

ORDINANCE NO. 2012-019

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*.

Table of Contents

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

Adopted by the City of Sacramento City Council on June 19, 2012 by the following vote:

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

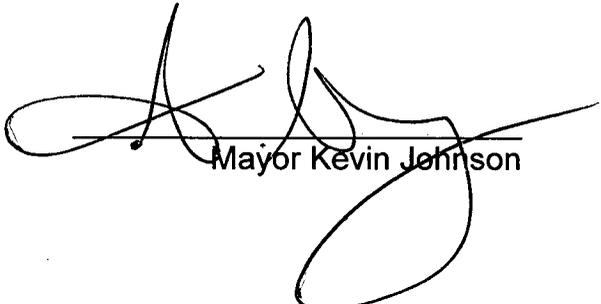
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk


Mayor Kevin Johnson

Passed for Publication: June 12, 2012

Published: June 15, 2012

Effective: July 18, 2012

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

**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

**Centerpointe at Natomas Crossing Phase II,
LLC**

By: _____
Max Fernandez, Director
Community Development Department
Date: _____, 2012

By: _____
Signature

Name

Title
Date: _____, 2012

Approved as to Legal Form
Sacramento City Attorney

Approved as to Legal Form

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

By: _____
Signature

Name
Attorneys for Centerpointe at Natomas
Crossing Phase II, LLC

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

**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