

PLANNING COMMISSION
RESOLUTION NO. 2009-32

A RESOLUTION RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE "FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS, A CALIFORNIA LIMITED PARTNERSHIP"

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements; and

WHEREAS, by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council established procedures and requirements for the consideration of development agreements; and

WHEREAS, on January 4, 2000, the City Council approved Ordinance No. 3168-C.S., a Development Agreement by and between the City of Modesto and Costa Limited Partners, A California Limited Partnership ("Development Agreement") which includes provisions regarding the development of the site, processing of future entitlements, payment of fees and taxes, installation of public infrastructure, and implementation of environmental mitigation measures; and

WHEREAS, the City and Costa Limited Partners, A California Limited Partnership are proposing the First Amendment to the Development Agreement in order to extend the term of the Development Agreement to May 17, 2021; and

WHEREAS, a public hearing was held by the Planning Commission on December 7, 2009, in the Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed First Amendment to the Development Agreement, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Planning Commission certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2009-27, which concluded that the project is within the scope of the General Plan Master EIR (SCH# 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that it hereby finds and determines as follows:

1. The proposed First Amendment to the Development Agreement is consistent with the goals, objectives, policies, standards, programs and uses in the General Plan and Kiernan Business Park Specific Plan of the City of Modesto because the resulting development would be consistent with the Kiernan Business Park Specific Plan in land use and intensity.
2. The proposed First Amendment to the Development Agreement is consistent with the specific content and other requirements of City Council

Resolution No. 97-492, the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65864 et seq.

3. The type of project is described in Chapter II of the Master Urban Area General Plan Master EIR (MEIR).
4. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made Conditions of Approval of the project.
5. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR, and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
6. Based on the Initial Study, the City of Modesto finds and determines:
 - a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 beyond that which was identified in the MEIR.
 - b. No new or additional mitigation measures or alternatives are required.
 - c. The proposed First Amendment to the Development Agreement is in compliance with the California Environmental Quality Act.
7. The Initial Study, Environmental Assessment No. EA/C&ED 2009-27, provides the substantial evidence to support findings 3-6, noted above.

BE IT FURTHER RESOLVED by the Planning Commission that it hereby recommends to the City Council approval by ordinance of the proposed First Amendment to Development Agreement By and Between the City of Modesto and Costa Limited Partners, A California Limited Partnership, attached hereto as Exhibit "A".

The foregoing resolution was introduced at the regular meeting of the Planning Commission held on December 7, 2009, by John Sanders, who moved its adoption, which motion was seconded by Patricia Gillum, and carried by the following vote:

Ayes: Brandvold, Gillum, Sanders and Tyler
Noes: Berglund and Carter
Absent: Bernal

BY ORDER OF THE PLANNING COMMISSION OF THE CITY OF MODESTO

Original, signed copy on file in CEDD
Patrick Kelly, Secretary

Attachment: Exhibit "A"

EXHIBIT "A"

**PROPOSED FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS, A
CALIFORNIA LIMITED PARTNERSHIP**

Draft on File with the Community & Economic Development
Department/Planning Division

**Final Amendment to Development Agreement on file
with the City Attorney's Office**