



REPORT TO PLANNING COMMISSION City of Sacramento

8

915 I Street, Sacramento, CA 95814-2671

PUBLIC HEARING
May 10, 2012

To: Members of the Planning Commission

**Subject: Centerpointe at Natomas Crossing Development Agreement
Amendment (P12-014)**

A request to amend City Agreement No. 97-099, which is the development agreement for the Centerpointe at Natomas Crossing office complex, located in the Employment Center 50 Planned Unit Development (EC-50 PUD) zone.

- A. Environmental Exemption (Per CEQA 15061(b)(3)-No Significant Effect),
- B. First Amendment to City Agreement No. 97-099, (the development agreement for the Centerpointe at Natomas Crossing project) to extend the initial term,
- C. Second Amendment to City Agreement No. 97-099, (the development agreement for the Centerpointe at Natomas Crossing project) to extend the initial term, and
- D. Third Amendment to City Agreement No. 97-099, (the development agreement for the Centerpointe at Natomas Crossing project) to extend the initial term,

Location/Council District:

Southeast corner of Truxel Road and Del Paso Road

Assessor's Parcel Numbers: 225-0070-125, 126, 127, 128

Council District 1

Recommendation: Staff recommends the Commission approve the request based on the findings and subject to the conditions listed in Attachment 1. **At the writing of this report, the project is non-controversial.** Staff recommends the Commission forward to City Council a recommendation of approval for items A to D.

Contact: Greg Bitter, AICP, Principal Planner (916) 808-2659

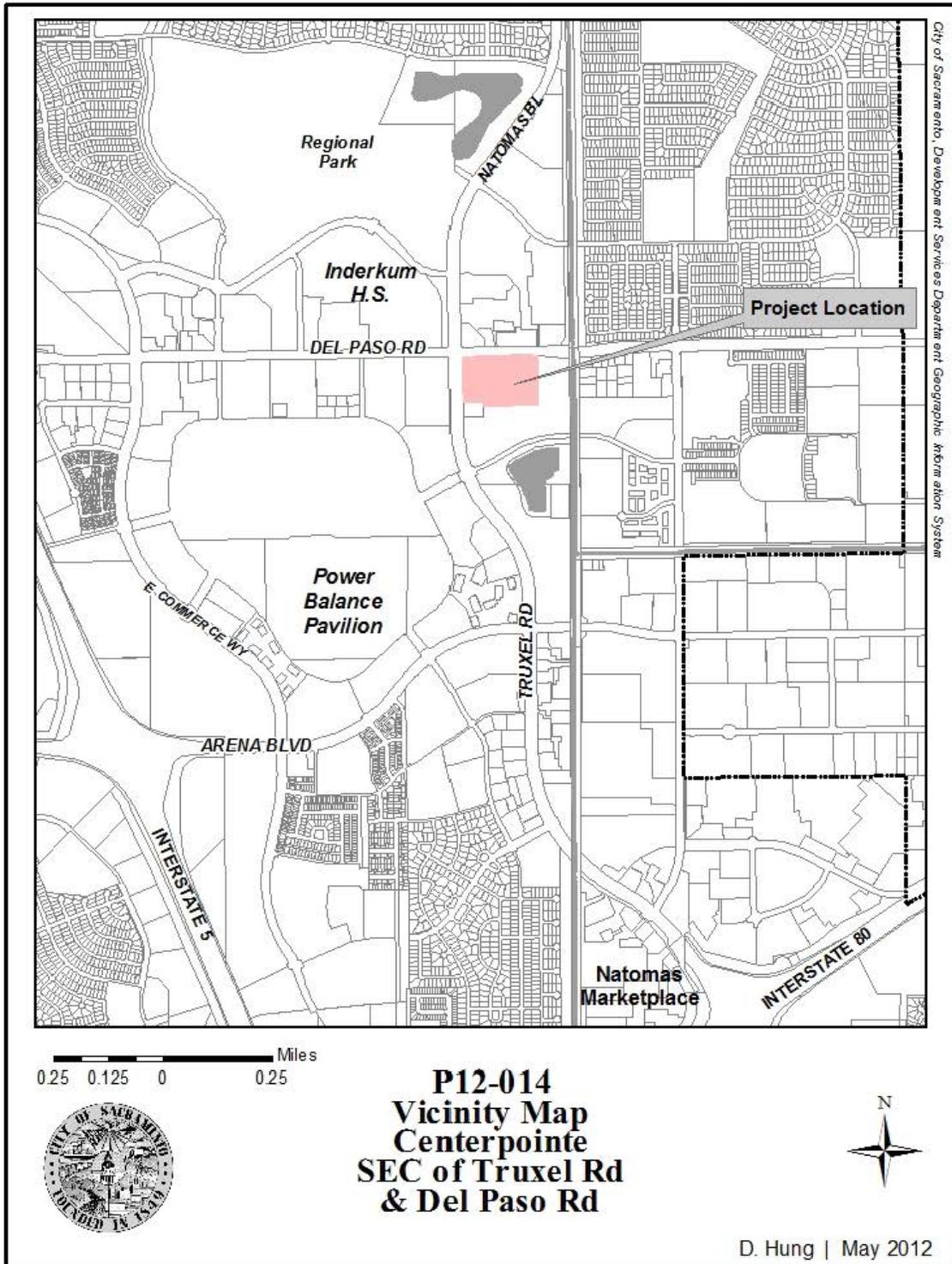
Applicant: Jack Meissner, Centerpointe at Natomas Crossing, (916) 801-4243, 4029 Cayente Way, Sacramento, CA 95864

Owners: The Jack and Mary Meissner Family Revocable Trust, c/o Jack Meissner, (916) 801-4243, 4029 Cayente Way, Sacramento, CA 95864

Centerpointe at Natomas Crossing Phase I, LLC, c/o Jack Meissner, (916) 801-4243, 4029 Cayente Way, Sacramento, CA 95864

Centerpointe at Natomas Crossing Phase II, LLC, c/o Jack Meissner, (916) 801-4243, 4029 Cayente Way, Sacramento, CA 95864

Vicinity Map



Summary: The subject property was entitled to allow the development of 11 office buildings, totaling approximately 190,694 square feet. Approximately 53,667 square of office buildings have been constructed on the site since 2003. The property is also subject to a development agreement (DA) that was approved on June 24, 1997, and became effective on July 24, 1997 (City Agreement 96-051). 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 owners of the property that the deadline was missed and an amendment to extend the initial term could be processed. The owners are now requesting to extend the term of the DA by five years. Staff notified all property owners within 500 feet of the site for this public hearing and received no opposition at the writing of this report.

Table 1: Project Information
General Plan designation: Employment Center Low Rise
Existing zoning of site: EC 50 PUD
Existing use of site: Partially developed
Property area: 12.47 net acres

Background Information: 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. Also approved were development guidelines and a schematic plan for the PUD, a Tentative Master Parcel Map, Tentative Map, and a Subdivision Modification, with conditions.

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.

On January 22, 2004, the Planning Commission approved the necessary entitlements to allow the development of an eleven (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 eleven (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.

In April of 2012, City staff notified the property owners that since the City had not received the required notice, the DA would expire on July 24, 2012. Staff offered the property owners the ability to extend the DA through an amendment to the initial term. On April 19, 2012, the property owners submitted an application to extend the initial term of the DA from 15 to 20 years.

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.

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 pursuant to the Section 15061(b)(3), since the project has no potential for causing a significant effect on the environment.

Policy Considerations:

General Plan

The 2030 General Plan designation of the subject site is Employment Center Low Rise. The proposal to extend the term of the DA will allow development of a project previously found to be consistent with the City's General Plan and currently consistent with the policies of the 2030 General Plan for Employment Center uses.

North Natomas Community Plan

The policies contained in the North Natomas Community Plan, found within Part 3 of the 2030 General Plan, are organized to mirror the structure of the Citywide General Plan elements and are intended to supplement, but not repeat, Citywide policies. The proposal to extend the term of the DA will allow the development of a project previously found to be consistent with the North Natomas Community Plan.

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 DA with the City. The City Council approved the standard DA format on August 9, 1994 (Resolution No. 94-494). On June 24, 1997, the City Council approved various entitlements for the Natomas Crossing Planned Unit Development – Alleghany Area #1 (P96-082). One of these entitlements was a DA (City Agreement 97-099) that included the property developed as the Centerpointe at Natomas office complex.

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 Centerpointe at Natomas office complex, 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 has expired. 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.

Extending the term of the DA will provide the City with a 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 landowners, the Jack and Mary Meissner Family Revocable Trust, Centerpointe at Natomas Crossing Phase I, LLC, and Centerpointe at Natomas Crossing Phase II, LLC, 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. Planning staff recommends the Planning Commission recommend approval of this amendment to the DA.

Conclusion: Staff recommends the Commission forward to City Council a recommendation of approval for 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.

Respectfully submitted by: 
GREG BITTER, AICP
Principal Planner

Approved by: 
LINDSEY ALAGOZIAN
Senior Planner

Recommendation Approved:

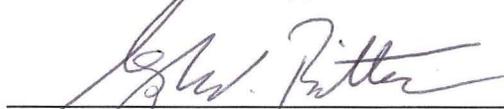

GREGORY BITTER, AICP
Principal Planner

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Attachment 1
Proposed Findings of Fact and Conditions of Approval
Amendments to Centerpointe at Natomas Crossing
Development Agreement (P12-099)
Assessor's Parcel Numbers: 225-0070-125, 126, 127, 128

Findings of Fact

- A.** The Planning Commission recommends approval and forwards to the City Council the Resolution finding the **Amendments to City Agreement No. 97-099** exempt from CEQA set forth in Attachment 2.
- B.** The Planning Commission recommends approval and forwards to the City Council an Ordinance approving the **First Amendment to City Agreement No. 97-099** set forth in Attachment 3.
- C.** The Planning Commission recommends approval and forwards to the City Council an Ordinance approving the **Second Amendment to City Agreement No. 97-099** set forth in Attachment 4.
- D.** The Planning Commission recommends approval and forwards to the City Council an Ordinance approving the **Third Amendment to City Agreement No. 97-099** set forth in Attachment 5.

Attachment 2: CEQA Exemption – Draft Resolution

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 Section 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 Amendment**.

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 amendment to the Centerpointe at Natomas Crossing Development Agreement is covered by the general rule that CEQA applies only to projects, which 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 amendment to the Centerpointe at Natomas Crossing Development Agreement may have a significant effect on the environment, and is therefore not subject to CEQA.

ORDINANCE NO.

Adopted by the Sacramento City Council

June xx, 2011

**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 xx, 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 Mayor 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*.

Table of Contents

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

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

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

This amendatory agreement, dated June, xx 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 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 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

**First 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:

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)

ORDINANCE NO.

Adopted by the Sacramento City Council

June xx, 2011

**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 *First Amendment to City Agreement No. 97-099* between the City and Northpointe 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 xx, 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:

- (g) 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.
- (h) 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.

- (i) Without the amendment, Landowner would be unlikely to proceed with development of the property subject to the amendment in the manner proposed.
- (j) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.
- (k) 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.
- (l) 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 Mayor 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 – Second Amendment to City Agreement No. 97-099

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This amendatory agreement, dated June, xx 2012, for purposed of identification, is between the City of Sacramento, a California municipal corporation (the "City") and the Northpointe 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 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 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

Centerpointe at Natomas Crossing Phase I, 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 I, LLC

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

**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)

ORDINANCE NO.

Adopted by the Sacramento City Council

June xx, 2011

**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 *First Amendment to City Agreement No. 97-099* between the City and Northpointe 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 xx, 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:

- (m) 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.
- (n) 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.

- (o) Without the amendment, Landowner would be unlikely to proceed with development of the property subject to the amendment in the manner proposed.
- (p) Landowner will incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit.
- (q) 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.
- (r) 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 Mayor 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*.

Table of Contents

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

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 June, xx 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 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 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