

RESOLUTION NO. 2010-207

Adopted by the Sacramento City Council

April 22, 2010

CONFIRMING THAT CONDITION 2.E. OF THE RESOLUTION APPROVING THE ESTABLISHMENT OF THE PROMENADE AT NATOMAS PLANNED UNIT DEVELOPMENT (RESOLUTION 2004-776) HAS BEEN SATISFIED, AND AUTHORIZING THE CITY MANAGER TO ISSUE AN ESTOPPEL CERTIFICATE CONFIRMING THE STATUS OF CONDITION 2.E AND OF RELATED AGREEMENTS

BACKGROUND

- A. On September 28, 2004, the City Council approved the Promenade at Natomas Project (P00-033).
- B. Condition 2.e of Resolution 2004-776, approving the Promenade Planned Unit Development, required the developer, Opus West, Inc., to enter into an agreement under which it would provide certain benefits to the community. Among those benefits was construction of a Regional Youth Baseball facility in South Natomas up to a cost of \$1,000,000.
- C. On February 28, 2006, the City Council approved Resolution 2006-157, authorizing the City Manager to execute an Agreement By and Between the City of Sacramento and Opus West Inc. Relative to the Promenade at Natomas Planned Unit Development (City Agreement 2006-0201) to fulfill condition 2.e of Resolution 2004-776 for the Promenade at Natomas Planned Unit Development. The City and Opus West, Inc. subsequently entered into that agreement.
- D. On April 3, 2007, the City Council approved Resolution 2007-194, authorizing the City Manager to execute Amendment No. 1 to City Agreement 2006-0201 with Opus West Inc. The amendment (City Agreement No. 2006-0201-1) addressed the construction of a regional baseball facility, providing as follows: "Upon written request by the City, [Opus] shall pay the City or a third party designated by the City an amount equal to the estimated cost to construct a regional youth baseball facility in South Natomas pursuant to plans and specification approved by the city; provided, however, [Opus] shall not be required to pay more than \$1,000,000. [Opus] shall make full payment within 90 days of the City's written request for payment."
- E. On June 14, 2005, a Subdivision Improvement Agreement (City Manager Agreement No. 2005-0493) was executed by the City of Sacramento and Opus's predecessor in interest, the Fong Ranch Liquidating Trust. This agreement was recorded June 23, 2005, with the Sacramento County Clerk/Recorder in Book 20050623 at Page 1817; a related assignment was subsequently recorded with the Sacramento County Clerk/Recorder in Book 20061130 at Page 485.

F. On January 19, 2006, an Agreement for Operation and Maintenance of Interim Drainage Facilities (City Agreement No. 2006-0122) was executed by the City and Opus West Corporation. This agreement was recorded on February 17, 2006, with the Sacramento County Clerk/Recorder in Book 20060217 at Page 1415.

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

Section 1. Condition 2.e of Resolution 2004-776 was satisfied when the City and Opus West, Inc. entered into City Agreement No. 2006-0201.

Section 2. The City Manager (or his designee) is authorized to issue an Estoppel Certificate to Kaiser Foundation Health Plan, Inc. using a form substantially the same as the form attached to this resolution as Exhibit A.

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Exhibit A: Draft Estoppel Certificate – 2 Pages

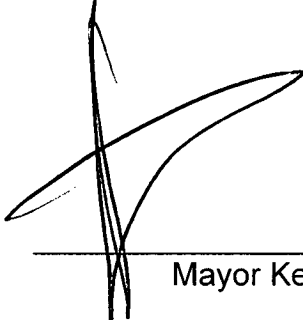
Adopted by the City of Sacramento City Council on April 22, 2010 by the following vote:

Ayes: Councilmembers Cohn, Hammond, McCarty, Pannell, Sheedy, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmembers Fong and Tretheway.



A handwritten signature in black ink, appearing to read 'Kevin Johnson', is written over a horizontal line. The signature is stylized and somewhat abstract.

Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

Exhibit A – Draft Estoppel Certificate

Recording requested by and
when recorded return to:

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

ESTOPPEL CERTIFICATE

Effective Date: April __, 2010

The City of Sacramento (the "City") and the Fong Ranch Liquidating Trust (the "Fong Trust") were parties to a North Natomas Development Agreement dated September 28, 2004, and recorded on November 10, 2004, with the Sacramento County Clerk/Recorder in Book 20041110 at page 1460 (the "Development Agreement"). Quality Properties Asset Management Company (the "Company"), an Illinois corporation, is a successor to the Fong Trust and currently owns a portion of the land subject to the Development Agreement, namely Assessor Parcel Numbers 225-2110-028, 225-2110-055, 225-2110-056, and 225-2210-059 (the "Property"). Kaiser Foundation Health Plan, Inc. ("Kaiser"), a California nonprofit public benefit corporation, desires to acquire the Property from the Company and has requested that the City deliver this certificate in connection with the proposed acquisition.

On the City's behalf, and based solely on my actual knowledge, I certify to Kaiser that the following statements are true as of the effective date of this certificate:

- A. The Development Agreement is in full force and effect and a binding obligation of the City and the Company.
- B. The Development Agreement has not been amended or modified, either orally or in writing.
- C. The Company is not in default in the performance of its obligations under the Development Agreement.
- D. If Kaiser acquires the Property, then Kaiser will have no obligations under the following agreements except as otherwise indicated:
 - 1. City Manager Agreement No. 2005-0493 (Public Improvement Proceeding No. P00-033 / Subdivision Improvement Agreement) between the City and the Fong Trust, dated as of June 14, 2005, and recorded June 23, 2005, with the Sacramento County Clerk/Recorder in Book 20050623 at Page 1817; and related assignment recorded with the Sacramento County Clerk/Recorder in Book 20061130 at Page 485. Kaiser remains obligated, however, to fulfill Condition E45 (to the 2008 approval to develop a three-story, 120,000-square-foot

office building) requiring installation of landscaping and appropriate irrigation for the mow strip on the east side of Gateway Park Boulevard from North Freeway Drive to North Market Drive.

2. City Agreement No. 2006-0122 (Agreement for Operation and Maintenance of Interim Drainage Facilities) between the City and Opus West Corporation, dated as of January 19, 2006, and recorded on February 17, 2006, with the Sacramento County Clerk/Recorder in Book 20060217 at Page 1415.
3. City Agreement No. 2006-0201 (Agreement By and Between the City of Sacramento and Opus West, Inc. Relative to the Promenade at Natomas Planned Unit Development), dated as of February 28, 2006, and recorded May 16, 2006, with the Sacramento County Clerk/Recorder in Book 20060516 at Page 1696; as amended by City Agreement No. 2006-0201-1 (Amendment No. 1 to Agreement by and Between the City of Sacramento and Opus West, Inc. Relative to the Promenade at Natomas Planned Unit Development).

The City acknowledges that Kaiser, acting in good faith, may rely on the statements in this certificate.

City of Sacramento

Gus Vina
Interim City Manager