

## ORDINANCE NO. 1627

### **AN ORDINANCE OF THE COUNTY OF SUTTER ADOPTING A SECOND AMENDMENT TO TIER-1 DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF SUTTER AND SOUTH SUTTER 6000, LLC REGARDING THE SUTTER POINTE SPECIFIC PLAN**

**WHEREAS**, the County of Sutter has heretofore adopted the Sutter Pointe Specific Plan and the Sutter Pointe Specific Plan Amendment pursuant to California Government Code sections 65450 through 65454; and

**WHEREAS**, pursuant to Government Code sections 65864 through 65869.5, the County has the authority to prepare and adopt development agreements with applicants to provide certainty regarding the policies, rules and regulations that will govern a project and to impose conditions that will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development; and

**WHEREAS**, the Sutter Pointe Specific Plan Project includes all of the Sutter Pointe Project entitlements including General Plan Amendments, an adopted Specific Plan, a Specific Plan Amendment, zoning designations, a Land Use and Development Code, and a certified Environmental Impact Report (EIR) and Addendum to the EIR which considered the potential effects of the Sutter Pointe Specific Plan Project and Sutter Pointe Specific Plan Amendment; and

**WHEREAS**, the Development Agreement is a Tier-1 Development Agreement and part of the "Initial Entitlements" approved along with the Specific Plan and Specific Plan Amendment which vests the landowners' rights as set forth in the Agreement. The Development Agreement further sets forth the Landowners' general obligations related to securing "Subsequent Entitlements" (including Tier-2 development agreements), and the County's reciprocal obligations to process such entitlements and ultimately allow physical development to proceed so long as the requirements in the development agreements, the "Initial Entitlements", and "Subsequent Entitlements" are satisfied; and

**WHEREAS**, on February 11, February 23, March 2, and May 14, 2009 the Sutter County Board of Supervisors and Planning Commission held joint study sessions to discuss and take public comment on the Sutter Pointe Specific Plan Project; and

**WHEREAS**, on May 27 and June 17, 2009, the Planning Commission conducted public hearings to consider recommending approval of the Sutter Pointe Specific Plan Project, including the Development Agreement and, upon the conclusion of the public hearings, recommended the Board of Supervisors approve the Sutter Pointe Specific Plan Project and adopt the Development Agreement; and

**WHEREAS**, on June 30, 2009, the Board of Supervisors conducted a public hearing to consider and, thereafter, did approve the Sutter Pointe Specific Plan Project and adopt the Development Agreement, a notice of which was given as required by sections 65090-65092 of the Government Code with certified proof of the required notice contained in the County's file for this

project; and

**WHEREAS**, on September 17, 2014, the Planning Commission conducted public hearings to consider recommending adoption of the Specific Plan Amendment and a First Amendment to the Tier 1 Development Agreement (the “First Amendment”) and, upon the conclusion of the public hearing, recommended the Board of Supervisors adopt the Specific Plan Amendment and the First Amendment; and

**WHEREAS**, on October 28, 2014, the Board of Supervisors conducted a public hearing to consider adopting the Addendum to the EIR, the Specific Plan Amendment and the First Amendment and, upon the conclusion of the hearing, did adopt the Addendum to the EIR, the Specific Plan Amendment and the First Amendment; and

**WHEREAS**, pursuant to Government Code section 65868, the County has the authority to amend a development agreement, subject to the provisions of Government Code section 65867.5; and

**WHEREAS**, Sutter County Zoning Code section 1500-25-100 discusses development agreements and subsection B provides for the amendment of existing agreements; and

**WHEREAS**, on November 16, 2016, the Planning Commission conducted a public hearing to consider recommending adoption of the Second Amendment to Tier 1 Development Agreement Relative to the Sutter Pointe Specific Plan (the “Second Amendment”) and, upon the conclusion of the public hearings, recommended the Board of Supervisors adopt the Second Amendment; and

**WHEREAS**, the Board of Supervisors finds that approval of the Second Amendment is covered by the general rule exemption specified by state CEQA Guidelines section 15061 (b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment the activity is not subject to CEQA; and

**WHEREAS**, on December 6, 2016, the Board of Supervisors conducted a public hearing to consider and, thereafter, did approve the proposed Second Amendment, a notice of which was given as required by sections 65090-65092 of the Government Code with certified proof of the required notice contained in the County's file for this project.

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SUTTER ORDAINS AS FOLLOWS:**

Section 1: The preceding recitals are true and correct and are incorporated by reference into this ordinance.

Section 2: This Ordinance incorporates, and by this reference makes a part thereof, that certain Second Amendment, as more particularly described in the attached EXHIBIT A, by and between the

County of Sutter and South Sutter 6000, LLC (the “Developer”), relative to the proposed development of the Sutter Pointe Specific Plan as modified by the Specific Plan Amendment.

Section 3: The Board of Supervisors finds and determines as follows:

- a. Pursuant to California Government Code section 65867.5, the provisions of the Development Agreement (as amended by the First Amendment and the Second Amendment) are consistent with goals, policies, general land uses and programs specified in the Sutter County General Plan and the Sutter Pointe Specific Plan, as amended, because the Development Agreement (as amended by the First Amendment and Second Amendment) commits the Developer to develop its property within the Sutter Pointe Specific Plan area as modified by the Specific Plan Amendment in an orderly manner, in accordance with a flexible phasing program tied to market demand and infrastructure availability; ensures that the County's economic base will be strengthened by vesting development which will create a variety of jobs and retail opportunities; commits the developer to fully fund public facilities and services; and establishes a clearly defined process requiring County approval of "Subsequent Entitlements" (including Tier-2 development agreements) prior to initiation of any development to ensure consistency with the provisions of Measure M.
- b. The Development Agreement (as amended by the First Amendment and the Second Amendment) contains all of the mandatory elements required by California Government Code section 65865.2 in that it specifies the duration of the Development Agreement (as amended by the First Amendment and the Second Amendment), the permitted uses of the property, the density and intensity of uses, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement (as amended by the First Amendment and the Second Amendment) also contain provisions pertaining to applicant financing of necessary public facilities and services.
- c. The Development Agreement (as amended by the First Amendment and the Second Amendment) will not be detrimental to the health, safety and general welfare of the residents of Sutter County because it reduces uncertainties and encourages good land use practices and compatibility; promotes the orderly development of property; requires the full funding of needed infrastructure and services without reducing current County services levels; provides for the dedication of sites within the project for public use and benefit; strengthens the County's economic base; and promotes the preservation of property values.
- d. The development permitted by the Development Agreement (as amended by the First Amendment and the Second Amendment) will provide sufficient benefit to the County of Sutter to justify entering into the Second Amendment.
- e. The County has imposed conditions on the Development Agreement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the

national Federal Emergency Management Agency standard of flood protection in non-urbanized areas.

Section 4: Based on the findings set forth in this Ordinance and the evidence contained in the record for this matter, the Board of Supervisors adopts the Second Amendment.

Section 5: If any section, subsequent subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 6: This Ordinance shall take legal effect and be in force thirty (30) days from and after the date of its passage.

Section 7: Within fifteen days of the adoption of this Ordinance, the County Clerk shall cause a copy of this Ordinance or summary thereof, to be published once in the Appeal Democrat, a newspaper of general circulation, published in Sutter County, State of California, along with a notice setting forth the date of adoption and the title of this Ordinance, and with the names of the members of the Sutter County Board of Supervisors voting for and against the *same*.

***THIS ORDINANCE*** was regularly introduced at a meeting of the Board of Supervisors of the County of Sutter on the 6th day of December 2016, and was ***PASSED AND ADOPTED*** at a regular meeting of the Board of Supervisors of the County of Sutter on this 6th day of December 2016, by the following vote:

AYES: Supervisors Flores, Munger, Whiteaker and LeVake

NOES: None

ABSENT: None

ABSTAIN: Supervisor Sullenger

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LARRY MUNGER, CHAIRMAN  
BOARD OF SUPERVISORS

ATTEST:  
DONNA M. JOHNSTON, CLERK

By: \_\_\_\_\_  
Deputy