AMENDMENT NO. 3
TO
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 3 TO DISPOSITION AND DEVELOPMENT AGREEMENT (this "Amendment") is entered into as of the _15_ day of __November_____, 2007, by and among the CITY OF VACAVILLE, a municipal corporation ("City"), the VACAVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency") and NUT TREE ASSOCIATES, LLC, a Delaware limited liability company ("Developer"). (City, Agency and Developer shall collectively be referred to as the "Parties").

RECITALS

WHEREAS, City, Agency and 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 and Amendment No. 2 dated July 27, 2005 (the "DDA") relating to the development of the Property;

WHEREAS, Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned to them in the DDA.

WHEREAS, City, Agency and Developer now desire to amend and clarify the DDA to address various issues including but not limited to the following: (i) to amend the Schedule of Performance; (ii) to provide for certain sign easements; (iii) to amend various provisions of the DDA relating to Phase IV; (iv) to amend Section 3.6 of the DDA relating to the landscape and lighting district; (v) to amend Section 4.5 of the DDA relating to trademarks; (vi) to add Section 8.12 to the DDA relating to the SID pump facility; (vii) to amend Section 2.2 of the DDA to change the timing of development of various phases; and (viii) to add Section 8.9 to the DDA relating to prevailing wage monitor.

AGREEMENT

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

1. **Additional Exhibits.** Exhibits Q, R, S, T, U, V, W, and 3 attached to this Amendment are hereby added to the DDA as Exhibits Q, R, S, T, U, V, W, and 3. Accordingly, the list of exhibits in Section 1.2 of the DDA is amended to add the following:

Exhibit Q	Legal Description of Eastern Sign Easement ("Eastern Sign Easement")
Exhibit R	Legal Description of Western Sign Easement ("Western Sign Easement")
Exhibit S	Sign Specifications for Eastern Sign Easement ("Eastern Sign")
Exhibit T	Sign Specifications for Western Sign Easement ("Western Sign")

Exhibit U	Legal Description of Parcel Surrounding Eastern Sign Easement
Exhibit V	Legal Description of Parcel Surrounding Western Sign Easement
Exhibit W	Easement Agreement for Eastern and Western Sign Easements ("Easement Agreement")
Exhibit 3	Conceptual Map Showing New Phase IV Parcel and Surrounding Parcels

2. **Schedule of Performance.** The Schedule of Performance attached as Exhibit C to the DDA shall be replaced with a new "Exhibit C – Revised Amendment No. 3 Schedule of Performance" attached to this Amendment.

3. **Amendment Regarding Phase IV.**

(a) General Purpose. Pursuant to Section 2.2 of the DDA, the Agency previously elected the option to seek other developers for the Phase IV Conference Center/Hotel and then offered Developer the right of first refusal to develop the Phase IV Conference Center/Hotel. However, the Agency and Developer could not reach agreement as to the terms and conditions for that development. Consequently, the parties have agreed to delete the Phase IV Conference Center/Hotel as a subject of the DDA. The provisions of this Section 3 are intended to implement that agreement of the parties.

(b) Deletion of Property. The Property shall not include the real property constituting the New Phase IV Parcel (as defined below) as that parcel is determined pursuant to this Section 3. The Agency and Developer shall process an amendment to the adopted Nut Tree Master Planned Development and the Parcel Map of the Nut Tree, filed in Book 46, Page 68 of Parcel Maps, Solano County Records (the "Parcel Map") as to create a new land use plan and new parcels to accommodate a conference center/hotel on a parcel of approximately eight (8) acres as shown on the attached Exhibit 3 (the "New Phase IV Parcel") that will be shown as a separate legal parcel on the map and to adjust the boundaries of the other residential and office surrounding office parcels. The amended Parcel Map is referred to herein as the "New Parcel Map." The New Nut Tree Master Planned Development and Phase IV Parcel and surrounding parcels shall be configured as shown on the attached Exhibit 3, if approved as part of an amended Master Planned Development subject to the other criteria in this Section 3. The New Parcel Map shall also provide for and identify easements for emergency vehicle access, pedestrian and vehicular access and utilities as the City and Agency determine are reasonably necessary.

The Developer shall submit a proposed New Nut Tree Master Planned Development and New Parcel Map and all other necessary applications (including circulation and utility plan) and all other necessary applications to the City and Agency within sixty (60) days following the execution of this Amendment. The Agency and City shall expedite processing the New Parcel Map and such other applications, and Developer shall promptly make changes based on the Agency and City review with the goal of obtaining City approval of and recording the New Nut Tree Master Planned Development and New Parcel Map within 30 days following City Council approval. The approval of the New Parcel Map will be considered concurrently with the City's

consideration and action on the Policy Plan amendment and modification to the approved planned development permit.

(c) No Development Rights. Developer shall have no right or obligation under the DDA to purchase, develop, or exercise the right of first refusal to purchase or develop, or use the New Phase IV Parcel, and Developer shall have no appurtenant rights specified in the DDA related to Phase IV or the development of the Conference Center/Hotel including but not limited to the right make use of the Stadium Parking rights in conjunction with the Conference Center/Hotel. Developer hereby releases the Agency and City from any and all claims Developer has or could have had against the City or the Agency arising under the DDA, the Development Agreement or those letters between the parties dated August 2, 2006 and September 27, 2006 and subsequent correspondences related to the development of the Conference Center/Hotel and Phase IV. Agency and City hereby release Developer from any and all claims the Agency or City have or could have had against Developer arising under the DDA, the Development Agreement or those letters between the parties dated August 2, 2006 and September 27, 2006 and subsequent correspondences related to the development of the Conference Center/Hotel and Phase IV.

(d) New Phase IV Parcel Subject to the CC&R's. Developer has prepared and recorded "The Nut Tree Declaration of Common Easements, Covenants, Conditions and Restrictions" recorded as Document No. 200500132690 in the Solano County Official Records on August 30, 2005 (the "Nut Tree CC&R's"). As currently drafted, the Nut Tree CC&R's contemplate that the parcels constituting the Property, including the Phase IV parcel designated for the Conference Center/Hotel, will be annexed to and become subject to the Nut Tree CC&R's upon the purchase of such parcels, and filing for record of a Declaration of Annexation, by Developer. Developer shall take the steps necessary to amend the Nut Tree CC&R's to accomplish the following: (a) amend the annexation procedures to allow the New Phase IV Parcel to be annexed to the Project and subject to the CC&R's; (b) revise the parcel descriptions, including the acreage and assessments for common area expenses and assessment allocation percentages shown on Exhibit E attached to the CC&R's, so that they are consistent with the New Nut Tree Master Planned Development and New Parcel Map, (c) revise the assessment provisions so that the New Phase IV Parcel is not responsible for assessments for operation, maintenance, repair or replacement of signs for individual users of parcels, for pedestrian pathways, walkways, parking lots and parking areas, or for Private Roadways (as defined in the Nut Tree CC&R's) and the association created under the Nut Tree CC&R's is not responsible for undertaking operation, maintenance, repair or replacement of signs for individual users of the New Phase IV Parcel, for pedestrian pathways, walkways, parking lots and parking areas on the New Phase IV Parcel, or for Private Roadways (as defined in the Nut tree CC&R's) on the New Phase IV Parcel, (d) to revise the CC&R's so that the Declarant (as defined in the CC&R's) does not have unilateral authority to approve, disapprove or consent to any development, action or activity on the New Phase IV Parcel and (e) amend those provisions pertaining to construction work and architectural controls so that the initial design, development and construction of the Conference Center/Hotel and related improvements and signage will not be subject to the design standards or approval of the Board or Architectural Committee, as the case may be; provided, however, that the New Phase IV Parcel and such improvements thereon will be subject to those provisions pertaining to ongoing maintenance and repair.

Developer shall submit to City and Agency a draft of the revised Nut Tree CC&R's within sixty (60) days following the execution of this Amendment. City and Agency shall promptly provide comments and Developer shall revise the draft accordingly. The revised Nut Tree CC & R's shall be recorded at the same time that the New Parcel Map is recorded.

(e) Assessments. Promptly following execution of this Amendment, the parties shall take steps to adjust the assessments under the Nut Tree Assessment District to reflect the reconfigured parcels as shown on the New Parcel Map. The parties shall reasonably cooperate with each other to accomplish the assessment adjustment in accordance with the original 2005 Nut Tree Assessment District Engineer's Report. Developer shall initiate the reallocation of assessments within thirty (30) days following recording of the New Parcel Map. Once the assessment adjustment has been completed, Developer shall have no obligation to pay the assessments on the New Phase IV Parcel. Within thirty (30) days following the date the assessment adjustment has been completed, the Agency shall reimburse Developer on a prorated basis for any assessments the Developer has paid for the New Phase IV Parcel for the period between the date of this Amendment and the date the assessment adjustment is completed. In addition, the Agency shall or shall provide for the New Phase IV Parcel to pay its reasonable fair share of the design and construction costs (including permit and fee costs and SID administrative costs) incurred by Developer in fulfilling its obligations with respect to the Pump Facility (as defined below in Section 8 of this Amendment), whether incurred before or after the date hereof, and of the landscape and lighting district costs contemplated under Section 6 of this Amendment. The Nut Tree CC&R's will provide for the New Phase IV Parcel to pay a fair share of ongoing maintenance and repair of looped vehicle access road and utilities improvements expenses.

(f) Amendment of Section 2.2. Section 9 below of this Amendment sets forth the amendment of Section 2.2 of the DDA to delete the paragraph relating to the Conference Center/Hotel.

(g) Deletion of Section 5.9. Section 5.9 shall be deleted from the DDA.

(h) Development Agreement. Developer's rights under the Development Agreement with respect to the New Phase IV Parcel are hereby transferred and assigned to the Agency. The City hereby consents to such transfer and assignment.

(i) Trademarks. Section 7 below sets forth the treatment of the New Phase IV Parcel and the development of the Conference Center/Hotel on that parcel for purposes of Section 4.5 of the DDA.

4. Amendment Regarding Sign Easements. The following Section 2.2A shall be added to the DDA:

"2.2A Phase I Sign Easements

The Redevelopment Plan calls for the development of retail and commercial space on the Property. As such, there is a need for proper advertising and signage that will inform the public

about uses on the Property. An ideal location for such signage is on two portions of land adjacent to I-80 that are part of the Property and currently owned by Agency, as more particularly described in Exhibit Q, the Eastern Sign Easement, and Exhibit R, the Western Sign Easement, (collectively, the "Sign Easements").

Agency entered into a Right of Entry Agreement for Installation and Maintenance of Signage with Developer dated August 9, 2006 (the "Right of Entry-Eastern Sign") pursuant to which the Eastern Sign was installed in the Eastern Sign Easement (referred to in the Right of Entry-Eastern Sign as "Sign A" and "Sign A Parcel"). Agency also entered into a Right of Entry Agreement for Installation and Maintenance of Signage with Developer dated August 9, 2006 (the "Right of Entry-Western Sign," collectively, with the Right of Entry-Eastern Sign, the "Rights of Entry") pursuant to which Developer installed the Western Sign on the Western Sign Easement (referred to in the Right of Entry-Western as "Sign B" and "Sign B Parcel").

The Rights of Entry provided that the Parties expected to negotiate an amendment to the DDA that would result in the permanent transfer of the land that constitutes the Eastern Sign Easement and the land that constitutes the Western Sign Easement (collectively, the "Sign Easements") to Developer. The Parties, however, have subsequently agreed that instead of transferring the land that constitutes the Sign Easements to Developer in fee simple, Developer would be granted easement rights over the Sign Easements. As such, Agency hereby desires to grant, and Developer desires to accept, easement rights over the Sign Easements subject to the terms and provisions of Amendment No. 3 to this Agreement and the Easement Agreement set forth in Exhibit W, which shall be part of the Phase I of the development of the Property. The rights of Entry shall terminate upon recordation of the Easement Agreement.

The terms and conditions of the Sign Easements are reflected in Exhibit W attached to Amendment No. 3 to this Agreement. The Property covered by the Sign Easements is described in the attached Exhibit Q (Eastern Sign Easement) and Exhibit R (Western Sign Easement) and the Property surrounding each sign easement is described in the attached Exhibit U (Eastern Sign) and Exhibit V (Western Sign). The specifications for each sign are set forth in Exhibit S (Eastern Sign) and Exhibit T (Western Sign)."

5. Amendment Regarding the Sign Easements. The following Section 7.4C shall be added to the DDA:

"Section 7.4C Eastern and Western Sign Easements

(A) The Close of Escrow for the Eastern and Western Sign Easements shall occur no later than 30 days from the date of execution of Amendment No. 3 to this Agreement.

(B) The consideration for the Sign Easements shall be $2.34/square foot.

(C) The Sign Easements shall be conveyed by Easement Agreement in the form and substance of Exhibit W attached to this Agreement.

(D) In lieu of an escrow, the Agency and Developer may arrange for recording of the Easement Agreement and payment of the consideration therefor."

6. **Amendment Regarding Landscape and Lighting District.** Section 3.6 of the DDA is hereby amended to read as follows:

"Section 3.6 Construction of East Monte Vista Avenue as Part of the Proposed Assessment District; Landscaping and Lighting Maintenance.

The Parties recognize that the realignment and reconstruction of East Monte Vista Avenue is a critical and key component to the development of the Property and, further, represent a primary component of the proposed Assessment District. City will provide project management for the design and construction administration for the construction of the Assessment District improvements, including New East Monte Vista Avenue. The City completed the Nut Tree Assessment District project in 2006 and acceptance of the project improvements is pending before the City Council.

The Developer will establish a landscape and lighting district for the on-going maintenance of the landscaping and lighting of the Nut Tree Assessment District areas once the New East Monte Vista Avenue project has been completed and accepted by City Council. Developer anticipates that such landscape and lighting district will be established and the district assessments placed on the 2008-2009 tax and assessment rolls by December 15, 2008. Until that time or until the district assessments are placed on the tax and assessment rolls, Developer will reimburse the City for all actual costs to maintain the public facilities constructed by the landscape and lighting district. To assure that reimbursement, the Developer shall, within 30 days following execution of Amendment No. 3 to this Agreement, deposit with the City the sum of $37,800 against which the City may draw to pay those costs. When the city draws from the deposit, it shall provide to Developer a bill detailing the costs for which the draw from the deposit is being made. If the deposit is insufficient to pay all such costs, the Developer shall reimburse the City for the costs within ten (10) following receipt of a bill from the City. If there is any deposit remaining after all costs are paid for the 2006-2007 and 2007-2008 fiscal years, the balance of the deposit shall be returned to the Developer. To the extent legally permitted and funds are available therefor, the parties shall use best efforts to provide for future reimbursement to Developer from the landscape and lighting district for the costs Developer pays to the City pursuant to this paragraph prior to the establishment of the landscape and lighting district and placement of its assessments on the tax and assessment rolls. The Developer shall pay to the Agency an amount equal to all the landscape and lighting district assessments and interest theron due and owing on the portions of the Property that the Developer has not yet purchased from the Agency, unless and until Developer does not have the right under this Agreement to purchase and develop such portions. Once the Developer acquires a portion of the Property, it will be obligated by reason of ownership of the portion of the Property to pay the assessments levied on that portion of the Property. The Developer shall continue to make those payments until the obligation is terminated pursuant to this Section 3.6. Once a portion of the Property is acquired pursuant to this Agreement or such portion is no longer subject to this Agreement, the Developer's obligation under this paragraph to pay the Agency for the portions of the Property that the Developer has not purchased from the Agency shall cease."

7. **Amendment Regarding Trademarks.** Section 4.5 of the DDA shall be amended to read as follows:

"Developer will develop the Property in furtherance of the historical Nut Tree properties. Subject to this intent and to the guidelines to be developed as set forth below, Agency will allow Developer and owners and operators of businesses located within the Project the non-exclusive use of the Nut Tree trademarks, tradenames, and service marks (collectively, "Nut Tree Marks") to the extent such marks, names, and other intellectual property rights are held by Agency, with the understanding that such marks, names, and other rights shall remain the property of Agency until ownership of them is assigned to Developer.

Developer and Agency acknowledge and agree that, within sixty (60) days of the execution of Amendment No.3 to this Agreement, they shall agree on a set of master guidelines ("the Guidelines") for use of the Nut Tree Marks by Developer, Agency, tenants, owners, operators, and other third parties doing business at the Property. The Guidelines shall describe such things as proper presentation of the Marks, including size, font, color, and placement, as well as establish minimum quality standards for the goods and services with which the Marks are to be used. The Guidelines themselves shall not confer authority to use the marks to anyone not otherwise authorized under this Agreement. Developer and Agency may amend the Guidelines once each calendar year upon mutual agreement. Amendments to the Guidelines may affect and control the manner of use by parties already using the Marks, but the Amendments shall not have the effect of revoking a party's right to use the Marks where such right has previously been granted. If Developer and Agency cannot reach agreement on the Guidelines or any future amendment thereto, the then current owner of the Nut Tree Marks shall have the ultimate decision making power, provided that the owner first makes a good faith effort to reach consensus.

Ownership of the Nut Tree Marks shall be assigned to Developer at such time that Developer has acquired fifty-two (52) acres of the total acreage intended for development in the Project, at which time Agency agrees to transfer to Developer all Nut Tree Marks for no additional consideration.

Prior to assignment of the Nut Tree Marks to Developer, Agency may use and permit third party uses of the Nut Tree Marks, provided that such use complies with the Guidelines and is made in connection with the following goods and services located on the Nut Tree Parcels: (i) retail stores and development, (ii) office development, (iii) residential development, and (iv) any other development occurring on the Nut Tree Property. Except for in connection with the Conference Center/Hotel, as is provided for in the next paragraph, use by parties other than the Developer shall not be made in connection with a restaurant. Developer understands and agrees that any allowed uses or other transfers of the Nut Tree Marks that the Agency makes prior to the transfer to Developer shall remain valid and in force following that transfer, provided that the use complies with the Guidelines. Developer agrees not to oppose such use and to provide its consent thereto, if such consent is required, provided that the consent is reasonable. In granting permission to third parties to make use of the Nut Tree Marks, Agency agrees to obtain the written agreement of such third parties to comply with the Guidelines. Agency shall assist Developer in evaluating the extent of the Agency's interest in the Nut Tree Marks prior to

transfer by providing, at Developer's request, copies of all contracts, federal filings, and other non-privileged documentation relevant to such matters.

At such time that Developer has acquired fifty-two (52) acres of the total acreage intended for development in the Project and ownership of the Nut Tree Marks is transferred, Developer agrees to provide Agency with a license, at no additional consideration, to use and permit third party use of the Nut Tree Marks provided that such use complies with the Guidelines and commenced or was expressly permitted by Agency before transfer of ownership or is made in connection with the Conference Center/Hotel or a restaurant therein. Developer expressly acknowledges that Agency may use and permit third party uses of the Nut Tree Marks, provided that such use complies with the Guidelines, in connection with the Conference Center/Hotel or a restaurant included therein and any other development of the Property or Project developed subsequent to termination of Developer's rights with respect to the development in question. This right with respect to Conference Center/Hotel shall exist at all times, including after the transfer of ownership in the Nut Tree Marks, and it is expressly included in Developer's license granted to Agency upon transfer of ownership of the marks.

The Agency also reserves the right to make and to permit fair use of the Nut Tree Marks, including for historical purposes and in street names. Agency and Developer acknowledge and agree that there are a limited number of existing third party uses of the trademark NUT TREE which were not expressly approved by Agency or Developer but which shall be allowed to continue without opposition by Agency or Developer. These uses are made by other members of the community to refer to the history of the area and the Nut Tree's role in that history. These uses include, but are not limited to, Solano County's "Nut Tree Airport" and the Vacaville Museum's "Nut Tree Remembered - The Cookbook.""

8. **Amendment Regarding Construction of Non Potable Water Pump.** The following Section 8.12 shall be added to the DDA:

"Section 8.12 <u>SID Pump Facility</u>.

Pursuant to the City conditions of approval for the Project, Developer is required to construct a pumping station for non-potable water that will pump water from the Solano Irrigation District ("SID") facilities to the Project for irrigation use (the pumping station and any associated facilities including all utilities, power, and connection to existing non-potable water main within the City right of way shall collectively be referred to as the "Pump Facility"). The Parties agree to cooperate in efforts to arrange for the construction of the Pump Facility in a cost effective manner, including use of a "package" system for the Pump Facility if SID will accept such a "package" system. The Parties agree to the following terms and contributions regarding the Pump Facility:

(a) In regards to the Pump Facility design and planning, the Agency, City and Developer agree to the following:

(i) The Pump Facility will be owned and operated by SID;

(ii) Developer agrees that SID's decisions as to the design and construction of the Pump Facility are final and that Developer will pay all costs of inspection, construction and testing of the Pump Facility and associated facilities in accordance with any and all of SID's decisions, including change orders;

(iii) Developer agrees pay to SID the costs of engagement of and full compensation of Summers Engineering and necessary consultants to prepare the design of the Pump Facility up to 100% Plans, Specifications, and Estimate (PS&E);

(iv) Developer will pay all required SID fees associated with the design/inspection of the system. SID under the direction of Summers Engineering will conduct the inspection of the Pump Facility;

(v) Developer will advance to SID all requested design and inspection costs prior to start of design and pay any additional costs of change orders directed by SID;

(vi) The Developer shall be responsible for obtaining all City permits and approvals necessary for the construction of the Pump Facilities, including approval of the site plan and elevations. Developer shall also be responsible for making submissions to and, if required, obtaining approval of the Pump Facility from the Solano County Airport Land Use Commission. Developer shall be responsible for paying all City and other governmental fees associated with those permits and approvals;

(vii) The City's Public Works staff will make good faith efforts to work with SID to enable Developer to hire a prequalified contractor to perform the work according to SID design and inspection of the Pump Facility and appurtenances and City's inspection. The goal of those efforts is to identify and provide to Developer a list of three to five (3-5) contractors that SID will accept as prequalified to construct the Pump Facility. The Developer will obtain at least three quotes or bids for the work from the contract and provide copies of the bids or quotes to the City and SID. The bids shall comply with all public works requirements, including prevailing wages, and the construction shall be built in accordance with all requirements applicable to City and SID work. The Developer shall pay the selected contractor for contract work and any necessary change orders approved by SID as to the Pump Facility or City as to the remaining project works which must be approved by City and SID on a timely basis in accordance with the contract;

(viii) Developer shall diligently undertake and complete the preconstruction tasks required under this Section 8.12 with the goals of completing all design and obtaining all preconstruction approvals and commencing construction of the Pump Facility on or before February 1, 2008 and completing construction and obtaining all City and SID inspection approvals on or before September 30, 2008. Developer shall undertake and complete those

tasks with sufficient lead time to permit reviews and, where necessary, approvals by SID, the City and the Solano County Airport Land Use Commission. The Parties recognize that the timing of planning, design, construction and inspection of the Pump Facility may be affected by the actions of SID and its consultants;

(ix) Developer has previously provided to the City a "Subdivision Improvements Performance Bond" dated August 17, 2006 in the amount of $641,490 (the "Pump Bond") as security for the construction of the Pump Facility. The Pump Bond has a term of two (2) years. At least five (5) days prior to entering into the contract for construction of the Pump Facility, the Developer shall provide to the City a letter of credit (the "Pump LC") to replace the Pump Bond. The Pump LC shall be in the amount of the lowest responsible bid plus ten percent (10%) of that amount. The Pump LC shall be from a responsible bank or financial institution acceptable to the City. Should the Developer not fulfill their duties of construction of the Pump Facility, the Pump LC shall provide for the provider to pay the City relying solely on the certification of the City. The Pump LC shall also provide for the provider to pay on the letter of credit by wire transfer of federal funds to the account designated in the demand and shall permit demands for draws to be made by facsimile transmission followed by telephonic confirmation. The City shall not be obligated to pay any fees in connection with a draw from the Pump LC. The City shall have the unconditional right to draw on the Pump LC in the event Developer fails to pay any amount or take any action within the time specified in this Section 8.12 or in the event the Developer fails to renews the letter of credit by the date sixty (60) days prior to the expiration of the Pump LC. The City shall use any draw from the Pump LC to complete the Pump Facility or pay any cost of construction for completing the Pump Facility. As an alternative to the Pump LC, the Developer may make a cash deposit with the City in the amount of the Pump LC. If Developer makes such a deposit, the City will be entitled to draw on the deposit in the same circumstances in which it may draw on the Pump LC. In addition, there is a possibility that the Agency, City and Developer will arrange for creation of a new benefit district to pay certain costs related to the Project including the cost of the Pump Facility. If such benefit district is formed and has funding available for the Pump Facility equal to the amount of the Pump LC, then Developer need not provide the Pump LC or a cash deposit pursuant to this subparagraph (a)(ix). When the Developer has provided the Pump LC or cash deposit or benefit district funds have been made available for the Pump Facility all in conformance with this subparagraph (a)(ix), the City shall release the Pump Bond;

(x) The Pump LC shall be released and no longer need be provided once the Pump Facility has been completed, completely accepted by SID and the City, Developer has paid all amounts due under this Section 8.12 and Developer has made the conveyances required by subparagraph (a) (xii) below. Prior to final release of the Pump LC, the Developer and the City shall cooperate to reduce the amount of the Pump LC to reflect partial completion of the Pump Facility and the amount of work and cost necessary to complete the Pump Facility including a retention of ten percent (10%) of the total Pump Facility construction contract

amount. If a cash deposit is made, the City shall release the deposit to Developer once the Pump Facility has been completed, completely accepted by SID and the City, Developer has paid all amounts due under this Section 8.12 and Developer has made the conveyances required by subparagraph (a) (xii) below. Prior to final release of the cash deposit, the City shall reduce the amount of the cash deposit to reflect partial completion of the Pump Facility and the amount of work and cost necessary to complete the Pump Facility. Any interest earned on a cash deposit shall be paid to the Developer less the City's administrative costs of one half of one percent (.5%) per year;

(xi) Prior to commencement of construction of the Pump Facility, the Developer shall purchase from the Agency the fee title and easement rights necessary to permit the construction of the Pump Facility. The location of the Pump Facility is part of the Property and shall be sold to Developer on the terms set forth in Section 4.2 of this Agreement. The portion of the Property conveyed to Developer for the Pump Facility shall be part of the property for Phase I;

(xii) When Developer has completed construction of the Pump Facility and obtained all City and SID approvals for the completed work, the Developer shall convey to SID all construction and equipment warranties and one year maintenance bond the portion of the Property and easement rights it acquired from the Agency pursuant to subsection (xi). The conveyance shall be made at no cost to SID and the property so conveyed shall be free and clear of all liens, assessments or other clouds on title. Prior to the conveyance to SID, the Developer shall pay all assessments against the property being conveyed. The Developer shall also provide or assign to SID all construction and equipment warranties and provide a one (1) year maintenance bond.

(xiii) Developer will enter into an agreement with SID, the Agency and City to provide the detailed agreements for the design and construction of the Pump Facility."

9. **Amendment Regarding Two-Year Extension and Development Uses.**

Section 2.2 of the DDA shall be amended to read as follows:

"Section 2.2 <u>Phases of Development; Recognition for Need for Flexibility in Selection of Phases to Develop.</u>

The Parties contemplate the development of the Property in three (3) **"Phases."** The Phases are described in greater detail immediately below. Each Phase of development will be planned as a unified development of the Improvements contemplated for said Phase and as approved by Agency; however, the Parties understand that on account of the mixed use development contemplated by this Agreement, Developer may purchase and develop portions of a single Phase (by purchasing and developing some, but not all, of the parcels within a given Phase) at different times prior to completing an earlier Phase or Phases upon satisfaction of the

conditions contained in this Agreement, including, but not limited to, those set forth in this Section 2.2.

Following is a list of the Phases of development contemplated by the Parties:

Phase I: Development of the Primary Retail Area. Phase I shall consist of the portion of the Property designated as Parcels 4, 6-1, 6-2, 7, 9-1, and 9-2 on the map attached hereto as Exhibit I. This area will include a public attraction area, (to include the Nut Tree Train, tracks, carousel, landscaping or other similar attractions) ("**Public Attraction Area**"), landscaped grounds located within the Core Area, and approximately two (2) acres of landscaped area located between I-80 and New East Monte Vista Avenue (as part of the view corridor for the Harbison House), and a minimum of 70,000 square feet of Lifestyle Retail. The Developer shall include two (2) restaurants and only one (1) major anchor tenant from Exhibit H (i.e. a bookstore) within the Lifestyle Retail component of Phase I. The cumulative building square footage of the two restaurants and the major anchor tenant shall not exceed 60% of the 70,000 square feet of the Lifestyle Retail building space to be included in Phase I and shall be subject to the requirements of the Nut Tree Policy Plan. The Parties anticipate that Phase I will encompass approximately thirty-seven (37) acres of the Property consisting of Parcel 4 (Nut Tree Family Theme Park, approximately 3.48 acres), Parcel 6-1 and 6-2 (Retail Parcels, approximately 29.85 acres), Parcel 7 (Bocce Grove, approximately 1.78 acres) and Parcel 9-1 and 9-2 (View Corridor, approximately 2 acres) as shown on the attached Exhibit I. Developer has proposed that the primary retail area be called "**Nut Tree Village**" and a primary purpose of this development is to recapture the flavor of the area's history as the Nut Tree. The Nut Tree Village shall be developed in accordance with the approved Preliminary Development Plan. As noted above, the Public Attraction Area is intended to promote local interest and link the proposed uses to the historic Nut Tree property by including the Nut Tree Train, a carousel or other similar attraction, a market hall and landscaped grounds for picnics, the view corridor to the Harbison House, etc.

Developer shall within thirty (30) months from the execution of this Agreement be under construction and be diligently working towards the completion of the Phase I development, except the rental housing component, if any, as described above and in accordance with the **Schedule of Performance.**

While the Agreement contemplates flexibility in the phasing of development, Phase I shall be under construction and diligently pursued toward completion before any other Phase. Developer shall commence construction of the Phase I Improvements upon completion of the demolition (including abatement and disposal of asbestos containing materials) by the Assessment District of the existing Nut Tree buildings throughout the Property, other than the Harbison House and the Ice Cream Pavilion, as provided in Section 3.4, below, including, but not limited to, the Nut Tree restaurant, studio, toy store, and remaining residential structures. Such demolition work shall be completed in accordance with the Schedule of Performance (as defined below). Developer shall commence site preparation activities immediately following the transfer of the Phase I Property and removal of the demolition debris in accordance with the Schedule of Performance."

Phase II: Initial Mixed Use Phase. Developer shall have 100% of Phase I under construction within eighty four (84) months from the execution of this Agreement and in

accordance with the **Schedule of Performance** and be diligently pursuing such construction to the Agency's satisfaction in order to purchase additional acres of the Core Property for the Phase II development. The Phase II development shall be a minimum of fifty (50) acres, which shall include the area of the Phase I development and may include Lifestyle Retail, Attraction Retail, high-end restaurants, office use, and residential units in accordance with the Nut Tree Ranch Policy Plan. Phase II shall not include a hotel. It is anticipated that the Developer will propose that the portion of the Property shown on the Preliminary Development Plan for development of a Limited Service Business Hotel shall instead be developed for Attraction Retail, Lifestyle Retail or high-end restaurants, including but not limited to an Office Max store, subject to City approval, in accordance with the City's normal requirements, of an amendment to the Policy Plan and a modification to the previous planned development approval for the new use. The Developer shall apply for such amendment to the Policy Plan and planned development approval modification within sixty days (60) following execution of Amendment No. 3 to this Agreement.

Phase III: Final Mixed Use Phase. Developer shall have 100% of Phase I construction completed and Phase II under construction in accordance with the **Schedule of Performance** and be diligently pursing such construction to completion to the Agency's satisfaction in order to purchase the remaining acreage of the Core Property, excluding that acreage reserved for the Conference Center/Hotel; provided, however, the cumulative acreage of Phase I and Phase II shall equal or exceed fifty (50) acres in the aggregate. Development may include Lifestyle Retail, Attraction Retail, high-end restaurants, office use, and residential units in accordance with Nut Tree Ranch Policy Plan. Phase III shall not include a hotel. It is anticipated that Developer will prepare revised plans/documents to allow the Parties to request that the portion of the Property shown on the Preliminary Development Plan for development of a Limited Service Business Hotel shall instead be developed for Attraction Retail, Lifestyle Retail or high-end restaurants, including but not limited to an Office Max store, subject to City approval, in accordance with the City's normal requirements, of an amendment to the Policy Plan and a modification to the previous planned development approval for the new use. The Developer shall apply for such amendment to the Policy Plan and planned development approval modification within sixty (60) days following execution of Amendment No. 3 to this Agreement.

The last date for Developer to acquire portions of the Property from the Agency and City pursuant to this Agreement shall be the date which is eighty-four (84) months after the date of execution of this Agreement, as such date may be extended for the reasons expressed in Section 8.11 or 14.3 (the "End Date"); provided, however, that the End Date shall be further extended as follows: (a) if by the End Date Developer has acquired fifty (50) acres or more of the Core Property, the End Date shall be automatically extended by one (1) year, to ninety-six (96) months after the execution of this Agreement; (b) if by the End Date (as extended pursuant to sub-paragraph (a)) Developer has acquired sixty (60) acres or more of the Core Property, the End Date shall be further extended to a date which is one hundred eight (108) months after the execution of this Agreement; and (c) if by the End Date (as extended pursuant to sub- paragraph (b)) Developer has acquired sixty-eight (68) acres or more of the Core Property, the End Date shall be further extended to a date which is one hundred twenty (120) months after the execution of this Agreement."

10. Amendment of Section 4.2 of the DDA.

The first paragraph of subsection (A) of Section 4.2 of the DDA shall be amended to read as follows:

"(A) The Core Property, consisting of approximately seventy-two (72) acres, more or less, at a uniform cost of two dollars and thirty-four cents ($2.34) per square foot, plus the costs of any assessments for Phases I, II, and III. The Core Property shall be purchased within the times set forth in Section 2.2 above. Said land price of $2.34 per square foot is agreed to be the uniform price throughout the Property even though a higher price might be obtained for the initial lands proposed to be developed. The Parties agree to this square footage price for two (2) primary reasons: (1) in recognition of the community centered development elements that recapture the historic nature of the Nut Tree but which do not, in and of themselves, bring substantial economic income to Developer, and (2) because the assessments for public improvements will be substantially allocated to lands within this Core Area of the Project."

11. Prevailing Wage Monitor. The following section shall be added to Section 8.9 of the DDA:

"During the construction of any portion of the Project pursuant to this Agreement, the Developer shall designate a prevailing wage compliance monitor to assure compliance with the provisions of this section in the construction of the Project and to respond in writing to reasonable requests from the Agency and other interested parties regarding prevailing wages and compliance with this section in the construction of the Project. The monitor shall respond to such requests within thirty (30) days following a request."

12. 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.

13. Miscellaneous.

(a) As amended by Amendment No. 1, Amendment No. 2, and this Amendment No. 3, 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 Amendment No. 1, Amendment No. 2, and this Amendment No. 3.

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

CITY:

CITY OF VACAVILLE, a municipal corporation

By: _____

Its: City Manager

AGENCY:

VACAVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____

Its: 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: _____

Its: MANAGING MEMBER

Approved as to form:

_____

Charles V. Thornton, counsel to Developer

783\22\497003.3_11.11.2007

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

CITY:

CITY OF VACAVILLE, a municipal corporation

By: _____

Its: City Manager

AGENCY:

VACAVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____

Its: 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: _____

Its: _____

Approved as to form:

Charles V. Thornton, counsel to Developer

783\22\497003.3_11.11.2007

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

CITY:

CITY OF VACAVILLE, a municipal corporation

By: _____

Its: City Manager

AGENCY:

VACAVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic

By: _____

Its: Executive Director

Approved as to form:

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

DEVELOPER:

NUT TREE ASSOCIATES, LLC, a Delaware limited liability company

By: _____

Its: MANAGING MEMBER

Approved as to form:

_____

Charles V. Thornton, counsel to Developer

783\22\497003.3_11.11.2007

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SOLANO } ss.

On NOV. 15, 2007, before me, CAROL J. YOUNT, NOTARY PUBLIC
Date — Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared ROGER SNELL + DAVID J. VAN KIRK,
Name(s) of Signer(s)

☐ 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.

CAROL J. YOUNT
Commission # 1516239
Notary Public - California
Solano County
My Comm. Expires Sep 29, 2008

WITNESS my hand and official seal.

Place Notary Seal Above

Carol J. Yount
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: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Exhibit C
Revised Amendment No. 3 Schedule of Performance

EXHIBIT C (Revised November 7, 2007)
REVISED AMENDMENT No. 3
SCHEDULE OF PERFORMANCE

	Action	Date
1.	Developer's execution and delivery of this Agreement	On February 6, 2003
2.	Master Development Components: Planned Development ("PD"—Master Planned Development), Development Agreement ("DA") and any other required actions such as, but not limited to, Rezoning, Policy Plan Amendment, and Determination of Consistency/Amendment to the Airport Land Use Compatibility Plan by Solano County ALUC	
a.	Developer to submit preliminary applications and supporting data to City	No later than 11 months from the execution of this Agreement
1.	Response from City	
2.	Resubmission by Developer	
b.	Developer to submit final applications to City	No later than 13 months from the execution of this Agreement
1.	Final Check by City	
c.	Action by Planning Commission (for PD and DA)	Dependent on Developer's proposed modifications to Nut Tree Ranch Policy Plan and EIR (e.g. CEQA process, rezoning, policy plan amendment, and Solano County ALUC review)
d.	Action by City Council (for PD and DA)	Dependent on Developer's proposed modifications to Nut Tree Ranch Policy Plan and EIR (e.g. CEQA process, rezoning, policy plan amendment, and Solano County ALUC review)

		Action	Date
3(I)		Amendment to DDA	
	a.	Developer to submit in to City/Agency financial advisors/bond underwriter for their review and approval Letter of Credit	On or before February 11, 2005
	b.	Execution of Amendment by Developer and submittal and execution of Letter of Credit by Developer	On or before February 25, 2005
3(II)		Finalize Assessment District, complete demolition	Prior to commencement of Phase I
	a.	City to advertise Assessment District Project	On or before February 27, 2005
	b.	Council to adopt formation of Assessment District	On February 8, 2005
	c.	Award of contract for construction of Assessment District (dependant on formation of Assessment District)	Spring 2005
	d.	Start of construction of Assessment District (dependant on award of contract for construction of Assessment District and weather conditions)	Spring of 2005

Phase I Development

NOTE: Developer may elect to develop portions of Phase I separately but Developer shall be under construction for and diligently working towards.the completion of a minimum of thirty-seven (37) acres of all Phase I development within 30 months (i.e. August 6, 2005) from the execution of this Agreement (and in accordance with Section 2.2 of this Agreement).

Action	Date

If Developer wishes to develop portions of Phase I separately Developer must submit to Agency for Agency's approval, a revised Schedule of Performance which has been incorporated into Amendment No. 1. Developer acknowledges and agrees with City's Plan Check review time shown below.

4(I)	Developer to submit in all Phase I Design Review application (includes all documentation required per PD conditions of approval)	
	City to approve all Phase I Design Review applications	
4(II)	Detailed Planning Approvals—Phase I (e.g. Project Specific Planned Development application)	
a.	Submittal of Working Drawings I	
	1st Plan Check review by City	30 days to receive City comments
	2nd Plan Check review by City	28 days to receive City comments
	3rd Plan Check review by City	20 days to receive City comments
	City to prepare fee calculation	5 days to receive fee calculation
	Building Permit Issuance	1 day after receipt of fee payment

NOTE:

a. Working drawings need to show Developer providing and maintaining temporary access/utilities to Stadium and Harbison House sites (per Section 3.4 of the DDA)

b. Developer is responsible for obtaining any and all other governmental permits/approvals required for said improvements (e.g. amusement rides, SID non-potable water system)

	Action	Date
5.	Submit Financing Plan and Tenant Listing for all of Phase I. Submittal of Tenant Listing is according to terms of DDA	Within 30 days from Design Review approval for Phase I—retail component
6.	Open Escrow for all of Phase I	Within 30 days from Financing Plan and Tenant Listing approval
	NOTE: Prior to the close of escrow for Phase I Developer to submit to Agency copy of executed agreement between Developer and Vacaville Museum relating to relocation of Harbison House (per Section 3.8 of the DDA)	
7.	Obtain Building Permits for Phase I	Approval from governmental entities (e.g. Solano Irrigation District (SID) which are outside the Agency's and/or City's jurisdiction) (as identified in Amendment No. 1)
8.	Record Project-wide CC&Rs, Parcel Map, and all other required documentation needed for close of escrow	Prior to Close of Escrow for Phase I (as identified in Amendment No. 1)
9.	Close of Escrow. The Agency shall convey title to Developer for Phase I	Within 5 working days of receipt of a Building permit (as identified in Amendment No. 1)
10.	Start Construction for each component of Phase I (as identified in Exhibit N of Amendment No. 1)	Within 10 days from obtaining Building Permits for each component of Phase I (as identified in Exhibit N of Amendment No. 1)
11.	Completion of Construction of Developer's Improvements for all of Phase I	As identified in Amendment No. 1
12.	Certificate of Completion for Phase I	As identified in Amendment No. 1

Phase II Development

NOTE: Developer may elect to develop portions of Phase II separately but Developer shall have 100% of all of Phase I development under construction and diligently pursuing such construction of an accumulative total of a minimum of fifty (50) acres, which includes Phase I development within 84 months from the execution of this Agreement (and in accordance with Section 2.2 of this Agreement).

Action	Date
Requirements of Section 3 of 3rd Amendment	
Submittal of:	60 days from execution of 3rd Amendment
a. Tentative Parcel Map and revised Master Circulation and Utility Plan	
Submittal of:	
a. Application for Policy Plan Amendment and modification to Planned Development Permit	60 days from execution of 3rd Amendment
b. Draft of revised CC&Rs	
City to provide comments to submittals a and b	30 days from receipt of submittals
Developer to submit revise submittals	30 days from receipt of City comments
Present to Planning Commission (for Amendment to Policy Plan and Planned Development)	60 days from receipt of complete submittals
Present to City Council (includes required public hearings)	30 days from Planning Commission approval
Record Parcel Map, revised CC&Rs,	30 days following City Council approval

Action	Date
Submit to City Engineer application to reallocate Nut Tree Assessment District in accordance with the 2005 Nut Tree Assessment District Engineer's Report	20 days from recording of Parcel Map
Requirements of Sections 4, 5, 6, & 7 of 3rd Amendment	
Close of escrow for Eastern and Western Sign Easements	30 days from execution of 3rd Amendment
Deposit of $37,800 related to Landscaping and Lighting District	30 days from execution of 3rd Amendment
Submittal and Agreement of Master Trademark Guidelines	60 days from execution of 3rd Amendment Developer and Agency to agree to Master Trademark Guidelines
Phase II Retail (based on description of DDA, Amendment #1, 2, and 3 and approved Policy Plan Amendment and modification to Planned Development Permit as specified in 3rd Amendment)	
1. Detailed Planning Approvals	
a. Submission of complete Design Review application (e.g. Project Specific Planned Development application) for Phase II Retail	6 months after execution of Amendment #3
City review and comment on submittal	30 days from submittal of complete Design Review application
Developer to revise submittal documents and re-submit to City	20 days after receipt of City comments
Staff level approval for Design Review application	15 days after receipt of revised application

	Action	Date
b.	Submission of Working Drawings to City for Retail Phase II based on staff level approval	Within 120 days after approval of Design Review application
c.	Working Drawing Approval for Phase II	
	City Building Permit reviews:	
	1st Plan Check review by City	30 working days to receive City comments
	Developer to respond to comments and re-submit	30 days for Developer to respond to comments
	2nd Plan Check review by City	28 working days to receive City comments
	Developer to respond to comments and re-submit	30 days for Developer to respond to comments
	3rd Plan Check review by City	14 working days to receive City comments
	Developer to respond to comments and re-submit	30 days for Developer to respond to comments
	4th Plan Check (e.g. fee calculation)	5 working days to receive fee calculation
	Building Permit Issuance (contingent upon sign-off from all reviewing Departments and outside agencies (such as Solano County Environmental Health)	1 working day after payment of fees
	Obtain Building Permits	Estimated 4-5 months from date of 1st submittal of working drawings (depending on response time from Developer and approval from governmental entities) . (e.g. Solano County Environmental Health) which are outside the Agency's and/or City's jurisdiction)