions and Restrictions and Grant of Easements recorded on November 20, 2002, in Book 20021120, Page 2791, Official Records.

APN No. : 225-0070-125-0000 (new)

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ORDINANCE NO. 2012-

Adopted by the Sacramento City Council

June 19, 2012

APPROVING A THIRD AMENDMENT TO CITY AGREEMENT NO. 97-099, A NORTH NATOMAS DEVELOPMENT AGREEMENT (CENTERPOINTE AT NATOMAS CROSSING)

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

Section 1. Incorporation of Agreement.

This ordinance incorporates the *Third Amendment to City Agreement No. 97-099* between the City and Centerpointe at Natomas Crossing Phase II, LLC ("**Landowner**"), a copy of which is attached to this ordinance as Exhibit A (the "**Original Agreement**").

Section 2. Hearing before the Planning Commission.

On May 10, 2012, 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 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 3. Hearing before the City Council; Findings.

On June 19, 2012, 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 4. Approval and Authorization.

The City Council hereby approves the *Third Amendment to City Agreement No. 97-099,* a copy of which is attached to this ordinance as Exhibit A. The City Council hereby authorizes the Director of the Community Development Department to sign on the City's behalf, on or after the effective date of this ordinance, the *Third Amendment to City Agreement No. 97-099*.

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Attachment A – Third Amendment to City Agreement No. 97-099

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

Third Amendment to City Agreement No. 97-099
North Natomas Development Agreement
Centerpointe at Natomas Crossing

This amendatory agreement, dated July 19, 2012, for purposed of identification, is between the City of Sacramento, a California municipal corporation (the "**City**") and the Centerpointe at Natomas Crossing Phase II, LLC ("**Landowner**").

Background

A. On June 24, 1997, the City and Sacramento Properties Holdings, Inc., a California Corporation ("**Sacramento Properties**"), entered into a North Natomas Development Agreement that is designated as City Agreement No. 97-099 and is recorded with the Sacramento County Clerk/Recorder in Book 19970908, Page 0382 (the "**Original Agreement**"). The effective date of the Original Agreement was July 24, 1997. The Original Agreement covers the real property described in Exhibit A to this amendatory agreement.

B. Landowner is the successor in interest to Sacramento Properties with respect to the real property described in Exhibit A (the "**Landowner's Parcel**"). Landowner acquired title to the Landowner's Parcel on February 14, 2008, by way of a *Grant Deed* that is recorded with the Sacramento County Clerk/Recorder in Book 20080220 at Page 0349.

C. The initial fifteen-year term of the Development Agreement expires on July 24, 2012. Section 3 in article II of the Original Agreement grants Sacramento Properties 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 Sacramento Properties nor Landowner has exercised that right, which expired on January 26, 2012.

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 July 24, 1997, and shall extend for a period of twenty (20) years thereafter, that is, until July 24, 2017, 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: _____
Max Fernandez, Director
Community Development Department
Date: _____, 2012

Approved as to Legal Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Centerpointe at Natomas Crossing Phase II, LLC

By: _____
Signature

_____
Name

_____
Title

Date: _____, 2012

Approved as to Legal Form

By: _____
Signature

_____
Name

Attorneys for Centerpointe at Natomas Crossing Phase II, LLC

Exhibit A
Description of Landowner's Parcel

All that certain real property situate in the City of Sacramento, County of Sacramento, State of California, described as follows:

Parcel One:

Parcel 2 as shown on that certain Parcel Map entitled, "Natomas Crossing Area 1, Remainder" recorded on July 28, 2004, in Book 178 of Parcel Maps, at Page 1.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said land, but without the right of entry upon any portion of the surface above a depth of 500 feet as contained in that certain Corporation Grant Deed, dated December 26, 1984, and recorded in Book 84-12-28, Page 1234, Official Records.

Parcel Two:

Easements for reciprocal ingress, egress, maneuvering and parking; storm drainage, water (including domestic, irrigation and fire) and sanitary sewer, as needed, per the requirements contained within the Agreement For Conveyance of Easements, recorded September 4, 2002, in Book 20020904, Page 739, Official Records of Sacramento County; on, over, below and across Lots 1 and 2 of Natomas Crossing Area 1, as shown on the Subdivision Map filed September 4, 2002, in Book 302 of Maps, Page 12, Sacramento County Records.

Parcel Three:

A non-exclusive easement for access, ingress and egress over the driveway area and utility facilities, on, over and across Lots 1 and 2 of Natomas Crossing Area 1, as shown on the Subdivision Map filed September 4, 2002, in Book 302 of Maps, Page 12, Sacramento County Records as set forth in that certain document entitled Declaration of Covenants, Conditions and Restrictions and Grant of Easements recorded on November 20, 2002, in Book 20021120, Page 2791, Official Records.

APN: 225-0070-126-0000

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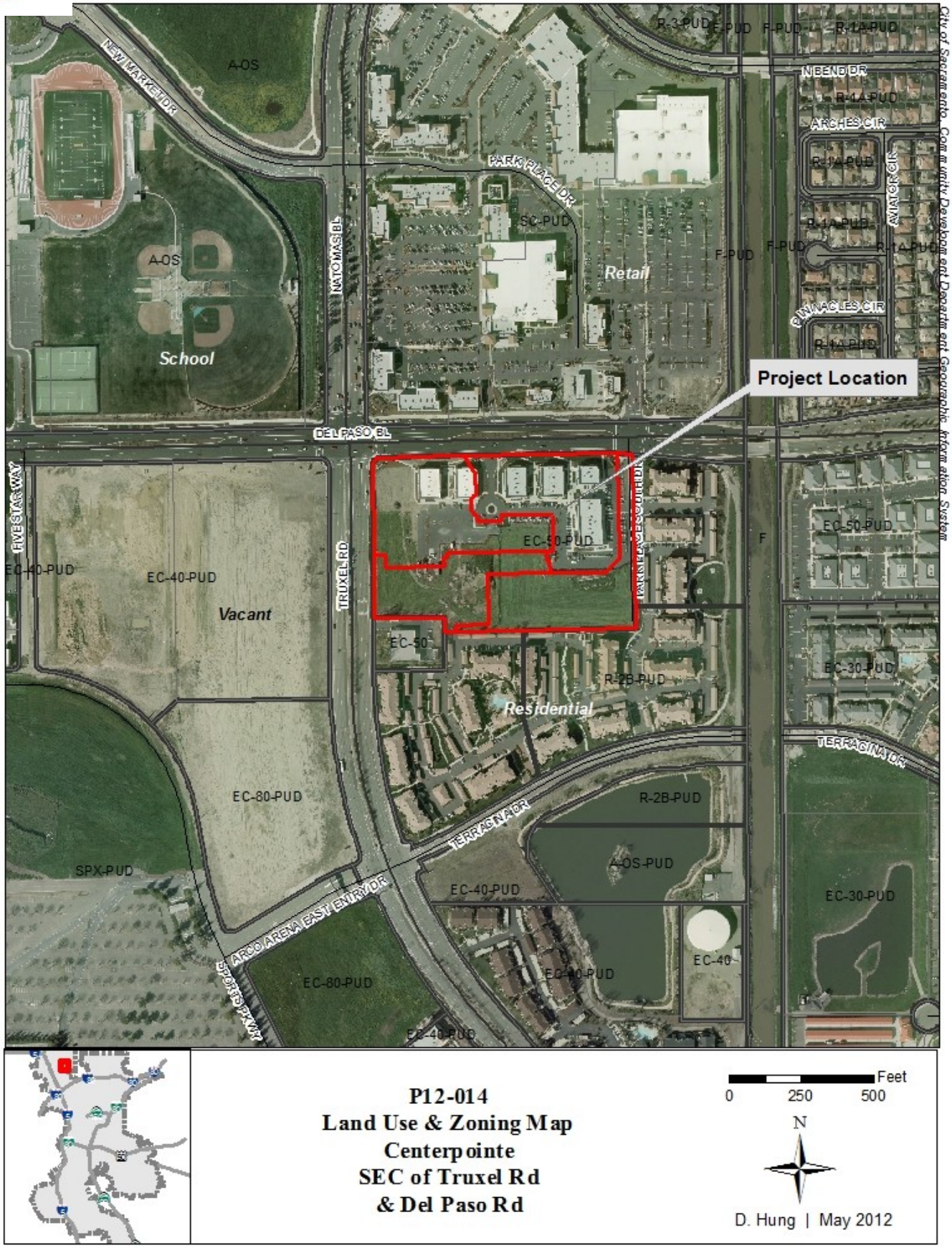

P12-014
Land Use & Zoning Map
Centerpointe
SEC of Truxel Rd
& Del Paso Rd

Feet
0 250 500

N

D. Hung | May 2012