

RECORDING FEES EXEMPT
PURSUANT TO
GOVERNMENT CODE §27383

RECORDING REQUESTED BY:
VACAVILLE REDEVELOPMENT AGENCY

WHEN RECORDED MAIL TO:

VACAVILLE REDEVELOPMENT AGENCY
ATTENTION: BRENDA J. CLYMA
40 ELDRIDGE AVE. STE 7
VACAVILLE, CA 95688

AMENDMENT NO. 2

To

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND AMONG

THE CITY OF VACAVILLE,

THE VACAVILLE REDEVELOPMENT AGENCY

AND

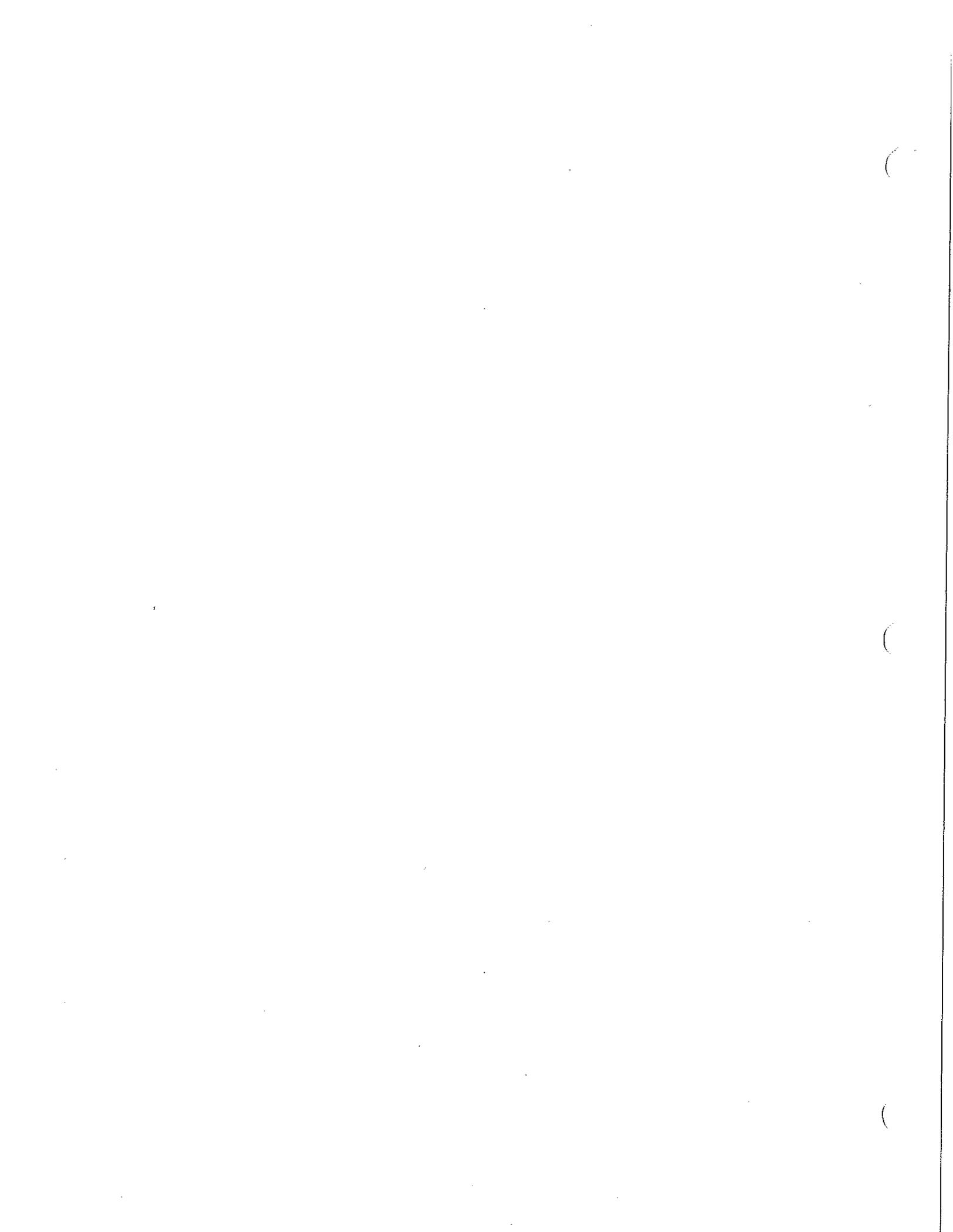
NUT TREE ASSOCIATES, LLC.

(NUT TREE PROPERTY)

Recorded—October 19, 2004,

Instrument # 2004-148400,

of Solano County Official Records



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AMENDMENT NO. 2
TO
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 2 TO DISPOSITION AND DEVELOPMENT AGREEMENT (this "Amendment") is entered into as of the 27th day of July, 2005, by and among the CITY OF VACAVILLE, a municipal corporation (the "City"), the VACAVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency") and NUT TREE ASSOCIATES, LLC, a Delaware limited liability company (the "Developer").

RECITALS

WHEREAS, the City, the Agency and the Developer are parties to that certain Disposition and Development Agreement dated as of February 4, 2003, as amended by Amendment No.1 dated February 23, 2005 (the "DDA") relating to the development of the Property (as defined in the DDA); and

WHEREAS, the City, the Agency and the Developer now desire to amend and clarify the DDA as provided herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Agency and the Developer hereby agree as follows:

1. **Amendment of Section 5.10 of the DDA.** Section 5.10 of the DDA is amended to read as follows:

"Section 5.10. Rights Burdening and Benefiting Adjoining Property.

(A) The Agency has entered into a series of agreements with the owners of certain real property (the "Stadium Property") that is adjacent to the Property. These agreements provide for certain rights of the Agency with respect to the Stadium Property and certain rights of the owners of the Stadium Property with respect to the Property. These agreements consist of the following:

(i) The 2004 Stadium Agreement dated December 8, 2004 by and among the City, Agency, and the owners of the Stadium Property: BC Stadium, LLC and West and East Bay Construction, Inc. (the "2004 Stadium Agreement"), recorded in the official records of Solano County on December 14, 2004 as Document No. 200400178844.

(ii) The First Amendment to 2004 Stadium Agreement dated July 18, 2005 by and among the City, Agency, and the successor owner of the Stadium Property, BC

Stadium, LLC (the "2004 Stadium Agreement Amendment") executed concurrently with this Amendment.

(iii) The Easement Grant Deed dated April 26, 2002 pursuant to which the then owner of the Stadium Property, B & C Stadium LLC, conveyed certain rights with respect to the Stadium Property to the Agency (the "Original Easement"), recorded in the official records of Solano County on May 7, 2002 as Document No. 20020057844.

(iv) The Easement Agreement dated December 8, 2004 by and between BC Stadium, LLC and the Agency and amending the Original Easement (the "Amended Easement"), recorded in the official records of Solano County on December 14, 2004 as Document No. 200400178845.

(v) The Right of Entry Agreement dated May 26, 2005 by and between the Agency and the current owner of the Stadium Property, CT Stocking, LLC and providing for certain rights over a portion of the Property (the "Right of Entry") which Right of Entry is being terminated by the 2004 Stadium Agreement Amendment.

For the purposes of this Section 5.10, "Stadium Owner" refers to CT Stocking, LLC or its successor as owner of the Stadium Property.

(B) Pursuant to the 2004 Stadium Agreement Amendment, the Stadium Owner has the right to use a portion of the Property for parking and ingress and egress until June 1, 2006 at the latest (the "Temporary Parking Rights"). In the event that Developer acquires the portion of the Property over which the Stadium Owner has Temporary Parking Rights, Developer shall acquire such portion of the Property subject to the Temporary Parking Rights as set forth in the 2004 Stadium Agreement Amendment.

(C) Pursuant to the 2004 Stadium Agreement Amendment, the Agency has the right to relocate the site of the Temporary Parking Rights. Developer shall have the right to cause such relocation pursuant to the 2004 Stadium Agreement Amendment if Developer pays all the costs associated with relocation of the site of the Temporary Parking Rights including, without limitation, the costs of preparation of plat/legal descriptions, design costs, construction costs, and permit fees. The Developer and the Agency shall cooperate to provide a right of entry or similar document to the Stadium Owner providing for the new location of the Temporary Parking Rights.

(D) Pursuant to Section 2.A.2 of the 2004 Stadium Agreement, the Agency has the right to obtain conveyance of a portion of the Stadium Property under certain conditions. Developer, for itself and its successors and assigns with respect to the Property, acknowledges and agrees that the right to obtain conveyance of a portion of the Stadium Property pursuant to Section 2.A.2 of the 2004 Stadium Agreement is a right personal to the Agency and does not run with and is not appurtenant to the Property or any portion thereof.

(E) The 2004 Stadium Agreement, the Original Easement and the Amended Easement create certain rights for the benefit of the Property to use a portion of the Stadium Property for parking (the "Stadium Parking Rights"). The Developer, for itself and its successors and assigns with respect to the Property agrees that, except as set forth in this subsection (E), the Stadium Parking Rights shall be utilized only for parking for the Conference Center/Hotel planned for Phase IV, and, if Developer no longer has the right pursuant to this Agreement to acquire the portion of the Property for Phase IV or does not develop a Conference Center/Hotel on the Property, Developer shall have no right to use the Stadium Parking Rights in conjunction with any portion of or use of the Property. If the Developer does develop the Conference Center/Hotel on the Property, then the Agency in its reasonable discretion may allow use of the Stadium Parking Rights in conjunction with office or retail uses on the Property provided that there are sufficient spaces available pursuant to the Stadium Parking Rights to serve both the Conference Center/Hotel and the proposed use of parking in conjunction with office or retail uses on the Property. The limitation on the use of the Stadium Parking Rights shall be set forth in the CC&R's for the Property prepared pursuant to Section 3.10 above; the provision of the CC&R's containing such limitation shall not be amended without the consent of the Agency.

(F) The Amended Easement provides for the Agency to give the Stadium Owner notice of intended use of the Stadium Parking Rights and, upon giving such notice, the Agency is required to take responsibility for a portion of the cost of maintaining the parking that is available pursuant to the Stadium Parking Rights. The Agency shall give such notice upon Developer's completion of the Conference Center/Hotel and thereafter Developer shall be responsible for the Agency's share of maintenance costs under the Amended Easement, provided, however, if the Agency (or its successors) makes use of the Stadium Parking Rights for the benefit of property other than the Property, then the share of the maintenance costs shall be reasonably allocated between Developer and the Agency (or its successors) based on their respective use of the Stadium Parking Rights."

2. **Amendment Regarding Flag Lot.** The following Section 7.4B shall be added to the DDA:

"Section 7.4B Close of Escrow for Flag Lot.

(A) The Close of Escrow for the portion of the Property described in the attached Exhibit P (the "Flag Lot") shall occur no later than March 1, 2006.

(B) Prior to the Close of Escrow for the Flag Lot, Developer shall apply to and obtain from the City the permits and approvals, including building permits, necessary to develop on the Flag Lot with approximately 95 parking spaces. The spaces to be developed on the Flag Lot are to serve the development on the Phase I Property, in particular, the Nut Tree Family Park, and the City's conditions of approval for the Nut Tree Family Park require development of the parking on the Flag Lot as a condition for development and use of the Nut Tree Family Park.

Developer acknowledges that the City approvals for the Flag Lot will require the lot to be paved and improved for permanent parking use. In addition, prior to the Close of Escrow for the Flag Lot, Developer shall provide to the Agency the evidence of insurance required pursuant to Section 5.8 above or evidence that the insurance evidence provided to the Agency at or before the Close of Escrow for the Phase I Property also covers the activities on the Flag Lot. The other conditions set forth in Article 5 above shall not apply to the Close of Escrow for the Flag Lot.

(C) Developer shall commence construction of the Flag Lot improvements promptly following the Close of Escrow and complete those improvements within ninety (90) days following the Close of Escrow. For the purposes of the requirements of Section 9 of Amendment No. 1 to the DDA, the amusement rides in the Nut Tree Family Park shall not be considered to have been installed, operational and open to the public until such time as the parking improvements on the Flag Lot have been completed in accordance with the City permits and approvals for that parking.

(D) For the purposes of preparing the Financing Plan and providing evidence of availability of funds for the Initial Phase I Improvements, the parking improvements that Developer will construct on the Flag Lot pursuant to this Section 7.4B shall be considered part of the Initial Phase I Improvements.

(E) The CC&R's referenced in Section 3.10 shall provide that the portion of the Phase I Property containing the Nut Tree Family Park shall have easement rights to use the parking on the Flag Lot and the means of ingress and egress from that parking for or in conjunction with the Nut Tree Family Park.

(F) The provisions of this Section 7.4B shall not prevent additional future development of the Flag Lot that does not interfere with the parking on the lot for the Nut Tree Family Park."

3. **Additional Exhibit.** Exhibit P attached to this Amendment is hereby added to the DDA as Exhibits P. Accordingly, the list of exhibits in Section 1.2 of the DDA is amended to add the following:

Exhibit P	Description of Flag Lot
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4. **Extension of Time to Close for Phase I.** The time set forth in Section 2.2 and Section 4.2 of the DDA (as amended by Amendment No. 1) within which the Developer must purchase the Phase I Property is hereby extended to September 6, 2005. In addition, the phrase "within thirty (30) months of the execution of this Agreement for Phase I Development" in the third sentence of Subsection 4.2(A) of the DDA (as amended by Amendment No.1) shall be replaced with the phrase "by September 6, 2005."

5. **Evidence of Rockwood Equity Contribution.** Developer shall be deemed to have met the requirement for evidence of availability of equity (as opposed to debt) financing for the Initial Phase I Improvements, as required by Section 5.7B of the DDA, if Developer presents to the Agency, in form reasonably satisfactory to the Agency, (a) evidence from Rockwood Capital Real Estate Partners Fund IV, L.P. ("Rockwood") that Rockwood has the funds available

to meet the cash equity requirements set forth in the Financing Plan for said Improvements and (b) a letter in which Rockwood agrees with and warrants to the Agency that, if Developer acquires Phase I, Rockwood will provide, or cause to be provided, those cash funds to Developer when needed for construction of the Initial Phase I Improvements in accordance with the terms of the DDA.

6. **Counterparts.** This Amendment may be signed in two or more counterparts. When at least one such counterpart has been signed by each party, this Amendment shall be deemed to have been fully executed, each counterpart shall be deemed to be an original, and all counterparts shall be deemed to be one and the same agreement. A facsimile copy of this Amendment or any counterpart shall be valid as an original.

7. **Miscellaneous.**

(a) As amended by Amendment No.1 and this Amendment No.2, the DDA shall remain in full force and effect.

(b) Unless the context requires otherwise, every reference in the DDA to the term "this Agreement" shall be deemed to mean the DDA as amended by this Amendment No. 1 and this Amendment No.2.

(c) Capitalized terms used in this Amendment No.2 and not otherwise defined shall have the meanings assigned to them in the DDA.

IN WITNESS WHEREOF, the City, the Agency and the Developer have caused this Amendment to be executed as of the date first written above.

CITY:

CITY OF VACAVILLE, a municipal corporation

By: _____

City Manager

AGENCY:

VACAVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____

Name: David J. Van Kirk
Executive Director

Approved as to form: _____

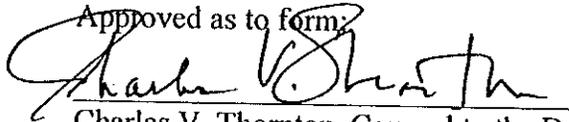
Lee C. Rosenthal, Special Counsel to the Agency and the City

DEVELOPER:

NUT TREE ASSOCIATES, LLC, a Delaware limited liability company

By: **SNELL & CO. LLC**, a California limited liability company, its managing member

By: _____
Roger Snell

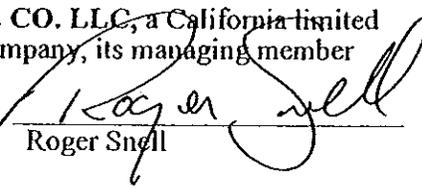
Approved as to form:


Charles V. Thornton, Counsel to the Developer

DEVELOPER:

NUT TREE ASSOCIATES, LLC, a Delaware
limited liability company

By: **SNELL & CO. LLC**, a California limited
liability company, its managing member

By: 
Roger Snell

Approved as to form:

Charles V. Thornton, Counsel to the Developer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Solano

} ss.

On July 20, 2005

Date

before me, Rochelle Lynne Martin

Name and Title of Officer (e.g., 'Jane Doe, Notary Public')

personally appeared

Roger Snell

Name(s) of Signer(s)

personally known to me

Approved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Rochelle Lynne Martin

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

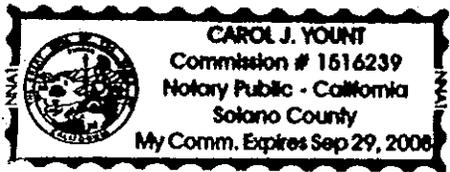
State of California

County of SOLANO

} ss.

On AUG. 6, 2005, before me, CAROL J. YOUNT, Notary Public

personally appeared DAVID J. VAN KIRK



personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carol J. Yount
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
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Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Exhibit P

[Description of Flag Lot]

LEGAL DESCRIPTION

PARCEL "E"

ALL THAT REAL PROPERTY IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL "C-1", AS SAID PARCEL IS DESCRIBED IN THE LOT LINE ADJUSTMENT RECORDED AS SERIES NUMBER _____, AND A PORTION OF PARCEL "B" AS SAID PARCEL IS DESCRIBED IN THE LOT LINE ADJUSTMENT RECORDED AS SERIES NUMBER 00-28393, BOTH OF SOLANO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

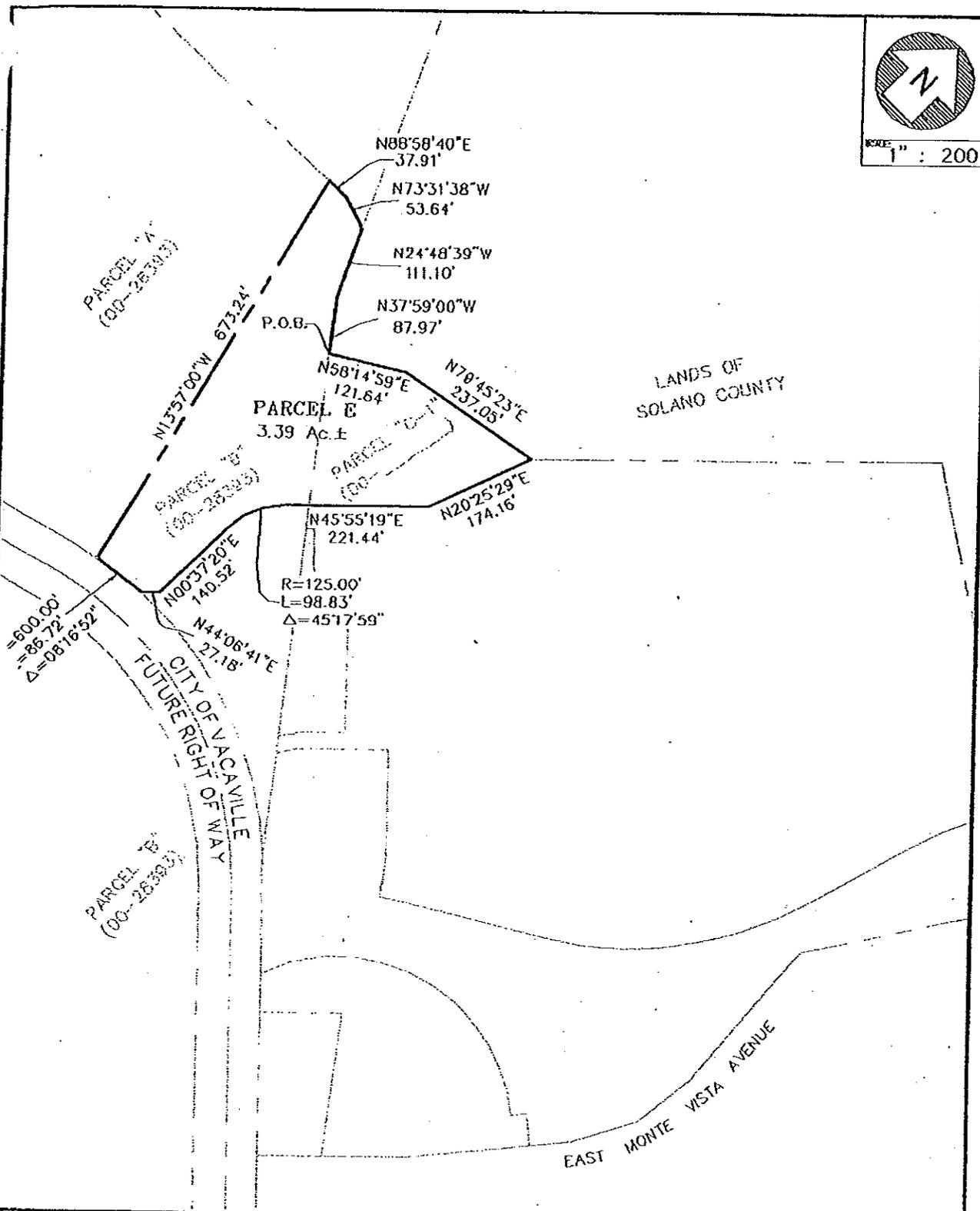
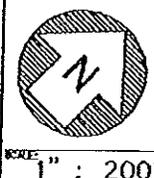
BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL "B", SAID POINT BEING THE MOST WESTERLY CORNER OF SAID PARCEL "C-1"; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL "B" NORTH 37°59'00" WEST, 87.97 FEET; THENCE NORTH 24°48'39" WEST, 111.10 FEET TO THE MOST SOUTHEASTERLY CORNER OF THE LANDS OF SOLANO COUNTY AS DESCRIBED IN THE GRANT DEED RECORDED AS SERIES NUMBER 00-30090 OF SOLANO COUNTY RECORDS; THENCE ALONG THE SOUTHERLY LINE THEREOF NORTH 73°31'38" WEST, 53.64 FEET; THENCE SOUTH 88°58'40" WEST, 37.91 FEET TO THE MOST NORTHEASTERLY CORNER OF PARCEL "A" AS DESCRIBED IN SAID LOT LINE ADJUSTMENT RECORDED AS SERIES NUMBER 00-28393; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL "A" AND THE SOUTHERLY PROLONGATION THEREOF SOUTH 13°57'00" EAST, 673.24 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF THE PROPOSED EXTENSION OF NUT TREE ROAD, SAID POINT BEING ON A CURVE CONCAVE TO THE SOUTH, THE RADIUS POINT OF WHICH BEARS SOUTH 10°10'47" EAST, 600.00 FEET FROM SAID POINT; THENCE EASTERLY ALONG SAID NORTHERLY RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 08°16'52", FOR AN ARC DISTANCE OF 86.72 FEET; THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE AND RUNNING NORTH 44°06'41" EAST, 27.16 FEET; THENCE NORTH 00°37'20" EAST, 140.52 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 125.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°17'59", FOR AN ARC DISTANCE OF 98.83 FEET; THENCE NORTH 45°55'19" EAST, 221.44 FEET TO A EASTERLY CORNER OF SAID PARCEL "C-1"; THENCE ALONG THE PERIMETER OF SAID PARCEL "C-1" NORTH 20°25'29" EAST, 174.16 FEET; THENCE SOUTH 79°45'23" WEST, 237.05 FEET; THENCE SOUTH 58°14'59" EAST, 121.64 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.39 ACRES, MORE OR LESS.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION.

THOMAS A. PHILLIPPI, R.C.E. 32067
LICENSE EXPIRATION DATE 12/31/00

Date



PROJECT NAME/LOCATION:
LOWE'S

DRAFTED BY: BLS
 CHECKED BY: TAP
 PROJECT NO.: 200140
 DWG NAME: 200140EX10
 ISSUE DATE: 10-10-00

PEI PHILLIPPI ENGINEERING
 CIVIL ENGINEERING - LAND SURVEYING
 425 MERCHANT STREET YACAVILLE, CA 95688
 P.O. BOX 8550 YACAVILLE, CA 95606
 OFFICE (707) 431-6365 FAX (707) 461-6660

RESOLUTION NO. 2005-101

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VACAVILLE AUTHORIZING
THE SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT
WITH NUT TREE ASSOCIATES, LLC

WHEREAS the Vacaville Redevelopment Agency owns approximately 77 acres located on the former Nut Tree property on the former Nut Tree site (portions of APNs 129-240-17, 31, 323, and 37 and APNs 129-250-02, 03, 05, 06, 09, 17, 18, 19, 20, 22, and 23) and adjacent to East Monte Vista Avenue; and the City of Vacaville, Vacaville Redevelopment Agency, and Nut Tree Associates (NTA) have entered into a Development and Disposition Agreement (DDA) for the purchase of this property for the purpose of the development of retail, restaurant, office, commercial, recreation, and residential uses; and

WHEREAS, In February 2003, the City Council and Redevelopment Agency entered into a DDA with Nut Tree Associates, LLC (NTA) providing the terms and conditions of the sale and subsequent development of the Nut Tree property; and

WHEREAS, the DDA was amended in February 2005 to modify close of escrow for Phase I and adjust schedules to carry out the provisions of the DDA; and

WHEREAS, it is necessary to amend the DDA to clarify certain provisions, and reflect changes in associated documents, and adjust schedules to carry out the provisions of the DDA;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Vacaville hereby approves the Second Amendment of the DDA for the sale of the property to Nut Tree Associates, LLC, and authorizes the Executive Director or his designee to prepare and execute the necessary documents to proceed with the DDA, as amended.

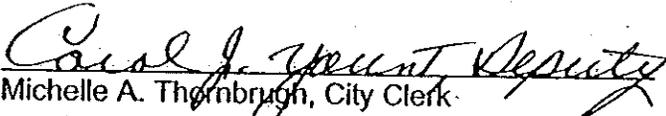
I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a noticed joint meeting of the City Council and Vacaville Redevelopment Agency of the City of Vacaville, held on the 26th day of July, 2005, and approved by the following vote:

AYES: Council member Dimmick, Hardy, Wilkins, Vice-Mayor Clancy and Mayor Augustine

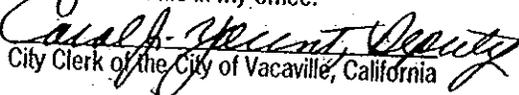
NOES: None

ABSENT: None

ATTEST:


Michelle A. Thornbrugh, City Clerk

I hereby certify that the foregoing instrument is a true copy of the original instrument on file in my office.


City Clerk of the City of Vacaville, California

RESOLUTION NO. RD-2005-16

RESOLUTION OF THE VACAVILLE REDEVELOPMENT AGENCY OF THE CITY OF VACAVILLE
AUTHORIZING THE SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT
AGREEMENT WITH NUT TREE ASSOCIATES, LLC

WHEREAS, the Vacaville Redevelopment Agency owns approximately 77 acres located on the former Nut Tree property on the former Nut Tree site (portions of APNs 129-240-17, 31, 323, and 37 and APNs 129-250-02, 03, 05, 06, 09, 17, 18, 19, 20, 22, and 23) and adjacent to East Monte Vista Avenue; and the City of Vacaville, Vacaville Redevelopment Agency, and Nut Tree Associates (NTA) have entered into a Development and Disposition Agreement (DDA) for the purchase of this property for the purpose of the development of retail, restaurant, office, commercial, recreation, and residential uses; and

WHEREAS, in February 2003, the City Council and Redevelopment Agency entered into a DDA with Nut Tree Associates, LLC (NTA) providing the terms and conditions of the sale and subsequent development of the Nut Tree property; and

WHEREAS, the DDA was amended in February 2005 to modify close of escrow for Phase I and adjust schedules to carry out the provisions of the DDA; and

WHEREAS, it is necessary to amend the DDA to clarify certain provisions, and reflect changes in associated documents, and adjust schedules to carry out the provisions of the DDA;

NOW, THEREFORE, BE IT RESOLVED, that the Redevelopment Agency of the City of Vacaville hereby approves the Second Amendment of the DDA for the sale of the property to Nut Tree Associates, LLC, and authorizes the Executive Director or his designee to prepare and execute the necessary documents to proceed with the DDA, as amended.

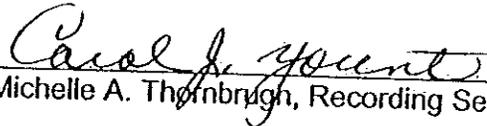
I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a noticed joint meeting of the City Council and Vacaville Redevelopment Agency of the City of Vacaville, held on the 26th day of July, 2005, and approved by the following vote:

AYES: Redevelopment Agency members Dimmick, Hardy, Wilkins, Vice-Chairman Clancy and Chairman Augustine

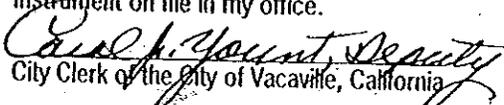
NOES: None

ABSENT: None

ATTEST:


Michelle A. Thornbrugh, Recording Secretary

I hereby certify that the foregoing instrument is a true copy of the original instrument on file in my office.


City Clerk of the City of Vacaville, California

