

Marc C. Tonnesen
Assessor/Recorder

P City of Vacaville

**RECORDING FEES EXEMPT
PURSUANT TO
GOVERNMENT CODE §27383**

Doc#: 200800093847

Titles: 1 Pages: 36



Fees 0.00
Taxes 0.00
Other 0.00
PAID \$0.00

**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. 4

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

**AMENDMENT NO. 4
TO
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS AMENDMENT NO. 4 TO DISPOSITION AND DEVELOPMENT AGREEMENT (this "Amendment") is entered into as of the 24th day of September, 2008 by and among the **CITY OF VACAVILLE**, a municipal corporation ("City"), the **VACAVILLE REDEVELOPMENT AGENCY**, a public body, corporate and politic ("Agency"), **NUT TREE ASSOCIATES, LLC**, a Delaware limited liability company ("Nut Tree Associates"), and **NUT TREE RETAIL, LLC**, a Delaware limited liability company ("NT Retail" and, collectively with NT Associates, "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, Amendment No. 2 dated July 27, 2005, and Amendment No. 3 dated November 15, 2007 (the "DDA") relating to the development of the Property;

WHEREAS, City, Agency and Developer now desire to amend the DDA with respect to certain land uses permitted on the Property and the process for Agency review of such land uses; and

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

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. **Exhibits.** The following exhibits which are attached to this Amendment No.4 to the DDA shall be exhibits to the DDA:

- | | |
|------------|---|
| Exhibit X | Map showing location of Freeway Retail and Nut Tree Village areas, as well as location of Reserved Restaurant Pads R-5 and R-6. |
| Exhibit Y | Map showing Excess Lands Owned by City of Vacaville |
| Exhibit Z | Revised Exhibit G and H |
| Exhibit AA | New Land Uses |
| Exhibit BB | Tenant Application |

- Exhibit BB Tenant Application
- Exhibit CC Nut Tree Marks
- Exhibit DD Vacaville Redevelopment Agency Trademark Usage Guidelines

2. Amendment Regarding Deletion of Business Hotel in Master Plan Conditions of Approval. The Conditions of Approval (the "Master Plan Conditions") for the Nut Tree Ranch Master Planned Development (the "Master Plan"), attached to Resolution No. 2004-90, currently limit the amount of retail/restaurant development approved through the Master Plan to 350,000 square feet of building floor area. The Master Plan Conditions also approve a 120-room business hotel. Subsequently to the approval of the Master Plan, through Amendment No. 3 to the DDA, the Agency and NT Associates amended Section 2.2 of the DDA to read, in relevant part, "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 . . ." NT Associates anticipates applying to the City for amendment of Condition 7(a) of the Master Plan Conditions to delete the reference to the hotel and increase the gross square footage as defined in Section 14.02.014.020 of the City of Vacaville Municipal Code for retail/restaurant uses, including both Lifestyle Retail and Attraction Retail to approximately 433,000 square feet. If the City approves such amendment of the Master Plan Conditions, then, subject to the other provisions of the DDA, the Agency hereby approves the amendment so as to permit Developer to develop on the Property up to approximately 433,000 gross rental square feet for retail/restaurant uses, including both Lifestyle Retail and Attraction Retail, or such smaller amount as the City may approve.

3. Amendment Regarding Additional Uses. The following paragraphs shall be added to Section 2.2 of the DDA:

"Limitations on Uses.

At the time of approval of Amendment No.4 to the DDA, the City approved certain changes to the Nut Tree Policy Plan which permit uses on the Property that were not previously permitted under the Nut Tree Policy Plan. Such additional uses are described on Exhibit AA attached to this Amendment No.4. Such uses shall be permitted on the Property pursuant to the DDA subject to the limitations and restrictions set out in this Section 2.2, which limitations and restrictions may prevent a particular use even if the City has approved it pursuant to the City land use process. In addition, as set forth in Section 2.5 of the DDA, Agency approval of a use does not limit the discretion of the City in the City's land use process to approve, disapprove or condition a particular use.

(A) **Restaurant Uses.** The two pads identified as R-5 and R-6 on Exhibit X (the "Restaurant Pads") shall be reserved for full service sit down restaurants. The Restaurant Pad directly east of the View Corridor, further described as parcels 9 and 9A as shown on Book 46 of Parcel Maps Page 68, and will be targeted as full service first class prominent sit down restaurant

("First Class Prominent Restaurant Pad") and shall be subject to the Restaurant Committee process described below. If no suitable full service first class prominent sit down restaurant tenant has been obtained for the First Class Prominent Restaurant Pad within twenty four (24) months from execution of Amendment No. 4 to the DDA, the pad may be developed with a full service sit down restaurant.

(B) **Restaurant Committee.** Promptly following the approval of Amendment No. 4 to the DDA, the Agency and the Developer shall form a committee (the "Restaurant Committee") made up of, a senior City staff member, the City economic development manager, and a representative of NT Associates. One Agency board member shall participate on the Restaurant Committee at those times when marketing activities are conducted. The Restaurant Committee shall develop a list of at least ten "first class" restaurants who would be potential tenants for the First Class Prominent Restaurant Pad. The Restaurant Committee shall also prepare a high quality restaurant marketing package. To assist in developing the restaurant list, preparing the marketing package and marketing the Restaurant Pads, the Agency or City shall, at the request of the Restaurant Committee, employ a qualified restaurant consultant. The Restaurant Committee and the Developer shall make good faith and diligent efforts to obtain restaurants from the list or similar restaurants as tenants for the Restaurant Pads. The costs of employing the restaurant consultant and preparing the marketing material shall be mutually agreed to and shall be paid one half (1/2) by the Agency and one half (1/2) by the Developer.

Review of Uses.

Certain uses on the Property shall be subject to approval by the Agency following the process set forth in this paragraph. The uses subject to the review process (the "Reviewable Uses") are all restaurant uses, all uses described in Exhibit AA attached to Amendment No. 4 to the DDA, and all uses designated with an asterisk on Exhibit G or Exhibit H as those exhibits have been revised in Amendment No. 4 to the DDA. The revised Exhibit G and Exhibit H are part of Exhibit Z to Amendment No. 4 to the DDA. The review process shall be carried out as follows:

(A) **Application.** If the Developer desires to rent or sell space for a Reviewable Use, the Developer shall prepare and submit to the Agency an application for approval of the Reviewable Use. The application as shown on Exhibit BB (the "Tenant Application") which application may be amended from time to time, shall require submission of information on the proposed use including but not limited to photographs, products sold, store design, other Northern California store locations, and, in the case of restaurants, menus.

(B) **Review of Tenant Application for Completeness.** Agency staff shall review the Tenant Application for completeness prior to circulation. Within five (5) working days following receipt of an Tenant Application, the Agency staff shall inform Developer in writing as to whether the Tenant Application is complete and, if incomplete, the additional information needed to make the Tenant Application complete..

(C) **Staff Recommendation.** Upon receipt of the completed Tenant Application (including the documentation required therein), the Agency staff shall determine if the proposed

use is permitted under the DDA and shall make a recommendation on the tenant. The Agency determination and recommendation shall be made within ten (10) days following receipt of a completed Tenant Application and shall be provided to the Developer in writing. Within five (5) business days following receipt of the Agency staff recommendation, the Developer may withdraw the Tenant Application or modify the Tenant Application to address issues raised by the staff recommendation. If the Tenant Application is modified, the modified Tenant Application shall be treated as a new Tenant Application and reviewed in accordance with the procedure set forth in subparagraph (B) above and this subparagraph (C).

(D) **Distribution of Tenant Application.** Once the Agency staff recommendation has been made pursuant to subparagraph (C) above and Developer has not withdrawn or modified the Tenant Application, the Agency staff shall promptly distribute the Tenant Application and the staff recommendation to the Agency Board and to the Developer.

(E) **Request for Agency Hearing and Determination.** Within ten (10) days following distribution of the Tenant Application and Agency staff recommendation to the members of the Agency Board and Developer, any member of the Agency Board or the Developer may request Agency Board review of the staff recommendation by giving written notice of the request to the City Clerk. If none of NT Associates, NT Retail or a member of the Agency Board requests Agency Board review within ten (10) days following distribution of the Tenant Application and Agency staff recommendation, then the Agency staff recommendation shall be final.

(F) **Setting of Hearings.** If an Agency Board hearing is to be held pursuant to subparagraph (E) above, the Agency shall make good faith efforts to schedule the hearing on the Tenant Application at the earliest possible date.

(G) **Finality of Agency Board Decision.** The decision of the Agency Board on a Tenant Application after hearing pursuant to subparagraph (E) above shall be final.

(H) **Standard for Consideration of Tenant Application.** Tenant Applications for approval of a Reviewable Use shall be granted if the proposed use is consistent with the provisions of the DDA and the Policy Plan.

(I) **Tenants for Whom Application Is Not Required.** With respect to those tenants who Developer does not believe are proposing a Reviewable Use, Developer shall submit to the Agency information concerning the proposed tenant prior to the Developer or tenant submitting applications to the City for land use, building or other City permits. The purpose of the submission is to permit the Agency to confirm that the proposed tenant and use are not a Reviewable Use and that the use is consistent with the DDA and Policy Plan.

(J) **Plan Review.** All tenants to comply with Chapter V.: Implementation, Section A.2.i. of the Nut Tree Ranch Policy Plan which section states: "Prior to the submittal of plans for a building permit, all tenants shall obtain staff-level Design Review approval of interior plans such as the floor and fixture plans, as well as plans for any proposed exterior improvements. Tenant improvement plans that are subsequently submitted for Building permits shall address all

conditions of approval identified during the staff-level approval. For those uses which require a Conditional Use Permit (CUP), this shall be achieved during the CUP review process."

4. **Purchase of Excess Right of Way.** The City has determined that excess lands are not needed for the New East Monte Vista Avenue, or transition at I-80 on/off ramps. Said excess lands are shown on Exhibit Z ("Excess Lands"). Pursuant to Section 4.2(c) of the DDA, such excess land may be sold to Developer under the DDA. The Agency and Developer agree that the Excess Lands shown in Exhibit Z shall be part of the Property for the purposes of the DDA and included within Phase II. The base purchase price for the Excess Land shall be the same purchase price as is charged for other portions of the Property included within Phase II, Two Dollars and Thirty Four Cents (\$2.34) per square foot and, in addition, shall include the costs of any assessments for Phases I, II, and III made by the assessment district. The Excess Lands will be subject to existing utility easements and will have no abutters' rights along the southerly line of the property.

5. **Amendment of Section 3.6 of the DDA.** The following shall be added to Section 3.6 of the DDA:

"The City's cost of on-going maintenance of the Browns Valley Business Sign (to be constructed by the City and shall be located within one of the existing City sign easement(s) located adjacent to Putah South Canal and East Monte Vista Avenue or adjacent to I-80 on/off ramp and East Monte Vista Avenue) shall be a cost that is included in the landscape and lighting district."

6. **Amendment Relating to Fees.** The following shall be added to subsection (A) of Section 4.3 of the DDA:

"Notwithstanding the above, the Agency shall not be required to pay any fees in connection with 2nd generation use of a building or other development that is not the initial use of the building or other development."

7. **Amendment Relating to Trademarks.** Section 4.5 of the DDA as amended by Amendment No. 3 to the DDA shall be deleted in its entirety and replaced with the following:

"Section 4.5. Trademarks.

The Agency is the owner of the word marks and design marks set forth in Exhibit CC (collectively, the "Nut Tree Marks"). The Agency will retain ownership of the Nut Tree Marks but has permitted Developer to make use of the Nut Tree Marks in connection with the Project. The Agency and Developer desire to negotiate agreements for long term use of the Nut Tree Marks in connection with the Project and tenants and uses in the Project. To that end the Agency and the Developer shall negotiate in good faith for an agreement (either as a separate agreement or a further amendment to the DDA) that will govern the use of the Nut Tree Marks. Regardless of the outcome of those negotiations,

Developer shall be permitted to retain all signs in the Project existing as of July 1, 2008 that make use of the Nut Tree Marks.

8. **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.

9. **Miscellaneous.**

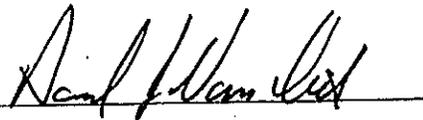
(a) As amended by Amendment No. 1, Amendment No. 2, Amendment No. 3 and this Amendment, the DDA shall remain in full force and effect.

(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, Amendment No. 3 and this Amendment No. 4.

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:

 for

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

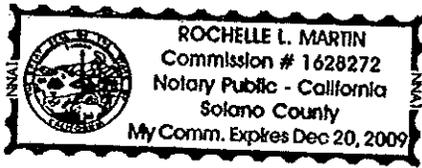
State of California

County of Solano

On November 19, 2008 before me, Rochelle L. Martin, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared David J. Van Kirk
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rochelle L. Martin
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

Title or Type of Document: NT-ODA #4

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

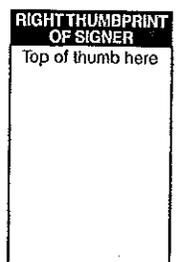
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

DEVELOPER:

NUT TREE ASSOCIATES, LLC, a Delaware limited liability company

By: _____

Its: _____

NUT TREE RETAIL, LLC, a Delaware limited liability company

By: _____

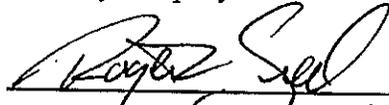
Its: _____

Approved as to form:


Charles V. Thornton, Counsel to Developer

DEVELOPER:

NUT TREE ASSOCIATES, LLC, a Delaware limited liability company

By: 
Its: MANAGING Member

NUT TREE RETAIL, LLC, a Delaware limited liability company

By: _____
Its: _____

Approved as to form:

Charles V. Thornton, Counsel to Developer

GENERAL CALIFORNIA ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF Marin

On 10/29/08 before me, Vanessa N. Persek, Notary Public
(here insert name and title of the officer)

personally appeared Roger Skell

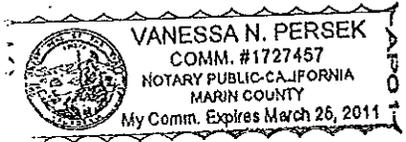
, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s)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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Vanessa N. Persek

(Seal)



DEVELOPER:

NUT TREE ASSOCIATES, LLC, a Delaware limited liability company

By: _____

Its: _____

NUT TREE RETAIL, LLC, a Delaware limited liability company

By: *Westnut Nut Tree, LLC*

By: *P. Caprotta*

Its: *Member*

Approved as to form:

Charles V. Thornton, Counsel to Developer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Solano }

On 11/12/08 before me, Margo Foster
Date Here Insert Name and Title of the Officer

personally appeared Ricardo Capreha
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature Margo Foster
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

Title or Type of Document: DDA - NT

Document Date: _____ Number of Pages: 7

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: _____

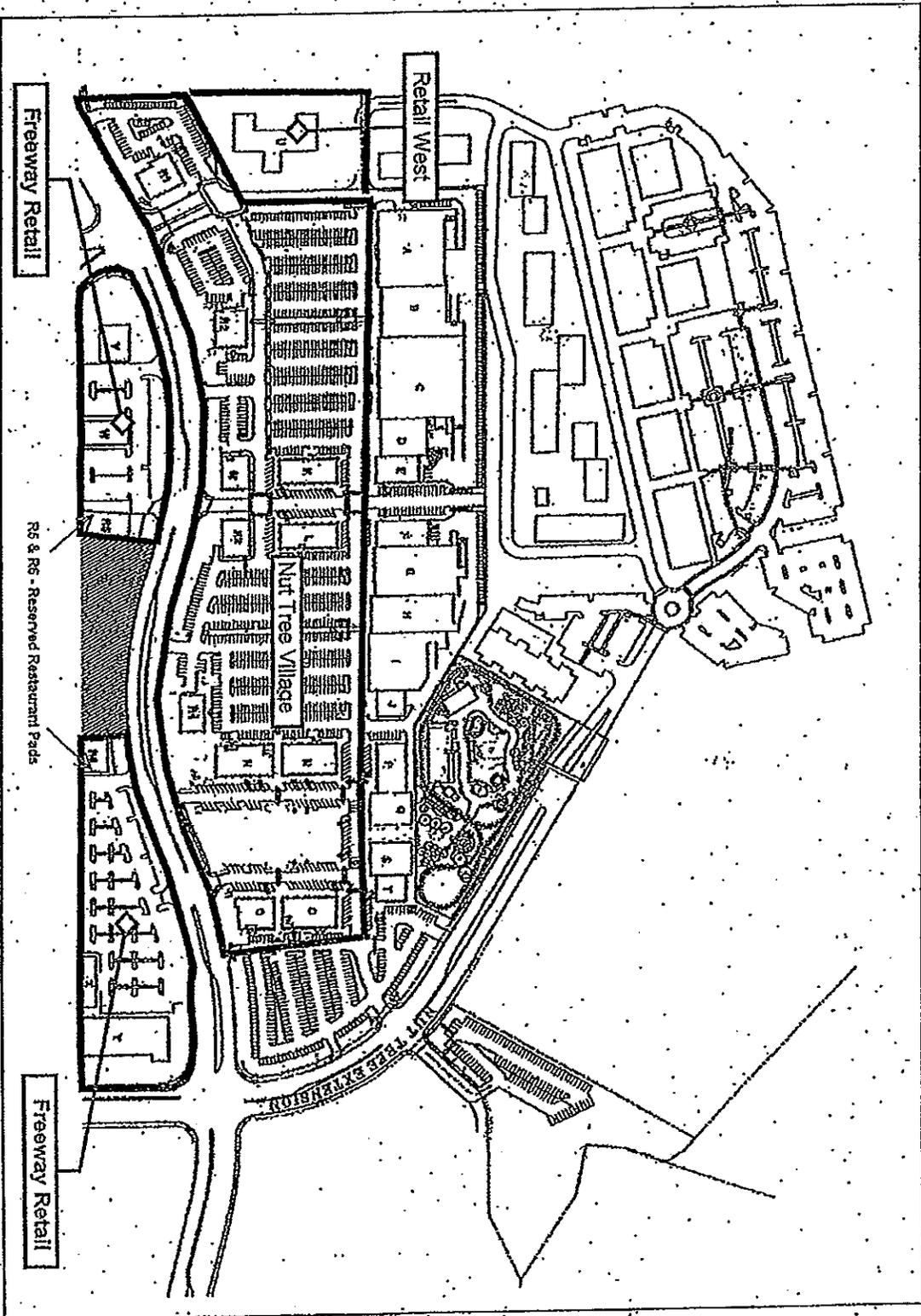
RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT X

**MAP SHOWING LOCATION OF FREEWAY RETAIL AND NUT TREE VILLAGE
AREAS, AS WELL AS, LOCATION OF RESERVED
RESTAURANT PADS R-5 AND R-6.**

Exhibit X



For Illustrative Purpose Only : Not to Scale

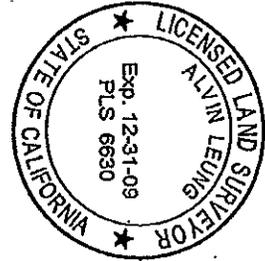
EXHIBIT X

EXHIBIT Y

MAP SHOWING EXCESS LANDS OWNED BY CITY OF VACAVILLE

EXHIBIT Y

Map showing excess lands owned by City of Vacaville

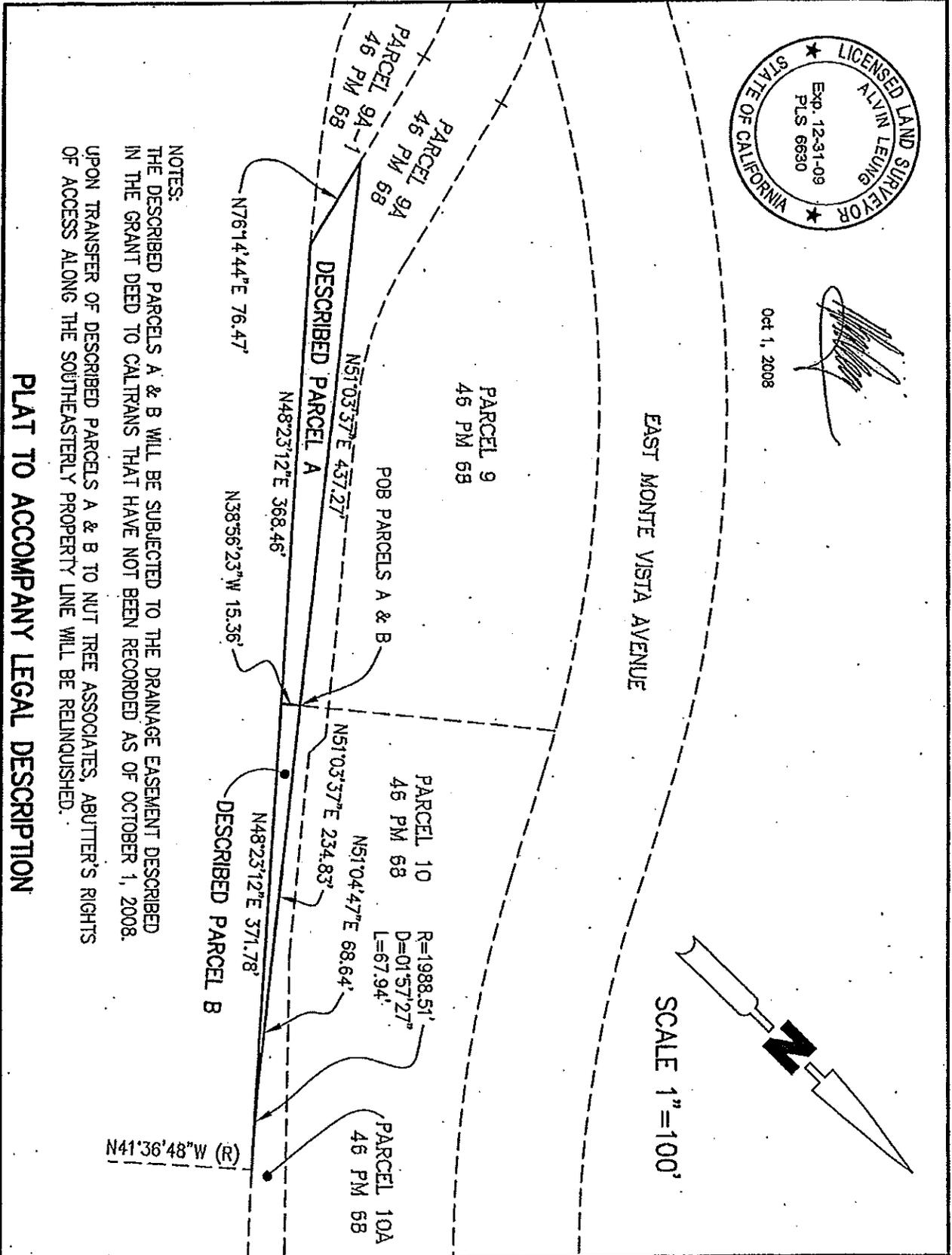
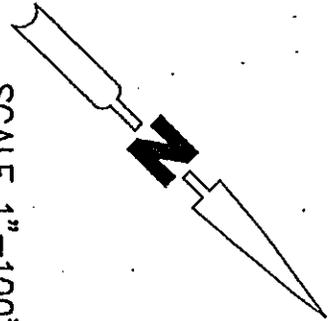


[Signature]

Oct 1, 2008

EAST MONTE VISTA AVENUE

SCALE 1"=100'



NOTES:
 THE DESCRIBED PARCELS A & B WILL BE SUBJECTED TO THE DRAINAGE EASEMENT DESCRIBED IN THE GRANT DEED TO CALTRANS THAT HAVE NOT BEEN RECORDED AS OF OCTOBER 1, 2008.
 UPON TRANSFER OF DESCRIBED PARCELS A & B TO NUT TREE ASSOCIATES, ABUTTER'S RIGHTS OF ACCESS ALONG THE SOUTHEASTERLY PROPERTY LINE WILL BE RELINQUISHED.

PLAT TO ACCOMPANY LEGAL DESCRIPTION

**LEGAL DESCRIPTION
PORTIONS OF THE EAST MONTE VISTA AVENUE RIGHT OF WAY**

REAL PROPERTY SITUATE IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING PORTIONS OF THE EAST MONTE VISTA AVENUE RIGHT OF WAY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A

BEGINNING AT THE MOST EASTERLY CORNER OF PARCEL 9A AS SAID PARCEL IS SHOWN ON THE PARCEL MAP OF THE NUT TREE FILED IN BOOK 46 OF PARCEL MAPS AT PAGE 68, SOLANO COUNTY RECORDS; THENCE ALONG THE SOUTHEASTERLY EXTENSION OF THE NORTHEASTERLY LINE OF SAID PARCEL SOUTH 38°56'23" EAST 15.36 FEET; THENCE SOUTH 48°23'12" WEST 368.46 FEET TO THE EASTERLY CORNER OF PARCEL 9A-1 AS LAST SAID PARCEL IS SHOWN ON SAID MAP; THENCE ALONG THE NORTHERLY LINE OF LAST SAID PARCEL SOUTH 76°14'44" WEST 76.47 FEET TO THE SOUTHEASTERLY LINE OF SAID PARCEL 9A; THENCE ALONG LAST SAID LINE NORTH 51°03'37" EAST 437.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 9,941 SQUARE FEET, MORE OR LESS.

PARCEL B

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 10A AS SAID PARCEL IS SHOWN ON THE PARCEL MAP OF THE NUT TREE FILED IN BOOK 46 OF PARCEL MAPS AT PAGE 68, SOLANO COUNTY RECORDS; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL NORTH 51°03'37" EAST 234.83 FEET, NORTH 51°04'47" EAST 88.84 FEET AND NORTHEASTERLY ALONG A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1988.51 FEET, A CENTRAL ANGLE OF 01°57'27" AND AN ARC DISTANCE OF 67.94 FEET TO A POINT OF CUSP; THENCE LEAVING LAST SAID LINE SOUTH 48°23'12" WEST 371.78 FEET TO A POINT ON THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF SAID PARCEL 10A; THENCE ALONG LAST SAID LINE NORTH 38°56'23" WEST 15.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,535 SQUARE FEET, MORE OR LESS.

SEE PLAT TO ACCOMPANY LEGAL DESCRIPTION WHICH ATTACHED HERETO AND MADE A PART HEREOF.

THE ABOVE PARCELS A & B WILL BE SUBJECTED TO THE DRAINAGE EASEMENT DESCRIBED IN THE GRANT DEED TO CALTRANS THAT HAS NOT BEEN RECORDED AS OF OCTOBER 1, 2008. UPON TRANSFER OF PARCELS A & B TO NUT TREE ASSOCIATES, ABUTTER'S RIGHTS OF ACCESS ALONG THE SOUTHEASTERLY PROPERTY LINE WILL BE RELINQUISHED.

END OF DESCRIPTION

THIS DESCRIPTION PREPARED BY OR UNDER THE DIRECTION OF:



Oct 1, 2008

ALVIN LEUNG, PLS 6630
LICENSE EXPIRES 12/31/09

DATE



EXHIBIT Z
REVISED EXHIBIT G AND H

EXHIBIT G (AMENDED)

EXAMPLES OF ATTRACTION RETAIL USES

The Nut Tree

Attraction Retail--Representative Examples	
Tenant Categories	Tenant

Apparel-General

Athletic Attic
Babies R US
Casual Male Big & Tall
Dress Barn
Gap
Gap/Gap Body
(combined)
Loehmann's
Mens' Warehouse
Millers Outpost
Nordstrom Rack

Arts/Crafts/Frames

Aaron Brothers

Department Stores

Burlington Coat Factory
Gottschalk's
Loehmann's
Sears
US Factory Outlets

**Electronics / Appliance /
Computer**

Best Buy
Circuit City
Comp USA
Fry's Electronics
Gateway Country Stores
Good Guys

Attraction Retail--Representative Examples**Tenant Categories****Tenant****Fabric-Crafts**

Brunswick
Discovery Zone
Kid-Castle Fun Center
Laser Quest
Putt-Putt Golf Courses
Q-Zar

Food/Beverage

Beverly Fabric
Beverages & More
Krispy Kreme

Furniture

Drexel Heritage
Ethan Allen
Furniture Trading
Company
Home Goods
Homestead House
Jennifer Convertibles
Krause's Furniture
IKEA
Relax The Back
Sears Homelife
Wickes

Health Food/Nutrition

GNC
Great Earth

Home Furnishings / Linens

Barbecues Galore
Container Store
Great Indoors
Homeplace
Lamps Plus

Office Supply

Office Max

Party/Card Shops

Party America
Party Land

Attraction Retail—Representative Examples	
Tenant Categories	Tenant

Restaurants - Convenience*

Blimpie Subs & Salads
Honey Baked Ham
Quiznos
Schlotzsky's
Subway
Togos

Restaurants--Sit Down*

Acapulco
Chuy's Mexican Grill
Dave and Busters
El Torito
Fuddruckers
Hungry Hunter
Johnny Rockets
Koo Koo Roo
Old Spaghetti Factory
Red Lobster

Roadhouse Grill
Ruby's Diner
Souplantation

Shoe Sales

Boot Barn *

Boot World *

Athlete's Foot

Foot Locker

Shoe City *

Shoe Pavillion *

Attraction Retail—Representative Examples	
Tenant Categories	Tenant

Sporting Goods

Any Mountain
 Bass Sporting Goods
 Cabellas
 Chicks
 Copeland Sports
 Gart / Sportsmart
 Gaylan's
 Oshman's
 Sport Chalet
 Sports Authority
 Tri City

Sporting Goods-Golf

Edwin Watts Golf
 Golfsmith
 Golf USA
 International Golf
 Nevada Bob's

Wireless

See Footnote 1

ATT
 Air Touch Cellular
 Cingular
 Mobile Works
 Nextel
 Pacific Bell PCS Store
 Sprint PCS
 US Cellular
 US West
 Verizon
 VoiceStream

Any single tenant or category of tenants identified by an asterisk shall be subject to the approval process outlined in accordance with Amendment #4.

#1 Wireless stores as shown shall not have more than 2,500 gross square feet of floor space for each tenant.

EXHIBIT H (Amended)

EXAMPLES OF LIFESTYLE RETAIL USES

The Nut Tree

Lifestyle Retail--Representative Examples

Tenant Categories

Tenant

Apparel-Baby/Kids

Gap Kids

Gymboree

Once Upon a Child

Apparel-General

Ambercrombie & Fitch

Ann Taylor

Anthropologie

American Eagle

Armani Exchange

Banana Republic

Bebe

Benetton

Brooks Brothers

Coldwater Creek

Diesel

Eddie Bauer-Regular

Franco Ferrini

Gap-Regular

Gap/Gap

Body

(combined)

Georgiou-Regular

Guess

J Crew*

Julius

Laura Ashley

Limited

Limited Too

Linda Maxwell

Mens' Warehouse

Patagonia

Ralph Lauren--Polo

Lifestyle Retail--Representative Examples	
Tenant Categories	Tenant

Apparel-General (Continue)

Saks Fifth Avenue
Structure
Talbot's
Tommy Bahama

Arts/Crafts/Frames

Hobby Shack*
Hobbytown USA*

Books

Barnes & Noble
Borders
Brentanos
Rizzoli Bookstore
Tower Books
Walden Books

Camera/Photo/Video

Ritz
Wolf

Candy

Ghirardelli Chocolate
Godiva Chocolatier
Jelly Belly
See's Candies

Coffee-Bakery

Java City
Peet's Coffee
Seattle Best
Starbucks
Tully's Coffee

Deli/Wine

A.G. Ferraari
Brewery Tasting Rooms
David Berkeley
Plump Jack Wines
Winery Tasting Rooms

Lifestyle Retail--Representative Examples**Tenant Categories****Tenant****Electronics / Appliance /
Computer**

Bang & Olufsen
Brookstone
Cambridge Sound Works
Gateway Country Stores
Tweeter

Entertainment

Discovery Channel Store
Imaginarium
Nature Company
Museum Store

Furniture

Mobilia
R. Basso

Games

It's About Games

Greeting Cards/Gift *

Hallmark Cards *

Grocery—Specialty *

Trader Joe's*
Andronico's *
Dean & DeLuca *
Draegers *
Ikeda *
Mollie Stones *
Oakville Grocery *
Whole Foods *

Home Furnishings / Linens

Calla Lilly Linens
Crate & Barrel
Cost Plus
David M. Brian
Eddie Bauer Home
Home Place
Napa Style

Lifestyle Retail--Representative Examples	
Tenant Categories	Tenant

**Home Furnishings / Linens
(Continue)**

Pottery Barn/Elm Street
Restoration Hardware
Sur Le Table
Williams Sonoma
Z Gallerie

Jewelry

Crescent Jewelers
Robbins Brothers
Sterling Jewelers

Music

Musicland/Suncoast
Tower Records
Virgin

Recreation

North Face
REI

Ice Cream / Smoothies

Ben & Jerry's Ice Cream
Cold Stone
Double Rainbow
Farrell's Ice Cream
Parlour
Haagen Dazs
Jamba Juice
Maggie Moo's
Marble Slab Creamery
TCBY

Lifestyle Retail--Representative Examples	
Tenant Categories	Tenant

Tenant Categories	Tenant
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Tenant Categories	Tenant
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Restaurants*

Bénihana
Buca di Beppo
California Pizza Kitchen
Charthouse
Cheesecake Factory
Chipotle *
Claim Jumper
Crocodile Café
Cucina Cucina
Elephant Bar
Fats

Fuzio
Gordon Biersch
Houstons
Judson's Grill
Il Fornaio
Johnny Carino's
Left at Albuquerque
Left Bank
Macaroni Grill
Mace's
Max's Opera Café
McCormick & Schmicks
Nut Tree Restaurant
Paragary's
P.F. Changs China Bistro
Pasta Pomodoro
Piatti
Plumpjack
Pyramid Alehouse
Ruth Chris Steakhouse
Vineyards House
Wolfgang Puck
Yan Can

Lifestyle Retail--Representative Examples	
Tenant Categories	Tenant

Shoe Sales

9 & Co
 Cole Haan
 Enzo Angiolini
 Kenneth Cole
 Nike Town
 Skechers
 Walking Store

Specialty

Bare Escentuals
 Body Shop
 Crabtree & Evelyn
 JT's
 Sharper Image
 Smith & Hawkins
 Laura Ashley
 Sunglass Hut
 Tinder Box
 Victoria's Secret
 Wacko

Toys

Disney Store
 Imaginarium
 Toys-R-Us *
 FAO Schwartz/Zalny
 Brainy/Right Start

Any single tenant or category of tenants identified by an asterisk shall be subject to the approval process as outlined in accordance with Amendment #4

EXHIBIT AA

NEW LAND USES

The new uses consist of the following uses all of which were added as permitted uses under the Nut Tree Policy Plan by amendment approved on September 23, 2008. These uses are:

- Banking Uses
- Health & Beauty Services
- Optometry Services
- Learning Centers
- Adult Education Facilities
- Medical Offices

EXHIBIT BB
TENANT APPLICATION

78322\555113.5with 555113.4
Clean - 604580.1

EXHIBIT BB-1

NUT TREE TENANT REVIEW APPLICATION

Tenant Review applications must be approved prior to submittals of any tenant improvement permits and/or CUP applications to Community Development (e.g. City Planning, Development Engineering, and Building). Additionally, tenant improvement review may result in floor plan, finish materials and/or other physical changes despite the approval of any design plans submitted and/or approved with this application.

Date Application Received by Agency: _____
(Note: If applications are received after 1 pm on Friday the application will be reviewed on the next working day)

Date Application determined complete and distributed: _____
(Note: Only application determined complete will be will not be submitted to Agency Board)

Tenant Name: _____

Related Tenant Website(s): _____

Other Store Locations within California: _____

Company Structure: Privately owned LLC
 Corporate Franchisee

Tenant Category: Lifestyle Retail Attraction Retail

Tenant Sub-category: Retail Office
 Service Medical
 Financial Educational
 Full Service Restaurant Casual Restaurant

Products to be sold: _____

Services to be provided: _____

Tenant Location within Project Area: (e.g. Building ID#) _____
 Submit Nut Tree Tenant Site Map

Tenant Lease Area or Building Size: _____ Square Footage (gross)

Submit the following tenant and/or parent company(s):

- Goals and objectives;
- Existing and future product lines;
- Target market;
- 3rd party verification of company's market ranking;
- Average existing sales per square foot of other store locations (if applicable);
- Projected sales per square foot of this location;
- Anticipated marketing campaign that does not emphasize discount stores which sell products at prices lower than those asked by traditional retail outlets/stores as a means of attracting customers to maintain a successful business; and
- Copy of restaurant menu, casual or full service (if applicable)

Submit the following to clearly demonstrate the tenant store design, to include but not be limited to the store entrance/façade, interior design schemes and layout, and the display or racking of goods and/or services:

- Standard Floor Plan and display of goods and/or services; and
- Photographs of other store locations (includes exterior and interior)

Internal City Use

Submitted to Agency Board: _____
Agency Board Hearing Requested: Yes No
Staff Determination: Approved Denied

Agency Board Hearing Request Deadline: _____
Agency Board Hearing: _____
Agency Board Appeal Hearing: _____

EXHIBIT CC

NUT TREE MARKS

Mark	Applicable U.S. Trademark Applications/Registrations
NUT TREE	U.S. Trademark Reg. No. 0953082 (with respect only to: Restaurant Services; Gift Shop Services; and Entertainment Services - namely, providing playground facilities and amusement rides)
	None
	None
	None
	U.S. Trademark Reg. No. 1411259 (with respect only to: Retail Toy and Gift Shop Services)

