

**EXEMPT PURSUANT TO  
GOVERNMENT CODE §27383**

**RECORDING REQUESTED BY:**

City of Vacaville

**WHEN RECORDED MAIL TO:**

Michelle Thornbrugh  
City Clerk  
City of Vacaville  
650 Merchant Street, Vacaville, CA 95688

Recorded in Official Records,  
Solano County  
Doc#: 202200061157  
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0128-070-020  
0128-070-030

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF VACAVILLE AND  
MONTESSA VACAVILLE, LLC, a California limited liability company  
[successor in interest to Five Plus, L.P.]  
REGARDING THE DEVELOPMENT OF REAL  
PROPERTY COMMONLY REFERRED TO AS**

**“MONTESSA”**

**September 22, 2022**  
**DATE**

This version printed on September 20, 2022.

Cc: Montessa Development Agreement 2<sup>nd</sup> Amendment (File No. 21-191)  
Montessa Development Agreement 3<sup>rd</sup> Amendment (File No. 22-378)

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF VACAVILLE AND MONTESSA VACAVILLE, LLC [successor in interest to  
Five Plus, L.P.] REGARDING THE DEVELOPMENT OF REAL PROPERTY  
COMMONLY REFERRED TO AS “MONTESSA”**

**THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT** (hereinafter the “Third Amendment”) is entered into this 22 day of September 2022, by and between **MONTESSA VACAVILLE, LLC**, a California corporation (“Developer”) and the **CITY OF VACAVILLE**, a municipal corporation (“City”), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code, and Division 14.17 of the Vacaville Municipal Code. City and Developer are also referred to hereinafter individually as “party” or collectively as the “parties.”

**RECITALS**

This Third Amendment is made with reference to the following facts:

- A. On August 23, 2016, the prior owner, Five Plus, L.P. (“Five Plus”) entered into an agreement entitled “Development Agreement By and Between the City of Vacaville and Five Plus, L.P. Regarding the Development of Real Property Commonly Referred to as Montessa”. The real property that is the subject of the August 23, 2016, Agreement (hereinafter “Agreement”) is generally depicted in Exhibit A of the Agreement and more particularly described in Exhibit B of the Agreement. The Agreement was recorded on September 2, 2016 (Doc #201600075612). All capitalized words and phrases in this Third Amendment shall have the same meaning as in the Agreement.
- B. On or about February 7, 2018, City and Five Plus recorded the First Amendment (the “First Amendment”) to the Agreement, modifying the Tentative Map and making other changes to the Agreement (Doc #201800009148).
- C. On or about August 12, 2020, Five Plus and Developer completed the sale of the Montessa property and recorded a Grant Deed with the Solano County Recorder’s Office (Doc #202000067115).
- D. Pursuant to Section 1.B of the Agreement, the Term of the Agreement is 10 years commencing on the Effective Date, September 22, 2016, and pursuant to Section 1.C of the Agreement, the Agreement includes a performance milestone to record a Final Map on or before the fifth (5<sup>th</sup>) anniversary of the Agreement’s Effective Date.
- E. On or about September 22, 2021, City and Montessa Vacaville, LLC. recorded the Second Amendment (the “Second Amendment”) to the Agreement, extending the performance milestone of recording a Final Map on or before the fifth (5<sup>th</sup>) anniversary to the sixth (6<sup>th</sup>) anniversary. The Agreement was recorded with the Solano County Recorder’s Office (Doc #202100100364).
- F. Notwithstanding Developer’s best efforts, Developer will not be able to record the Final Map on or before the sixth (6<sup>th</sup>) anniversary of the Agreement’s Effective Date, as required by Section 1.C of the Agreement, as amended by the Second Amendment to the Agreement.

- G. Subsection 12.D of the Agreement provides that the Agreement may be amended by mutual consent of the parties and that the Director of Community Development ("Director") is authorized to execute such amendments on behalf of City as an Administrative Amendment when the amendment does not relate to Term of the Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, the conditions, terms, restrictions and requirements relating to subsequent discretionary approvals of City, or monetary exactions of Developer.
- H. The Director of Community Development has the authority to approve this Third Amendment as an Administrative Amendment because an extension of the time to record the Final Map is not an extension of the Term of the Agreement.

**NOW, THEREFORE**, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

### **SECTION 1. REAFFIRMATION**

Developer, by and through the undersigned, does hereby reaffirm the terms of the Agreement, First Amendment, and Second Amendment and further agrees to be bound by all terms of the Agreement, First Amendment, and Second Amendment other than as modified herein.

### **SECTION 2. DEFINITIONS**

As used herein, and except as modified herein, the capitalized words and phrases shall have the same meaning as the capitalized words and phrases in the Agreement.

Except as stated herein, all references to Five Plus, L.P. or Five Plus, L.P., Inc., in the Agreement, whether in the title or the body of the Agreement, are hereby amended to read Montessa Vacaville, LLC, a California limited liability company.

### **SECTION 3. TIMING OF FINAL MAP**

Section 1.C of the Agreement shall be modified by replacing "sixth (6<sup>th</sup>) anniversary" with "sixth and one half (6.5) anniversary" thereby extending the time to record a Final Map by one half of a year, or six (6) months.

### **SECTION 4. OTHER TERMS AND CONDITIONS**

All other terms and conditions of the Agreement, First Amendment and Second Amendment not expressly amended by this Third Amendment shall remain in full force and effect.

### **SECTION 5. SIGNATORY'S AUTHORITY**

Each party warrants to each other party that he or she is fully authorized and competent to enter into this Third Amendment in the capacity indicated by his or her signature and agrees to be bound by this Third Amendment.

*Signatures on following page*

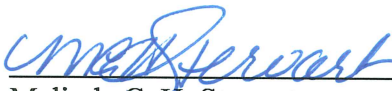
IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the day and year first above written.

“CITY”

CITY OF VACAVILLE,  
a municipal corporation

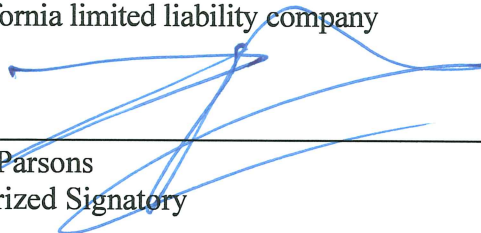
  
\_\_\_\_\_  
Erin Morris, AICP  
Director of Community Development

APPROVED AS TO FORM  
Melinda C. H. Stewart, City Attorney

  
\_\_\_\_\_  
Melinda C. H. Stewart  
City Attorney

“DEVELOPER”

MONTESSA VACAVILLE, LLC  
a California limited liability company

  
\_\_\_\_\_  
Louis Parsons  
Authorized Signatory

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**(Civil Code §1189)**

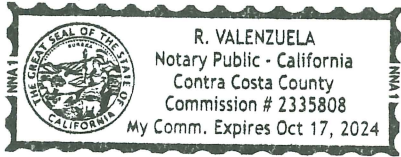
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF CONTRA COSTA        )

On September 19, 2022, before me, R. VALENZUELA, a Notary Public, personally appeared **LOUIS PARSONS**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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.



R. Valenzuela  
SIGNATURE OF NOTARY

\*\*\*\*\* **OPTIONAL** \*\*\*\*\*

Title or Type of Document: \_\_\_\_\_

Signer(s) are Representing: \_\_\_\_\_

Document Date: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

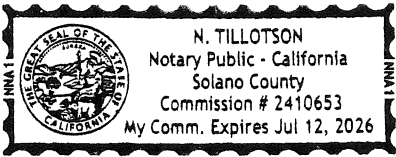
**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Solano }

On September 21, 2022 before me, N. Tillotson, Notary Public  
*Date Here Insert Name and Title of the Officer*  
personally appeared Erin Morris, AICP  
*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 [Handwritten Signature]  
*Signature of Notary Public*

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: Third Amendment to the Montessa Development Agreement  
Document Date: September 22, 2022 Number of Pages: 4  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Erin Morris, AICP Signer's Name: \_\_\_\_\_  
 Corporate Officer – Title(s): \_\_\_\_\_  Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  Partner –  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian of Conservator  Trustee  Guardian of Conservator  
 Other: Director of Community Development  Other: \_\_\_\_\_  
Signer is Representing: City of Vacaville Signer is Representing: \_\_\_\_\_