

FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF YUBA CITY AND
HARTER PACKING COMPANY AND BROWN YUBA CITY, LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
HARTER SPECIFIC PLAN – YUBA CITY MARKETPLACE

This First Amendment to the Development Agreement ("Amendment") is entered into this 5th day of August 2008, by and between the City of Yuba City, a municipal corporation ("City"), and Harter Packing Company, LLC, a California Limited Liability Company ("Harter") and Brown Yuba City, L.L.C., an California Limited Liability Company ("Brown"), hereinafter collectively referred to as "Developer," pursuant to the authority of Government Code section 65864, et seq.

Recitals

A. On November 2, 2004, City and Developer entered into a Development Agreement relative to the development known as the Harter Specific Plan – Yuba City Marketplace (the "Development Agreement").

B. City and Developer desire to enter into this First Amendment to the Development Agreement in order to make various amendments to the Development Agreement.

C. This Amendment is authorized by Section 1.5 of the Development Agreement and Section 65868 of the Government Code of the State of California.

Now, therefore, the parties agree as follows:

1. The prior Section 5(d) of the Recitals of the Development Agreement is superseded and amended by substitution herewith and Section 5(d) of the Recitals is substituted as follows:

(d) Harter Specific Plan Financing Strategy and Phasing Plan adopted by Resolution No. 04-198 dated October 26, 2004 and as amended by Resolution No. 08-072 dated August 5, 2008 ("Financing Plan").

2. The prior Section 2.9 of the Development Agreement is superseded and amended by substitution herewith and Section 2.9 is amended to read as follows:

2.9 City Fees, Taxes, and Assessments. City shall have the authority to enact new or increase existing fees, taxes or assessments including, but not limited to, impact fees, except that the Development Impact Fee under the Financing Plan (referred to in the Financing Plan as the Harter Specific Plan Fee) and Harter Specific Plan Developer Impact Fee Ordinance shall be set and governed exclusively by the terms of said Financing Plan

and Ordinance and shall not be subject to the terms of this Section. Developer agrees to pay the City fee, tax or assessment in effect at the time of the submittal of a complete building permit application that complies with all City policies and regulations, including, but not limited to, general plan, zoning, zoning regulations, etc. provided that such fee, tax or assessment is adopted on a City-wide basis in accordance with AB 1600. Notwithstanding the foregoing, Developer shall pay those development impact fees listed in Exhibit A attached hereto and by this reference made a part hereof, in accordance with the terms and conditions as set forth in Exhibit A. Notwithstanding the foregoing, City shall have the authority to enact fees, taxes or assessments which are not City-wide, in connection with improvements to State Route 20, which shall be limited to Developer's "fair share" and shall be subject to a credit for the total cost of any improvements to State Route 20 constructed or paid for by the Developer under the Entitlements. Nothing in this Agreement constitutes a waiver of Developer's right to challenge the legality of any future fees, taxes or assessment as applied to the Project, including the nexus requirement of California law.

3. The prior Section 3.4(C) of the Development Agreement is superseded and amended by substitution herewith and Section 3.4(C) is amended to read as follows:

C. Developer shall complete the design and construction of the five acre neighborhood park referred to in Section 6.1.1 of Appendix A of the Specific Plan, including all adjacent street frontages ("Park"). Construction of the Park shall be divided into two phases: (1) 50% of the Park construction shall be completed prior to the issuance of the last occupancy permit for the Harter North or Harter South single-family residential developments whichever occurs first and (2) the remaining 50% of the Park construction shall be completed prior to the issuance of the last occupancy permit for the other single-family residential development, either Harter North or Harter South. Construction of the first one half of the Park will commence when 50% of the homes in either the Harter Estates North or South are completed. The Park will include a transition area as depicted on Figure A-11 on page 19 of the Specific Plan ("Transition Area"). Developer shall dedicate the land for the Park and the Transition Area to the City prior to the issuance of the first building permit in the Project. The design of the Park shall be approved by the City before construction of the Park by Developer. Developer shall receive a credit on its City park impact fees within the Project for Developer's costs for the design and construction of the Park but will not receive a credit for the dedication of the land. In the event the cost of the Park design and construction exceeds Developer's park impact fees, City shall reimburse Developer for the balance as funds become available in the City's Park Impact Fee Account with funds resulting from development in the Specific Plan. The costs of maintaining the Park and the Transition Area shall be paid through the Lighting and Landscape District as provided in 3.4.A.

4. The prior Section 3.4(E) of the Development Agreement is superseded and amended by substitution herewith and Section 3.4(E) is amended to read as follows:

E. Developer shall be eligible to receive credit for certain development as

provided in Exhibit B attached hereto and by this reference incorporated herein.

5. All provisions of the Development Agreement not otherwise inconsistent with this Amendment are, and shall remain, in full force and effect. Such provisions are herewith reenacted, readopted, and approved and ratified herewith as if fully set forth herein. Adoption of this Amendment and the readoption and ratification are consistent with the City's General Plan, and the Harter Specific Plan and the EIR certified by the City of Yuba City on October 26, 2004.

In witness whereof, this Amendment has been executed by the parties hereto on the day and year first above written.

CITY:

City of Yuba City, a Municipal Corporation

By:  _____

Steve Jepsen
City Manager

DEVELOPER:

Harter Packing Company, LLC, a California
limited liability company

Richland Ranches, Ltd. of California
a California corporation

By:  _____
Its: _____

Lomo Cold Storage, a California general
partnership

By:  _____
Its: _____

Sutter Land Properties, LLC, a California
limited liability company

By: Ranick Staub
Its: _____

~~By: Grace Yuba City, L.L.C., an Arizona
limited liability company, its Managing Member~~

~~By: Grace Investment Company, an Arizona
corporation, its sole Manager~~

~~By: _____
Its: _____~~

ACKNOWLEDGMENTS

EXHIBIT A

Impact Fee Proposal

A. Development Impact Fee Implementation Schedule

1. A one year freeze on existing fees from the time of adoption of this Amendment.
2. The new fees adopted by the City Council will be phased in over seven years following the initial year of frozen rates. The increase in the new rates, from those adopted on January 1, 2008, will be phased in as provided in Table 1;

Table 1
Phase in of New Development Impact Fees

<u>Year</u>	<u>Percent Implemented</u>
01	Frozen
02	15%
03	30%
04	45%
05	60%
06	75%
07	90%
08	100%

3. Sierra Central, an original pipeline project in the Harter Development area will be given an extension on holding existing fees to January 1, 2010.
4. The annual cost of living adjustment, indexed to construction cost provided by Engineering News Record, will apply to all fees on an annual basis.
5. The new Levee Fee for all projects in the Harter Specific Plan area are effective January 1, 2008 at 100% implementation (no freeze or Phasing)
6. Any new development impact fees and adjustments thereto adopted by the City after the adoption of this Amendment are subject to Section 2.9 of this Development Agreement.

EXHIBIT B

Credits for Infrastructure Development

1. Credits would be for improvements constructed by Harter and do not include the improvements for the Market Place Development funded by Brown.
2. Fee Credits Certificates will be issued by category at the time of acceptance by the City of Harter Plan infrastructure improvement. Such fee credits would accrue at the lesser of;
 - a) The actual construction cost, or
 - b) The discounted rate of categorical payment as provided in the Financing Plan in effect for Harter at the time of acceptance.

Example: Roadway over-sizing project credits;

$$[(\text{Base fee} + \% \text{ of increase}) \times [1.0 + \text{COLA}] \times 75\%$$

3. Fees will have no cash value (can not be sold) and are transferable only to vacant parcels in the Harter Specific Plan Area.
4. Water Credits will apply to oversizing only for the distribution system. No Treatment plant fee credits will be provided.
5. Sewer Credits will apply to oversizing only for the collection system. No treatment plant fee credits will be provided.
6. Roadway Credits will apply to oversizing at the rate of 75% of construction cost or 75% of the discounted rate of Harter Fees paid at the time of acceptance. This includes Traffic Signals, Harter Pkwy (except median landscaping included in the Development Agreement), Hwy 20, Tharp Road and Butte House Road.
7. Park Credits will remain per the existing Development Agreement.
8. There are no fee credits for drainage improvements as this is a County based fee.