

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Community Development Agency** is hereby called for:

Date/Time: Tuesday, April 19, 2011, 6:45 p.m.
(or as soon thereafter as possible)

Location: City Hall, Civic Center
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Community Development Agency on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. Items from the Audience - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2008-140 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request an Agency Member to sponsor the item for discussion at a future meeting*
4. Approval of Minutes
5. AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN SUBORDINATION AGREEMENTS ON BEHALF OF THE COMMUNITY DEVELOPMENT AGENCY FOR THE CITY OF TRACY FOR LOANS GENERATED UNDER THE DOWNTOWN REHABILITATION HOME LOAN PROGRAM
6. PUBLIC HEARING TO APPROVE A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES AND THE FIRST AMENDMENT TO THE DDA BETWEEN THE AGENCY AND ARMADILLO REALTY, LLC
7. Adjournment



Chairperson

Posting Date: April 14, 2011

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

November 3, 2010, 6:50 p.m.

Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

1. CALL TO ORDER - Chairman Ives called the meeting to order at 6:50 p.m.
2. ROLL CALL - Roll call found Agency Members, Abercrombie, Maciel, Tolbert, Tucker, and Chairman Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. APPROVAL OF MINUTES – It was moved by Agency Member Abercrombie and seconded by Agency Member Maciel to adopt the special meeting minutes of June 15, 2010. Voice vote found all in favor; passed and so ordered.
5. APPROVE THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BY AND BETWEEN THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY AND J.S. KENDALL CONSTRUCTION, INC. AND AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN THE AGREEMENT ON BEHALF OF THE AGENCY – Ursula Luna-Reynosa, Director of Economic Development presented the staff report. The Community Development Agency of the City of Tracy (the “Agency”) is the fee owner of the parcel located adjacent to Texas Roadhouse (the “Site”). J.S. Kendall Construction, Inc., a Nevada Corporation (the “Developer”) is interested in developing the Site.

The Agency owns the Site and staff has been unsuccessful in its marketing efforts over the years. Since the recession, there has been little interest in the Site. The Developer approached staff and indicated a desire to market the Site to an appropriate tenant to develop the Site. Staff has prepared an agreement to provide the parameters for a six month negotiating period. During that time, if the Developer is successful in getting a signed Letter of Interest (the “LOI”) from a tenant that is acceptable to the Agency, then a Disposition and Development Agreement (the “DDA”) will be prepared for Agency Board consideration. One of the pre-closing terms of the DDA will be that the Developer needs to obtain a signed lease agreement from the tenant that signed the LOI prior to closing. The Agreement provides a provision for a four month extension period if the Developer is making sufficient progress in negotiating a LOI or lease agreement with a desired tenant. An Agency Board policy requires financial consideration for agreeing to enter into any type of exclusive negotiating rights agreement. However, in this case, staff recommended the Agency Board accept non-monetary consideration. Staff has been unsuccessful in closing a deal or even getting close to closing a deal on the Site. Essentially, the Developer will use its broker and connections to try to find a tenant. Due to the lack of interest in the Site, the benefit of having the Site professionally marketed outweighs the potential opportunity cost of having the Site tied up during the exclusive negotiating period.

Ms. Luna-Reynosa recommended that the Agency approve the Agreement by and between the Agency and Developer and authorize the Executive Director to sign the Agreement on behalf of the Agency.

Chairperson Ives invited public comment. Since no one wished to address the Agency on the matter Agency Member Abercrombie moved to adopt CDA Resolution 248, approving an Exclusive Negotiating Rights Agreement by and between the Community Development Agency of the City of Tracy and J.S. Kendall Construction, Inc., and authorizing the Executive Director to sign the Agreement on behalf of the Agency. Agency Member Maciel seconded the motion. Voice vote found all in favor; passed and so ordered.

6. ADJOURNMENT - It was moved by Agency Member Abercrombie and seconded by Agency Member Maciel to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:52 p.m.

The agenda was posted at the Tracy City Hall on October 28, 2010. The above are summary minutes.

Chairperson

Attest:

Secretary

CDA AGENDA ITEM 5

REQUEST

AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN SUBORDINATION AGREEMENTS ON BEHALF OF THE COMMUNITY DEVELOPMENT AGENCY FOR THE CITY OF TRACY FOR LOANS GENERATED UNDER THE DOWNTOWN REHABILITATION HOME LOAN PROGRAM

EXECUTIVE SUMMARY

Due to low interest rates, increased interest to refinance mortgage loans has led to recent requests for the Agency to subordinate its interest to new loans. Staff is recommending that the Agency Board authorize the Executive Director to sign subordination agreements on behalf of the Agency under certain conditions.

DISCUSSION

On December 7, 2004 the Agency Board approved the establishment of the Downtown Rehabilitation Home Loan Program (the "Program") and authorized staff to implement the Program. The Program offers loans up to \$50,000 at 3% interest to downtown residential property owners. Funds can be used for any health and safety repairs and improvements including such things as new roofs or roof repair, new or repaired plumbing and or electrical systems, structural repairs, etc. Strictly cosmetic improvements are not allowed unless necessitated by accompanying health or safety work. Room additions are not allowed unless necessitated by overcrowded family conditions.

Most of the applicants that apply for the Program have existing mortgages in place and therefore the Downtown Rehabilitation Loan (the "Loan") gets recorded after any existing loans on title. Staff has received two requests recently requesting the Agency to subordinate the Loan as property owners participating in the Program desire to refinance their existing mortgages to lower interest rates. In both cases, the property owners are not requesting to take out additional money; rather to refinance the principal amount currently owed which results in lower mortgage payments.

While refinancing an existing mortgage to a new longer term loan increases the over all financial commitment over the term of the loan, if the property owner is getting a lower interest rate then the monthly obligation is lowered which increases the property owner's cash flow and helps the property owner meet other obligations including the Loan payments. Therefore, staff is requesting that the Agency Board authorize the Executive Director to sign subordination agreements on behalf of the Agency under the following conditions:

1. Loan is generated pursuant to the Program;
2. Amount being refinanced is equal to or less than the outstanding balance on the loan being refinanced;

3. The monthly payment under the new loan is less than it is under the existing loan;
4. Property taxes are current;
5. If Agency loan payments are not current, then the borrower will need to demonstrate that their monthly housing costs (including all debt service, insurance, taxes and utilities) must be less than 31% of their gross household income;
6. The Agency's lien position isn't lessened; and
7. The term of the new loan doesn't exceed 30 years.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's seven strategic plans.

FISCAL IMPACT

There is no fiscal action generated by the current action. Agency funds for staffing the Program and providing the loan proceeds have already been included in the approved Agency Budget for Fiscal Year 2010-2011.

RECOMMENDATION

Staff recommends that Council authorize the Executive Director to sign subordination agreements on behalf of the Agency for loans generated under the Downtown Rehabilitation Loan Program.

Prepared by: Ursula Luna-Reynosa, Economic Development Director

Approved by: R. Leon Churchill Jr., City Manager

CDA RESOLUTION

A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN SUBORDINATION AGREEMENTS ON BEHALF OF THE AGENCY FOR LOANS GENERATED UNDER THE DOWNTOWN REHABILITATION LOAN PROGRAM

The Community Development Agency of the City of Tracy resolves as follows:

WHEREAS, the City Council (the "City Council") of the City of Tracy (the "City") has adopted the Community Development Project Area Plan (as amended, the "Redevelopment Plan"). The Redevelopment Plan sets forth plans for redevelopment of the Community Development Project Area (the "Project Area"); and

WHEREAS, the Community Development Agency of the City of Tracy (the "Agency") is responsible for administering the Redevelopment Plan to cause redevelopment of the Project Area including affordable housing opportunities; and

WHEREAS, on December 7, 2004 the Agency Board approved the establishment of the Downtown Rehabilitation Home Loan Program (the "Program") and authorized staff to implement the Program; and

WHEREAS, most of the applicants that apply for the Program have existing mortgages in place and therefore the Downtown Rehabilitation Loan (the "Loan") gets recorded after any existing loans on title; and

WHEREAS, the Agency desires to enter into subordination agreements on behalf of the Agency under the following conditions:

1. Loan is generated pursuant to the Program;
2. Amount being refinanced is equal to or less than the outstanding balance on the loan being refinanced;
3. The monthly payment under the new loan is less than it is under the existing loan;
4. Property taxes are current;
5. If Agency loan payments are not current, then the borrower will need to demonstrate that their monthly housing costs (including all debt service, insurance, taxes and utilities) must be less than 31% of their gross household income;
6. The Agency's lien position isn't lessened; and
7. The term of the new loan doesn't exceed 30 years.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Agency Board finds that the above recitals are accurate.
2. The Agency Executive Director is hereby authorized and directed to sign subordination agreements on behalf of the Agency under the following conditions:

1. Loan is generated pursuant to the Program;

2. Amount being refinanced is equal to or less than the outstanding balance on the loan being refinanced;
3. The monthly payment under the new loan is less than it is under the existing loan;
4. Property taxes are current;
5. If Agency loan payments are not current, then the borrower will need to demonstrate that their monthly housing costs (including all debt service, insurance, taxes and utilities) must be less than 31% of their gross household income;
6. The Agency's lien position isn't lessened; and
7. The term of the new loan doesn't exceed 30 years.

3. This Resolution shall take immediate effect upon its adoption.

The foregoing Resolution _____ was passed and adopted by the City of Tracy Community Development Agency on the 19th day of April, 2011, by the following vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

Chair

ATTEST:

Agency Secretary

CDA AGENDA ITEM 6

REQUEST

PUBLIC HEARING TO APPROVE A RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF TRACY APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES AND THE FIRST AMENDMENT TO THE DDA BETWEEN AGENCY AND ARMADILLO REALTY, LLC

EXECUTIVE SUMMARY

Both the City Council and Community Development Agency are asked to approve (in separate meetings) a Settlement Agreement and Mutual Release Between the Community Development Agency of the City of Tracy, City of Tracy and Armadillo Realty, LLC ("Armadillo") ("Settlement Agreement"), regarding development impact fees, reimbursement to Armadillo for improvements, conveyance of .072 acre, reciprocal easement and parking maintenance agreement, and deed restriction on City property. Agency is also asked to approve the First Amendment to the DDA between the Agency and Armadillo Realty, LLC.

DISCUSSION

The Community Development Agency and Armadillo entered into a Disposition and Development Agreement on April 19, 2005 ("DDA"). Armadillo is the owner and operator of the Texas Roadhouse restaurant, located on the Property located at the corner of Naglee Road and Grant Line Road in the City. The Armadillo Property is approximately 1.23 acres, also referred to as Parcel A.

The City owns a parcel adjacent to and north of the Armadillo Property (formerly owned by the Agency, but transferred to the City on March 8, 2011. This City Property is approximately 1.01 acres, and is referred to as Parcel B.

The City and the Agency are involved in a dispute with Armadillo regarding the payment of certain development impact fees, which the City and Agency believe are due under the Disposition and Development Agreement dated April 19, 2005. The disputed amount is \$211,386.

Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that City or Agency would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of reimbursable improvements to Parcel B is \$416,942. Parcel B is currently for sale.

City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute resulting in the proposed Settlement Agreement. Pursuant to the proposed Settlement Agreement, Armadillo will pay the City \$125,000 in settlement of the unpaid Impact Fees. In addition, the proposed Settlement Agreement addresses the following:

(a) Armadillo constructed certain improvements just over the property line between Parcels A and B (trash enclosure and walkway). As part of this settlement, City will agree to complete a lot line adjustment and convey a small portion of Parcel B property (.072 acres) to Armadillo and Armadillo will pay the City \$20,000; and

(b) City has agreed to record a Declaration restricting the use of Parcel B to uses which are not steakhouses ("Declaration of Restrictions"); and

(c) The Parties wish to have a reciprocal easement and maintenance agreement for the operation and maintenance of the parking lots on both parcels ("Mutual Easement and Maintenance Agreement").

Staff is also recommending that the Agency approve a First Amendment to the DDA to reflect the terms of the Settlement Agreement.

FISCAL IMPACT

Under the terms of the settlement, City will receive a portion of the disputed development impact fees. The remaining uncollected fees will be paid by the buyer of Parcel B.

STRATEGIC PLAN

This item does not relate to the Council strategic plans.

RECOMMENDATION

That the Community Development Agency adopt a resolution authorizing the Chairperson to sign the Settlement Agreement and First Amendment to the DDA.

Prepared by: Andrew Malik, Development and Engineering Services Director
Daniel G. Sodergren, Agency Counsel

Reviewed and Approved by: Leon Churchill, Jr., Executive Director

Attachments: Resolution
Settlement Agreement
First Amendment to DDA

CDA RESOLUTION _____

APPROVING A SETTLEMENT AGREEMENT WITH ARMADILLO REALTY, LLC REGARDING DEVELOPMENT IMPACT FEES AND THE FIRST AMENDMENT TO THE DDA BETWEEN THE AGENCY AND ARMADILLO REALTY, LLC

WHEREAS, Armadillo Realty, LLC, (“Armadillo”) is the owner and operator of the Texas Roadhouse restaurant, located on the Property located at the corner of Naglee Road and Grant Line Road in the City. The Armadillo Property is approximately 1.23 acres, also referred to as Parcel A; and

WHEREAS, the City owns a parcel adjacent to and north of the Armadillo Property. This City Property is approximately 1.01 acres, and is referred to as Parcel B; and

WHEREAS, the City and the Agency are involved in a dispute with Armadillo regarding the payment of certain development impact fees, which the City and Agency believe are due under the Disposition and Development Agreement between the Agency and Armadillo dated April 19, 2005 (“DDA”). The disputed amount is \$211,386; and

WHEREAS, Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that the city or Agency would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of reimbursable improvements to Parcel B is \$416,942. Parcel B is currently for sale; and

WHEREAS, City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute resulting in a Settlement Agreement and Mutual Release (“Settlement Agreement”); and

WHEREAS, the Settlement Agreement also contemplates a Mutual Easement and Maintenance Agreement and a Declaration of Restrictions; and

WHEREAS, the Agency and Armadillo wish to enter into a First Amendment to the DDA to reflect the terms of the Settlement Agreement.

NOW, THEREFORE, the Community Development Agency of the City of Tracy authorizes the Chairperson to sign the Settlement Agreement and First Amendment to the DDA.

* * * * *

Resolution _____
Page 2

The foregoing Resolution _____ was passed and adopted by the Tracy Community Development Agency on the 19th day of April, 2011, by the following vote:

AYES: MEMBERS:

NOES: MEMBERS:

ABSENT: MEMBERS:

ABSTAIN: MEMBERS:

Chairperson

ATTEST:

Secretary

**Settlement Agreement and Mutual Release Between
Community Development Agency of the City of Tracy,
City of Tracy and Armadillo Realty, LLC**

This Settlement Agreement and Mutual Release between the Community Development Agency of the City of Tracy, City of Tracy and Armadillo Realty, LLC, is entered into on _____, 2011.

Recitals

- A. Agency. The Community Development Agency of the City of Tracy (Agency) is a redevelopment agency operating under the laws of the State of California.
- B. City. The City of Tracy (City) is a general law city operating under the laws of the State of California.
- C. Armadillo. Armadillo Realty, LLC, (Armadillo) is a Nevada limited liability company. Armadillo is also the owner and operator of the Texas Roadhouse restaurant, located on the Property described in Recital E.
- D. DDA and Impact Fees. Agency and Armadillo are parties to a Disposition and Development Agreement dated April 19, 2005 (DDA) under which the parties set forth the terms and conditions of development of the Property. Under the DDA, the Agency required payment of certain development impact fees (Impact Fees) as a condition of issuance of permits. Armadillo paid the City \$283,791 in Impact Fees at the time of issuance of permits for Parcel A. The City and Agency believe that Armadillo owes an additional \$211,386 in Impact Fees to City. Armadillo disagrees (the Dispute).
- E. Property. The Property is approximately 2.2 acres as shown in the DDA and in the Parcel Map recorded as document number 2005-169772, located at the corner of Naglee Road and Grant Line Road in the City of Tracy. The Property was divided into two parcels, as follows:
- Parcel A (originally 1.23 acres) was conveyed from Agency to Armadillo in 2005. It has been developed by Armadillo as a Texas Roadhouse Restaurant.
 - Parcel B (originally 1.01 acres) is currently owned by City, having been acquired from Agency, and is for sale. Armadillo constructed certain improvements on Parcel B (excavation, utilities, parking and building pad) with the understanding that the City would reimburse Armadillo for these improvements upon the sale or lease of Parcel B. The cost of the improvements to Parcel B is \$416,942 (Parcel B Improvement Costs).
- F. Litigation and tolling. City and Agency have considered filing a lawsuit to recover the unpaid Impact Fees. The Parties have attempted to resolve this dispute and have entered into extended tolling agreements in December 2009, March 2010, July 2010, October 2010, and March 2011 to toll the statute of limitations with respect to legal claims the City or Agency may have.



G. Setbacks. Regarding building setbacks, the City here acknowledges that in the I-205 Corridor Specific Plan area, where Parcel B is located, the building setback in a commercial shopping center may be reduced to zero along non-street property lines. (I-205 Corridor Specific Plan Amendment approved by the City Council by Resolution No. 2001-333.)

H. Settlement. The Parties have reached a settlement and wish to enter into this Agreement, and other related documents, to reflect that settlement. The parties wish to: (1) compromise and settle the dispute between them in order to avoid the cost and uncertainties of litigation; (2) memorialize the agreement of the parties regarding recordation of a Grant Deed and Reciprocal Easements for the mutual benefit of Parcel A and Parcel B; (3) agree to a limitation on the steakhouse use of Parcel B; and (4) address such other outstanding matters between the parties as are set forth in this agreement.

NOW, THEREFORE, in consideration of the promises set forth in this agreement, the parties agree that:

1. Lot line adjustment; Grant Deed. City agrees to process a lot line adjustment between Parcels A and B and to convey to Armadillo a .072-acre (3,148.50 square foot) portion of Parcel B which contains certain Parcel A improvements (including a bollard located adjacent to the dumpster on Parcel A, a grease trap, and a service area for the Texas Roadhouse restaurant). Armadillo shall pay the City half of the fair market value of this piece, which the parties estimate to be \$40,000. A diagram of the proposed lot line adjustment and property to be conveyed is attached as Exhibit A. After the lot line adjustment is approved and recorded, the City shall convey the .072 acre portion to Armadillo.

2. Reciprocal Easements. The parties agree to record a reciprocal access and parking easement and maintenance agreement in substantially the form set forth in Exhibit B, attached. The Mutual Easement and Maintenance Agreement permits mutual, non-exclusive ingress, egress, access and parking on the surface parking facilities of Parcels A and B, and provides for maintenance. The recording shall occur concurrently with the recording of the lot line adjustment, grand deed, and declaration of restrictions. City will use its best efforts to process the lot line adjustment and record these documents as soon after the effective date of this Agreement as possible.

3. Limitation on Steakhouse Use of Parcel B. City agrees to record a Declaration of Restrictions against Parcel B to provide that Parcel B not be used as a steak house. This restriction shall remain in effect for as long as Parcel A is used as a steakhouse by Texas Roadhouse or any successor steakhouse restaurant, or for 50 years, whichever occurs first. In this Agreement, "steakhouse" means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items as steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon). The recording shall occur concurrently with the recording of the lot line adjustment, grant deed and reciprocal easements.

This limitation shall be reflected in the Amended DDA, referred to in Section 4 below, and in a separate Declaration of Restrictions in substantially the form set forth in Exhibit C, attached.

4. Amending DDA. The parties agree to amend the DDA to reflect this settlement, including:
- redefinition of Parcel A and Parcel B to reflect the conveyance described in Section 1 above;
 - adding a reference to this Settlement agreement regarding the payment of Impact Fees, and
 - adding a new section to reflect the limitation on use of Parcel B for a steak house restaurant. (See Section 3 above.)

The DDA Amendment shall be substantially in the form set forth in Exhibit D attached.

5. Amounts Owed by Armadillo. After recordation of the Grant Deed, Reciprocal Easements, and DDA amendment, Armadillo shall owe the City \$145,000, which represents the following amounts:

- \$125,000, in settlement of the unpaid impact fees (see Recital D); and
- \$ 20,000, as half the value of the City property being conveyed to Armadillo (see ¶1).

This amount shall offset the amount City will reimburse Armadillo for Parcel B Improvement Costs. (See Paragraph 6.)

6. Payment by City. Upon the sale, lease or other disposition of Parcel B, City shall reimburse Armadillo \$416,942 for the Parcel B Improvement Costs. This amount shall be reduced by the \$145,000 owed to City by Armadillo, so that the reimbursement total will be \$271,942.

7. Release of claims; No assignment. For the above-mentioned valuable considerations and upon the occurrence of the conditions precedent set forth in this Agreement, the parties hereby release, forever discharge and agree to hold harmless each other party to this Agreement and their respective officers, agents, employees, attorneys, shareholders, insurers, predecessors and successors in interest, assigns and spouses, of and from any and all claims, damages, setoffs or causes of action asserted or which could be asserted in connection with the Dispute.

The parties warrant that they have made no assignment of any claim, cause of action, right of action or any other right of any other kind which is the subject of this Agreement, and that no other person or entity has an interest in any of the demands, obligations, actions, or causes of action referred to here.

This Agreement has been knowingly and voluntarily executed by the parties. The parties intend to relinquish all claims against each other in connection with the Dispute, whether or not now known, and expressly waive all rights and benefits conferred upon them by the provisions of Civil Code Section 1542, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

gph

By their initials, the parties understand and acknowledge the significance and consequences of this waiver of Section 1542:

8. Miscellaneous provisions.

8.1 Own costs. The parties acknowledge and agree that they shall each be responsible for the payment of their own cost, expenses and attorneys' fees incurred in relation to the Dispute and the preparation of this Agreement.

8.2 Entire agreement. This Agreement, and the related documents referred to in Sections 1 through 4, contain the entire agreement between the parties and may not be amended, altered, modified or otherwise changed except by a writing executed by them.

8.3 Laws of California. This Agreement shall be governed by the laws of the State of California.

8.4 Severability. If a provision of this Agreement is for any reason held to be invalid or unconstitutional, the decision shall not affect the remaining portions of the Agreement.

8.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF TRACY

By: _____
Chairperson

CITY OF TRACY

By: _____
Mayor

Approved as to form:

ARMADILLO REALTY, LLC, a Nevada
limited liability company

By:  _____

Name: STEPHEN C. MADICKEN

Its: PRESIDENT



Daniel G. Sodergren, City and Agency
Attorney

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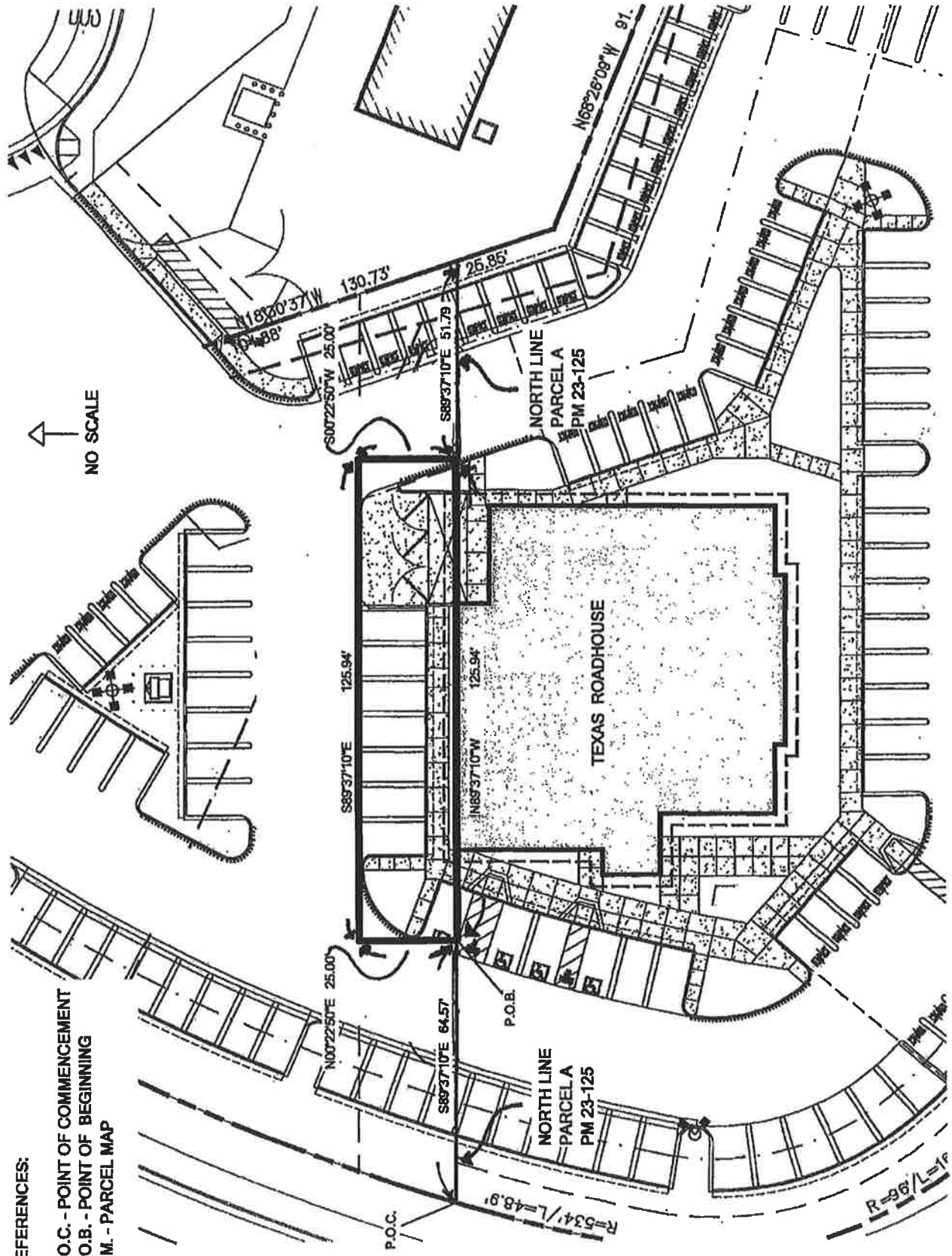
Exhibits:

- A Diagram of the proposed lot line adjustment and property to be conveyed (Agr. §1)**
- B Form of Mutual Easement and Maintenance Agreement (Agr. §2)**
- C Form of Declaration of Restrictions applicable to Parcel B (Agr. §3)**
- D Form of DDA Amendment (Agr. §4)**

GAH

Exhibit A
Diagram of the proposed lot line adjustment and property to be conveyed





Signature

EXHIBIT "A"

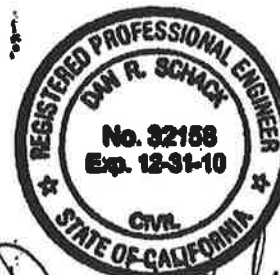
**LEGAL DESCRIPTION
TEXAS ROADHOUSE
LOT LINE ADJUSTMENT**

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89 FEET 37 MINUTES 10 SECONDS WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.

CONTAINING 3148.5 SQUARE FEET, MORE OR LESS.



06-22-10

**Exhibit B
Form of Easement and Maintenance Agreement**



Recorded by
and When Recorded Return to:
City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: parcels at Naglee Road and Grant Line Road, Tracy, CA
APN Nos. 212-290-41 and 212-290-43

MUTUAL EASEMENT AND MAINTENANCE AGREEMENT

This Mutual Easement and Maintenance Agreement is entered into on _____, 2011 between the City of Tracy, a municipal corporation ("City") and Armadillo Realty, LLC, a Nevada limited liability company ("Armadillo").

Recitals:

- A. City is the owner of .938 acres of property (after 2011 lot line adjustment) located near the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel B on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.
- B. Armadillo is the owner of 1.302 acres of property (after 2011 lot line adjustment) located at the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel A on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.
- C. Under the Settlement Agreement and Mutual Release between the parties, dated _____, 2011, the parties agreed, among other things, to: (a) compromise and settle the dispute between them; (b) transfer from Parcel B (Agency) to Parcel A (Armadillo) a .072 portion of land; (c) limit the steakhouse use on Parcel A; and (d) record a mutual easement and maintenance agreement regarding joint use of the parking area surrounding both properties.
- D. This Mutual Easement and Maintenance Agreement satisfies a portion of that Settlement Agreement and Mutual Release.

NOW, THEREFORE, the parties agree as follows:

1. Grant of easement. Armadillo, as grantor, hereby grants to City, a non-exclusive perpetual easement for ingress, egress, access and parking for vehicular and pedestrian traffic upon and across the surface parking facilities and related entrances, exits, driveways, walks and service drives located within Parcel A (as shown on Exhibit A, the "Parcel A Parking Easement").

ghm

2. Grant of easement. City, as grantor, hereby grants to Armadillo, a non-exclusive perpetual easement for ingress, egress, access and parking for vehicular and pedestrian traffic upon and across the surface parking facilities and related entrances, exits, driveways, walks and service drives located within Parcel B (as shown on Exhibit A, the "Parcel B Parking Easement").

3. Easements appurtenant. Each easement granted here shall be appurtenant to and for the benefit of the parcel owned or occupied by the grantee of such easement and its successors, assignees, mortgagees, lessees, sublessees, employees, suppliers, contractors, vendors, agents, customers, licensees and invitees.

4. No other easements. No owner of Parcel A or Parcel B shall grant any parking easement or easements of the type set forth in this document for the benefit of any other person or property.

5. Maintenance obligation and cost sharing.

a. Obligation. Armadillo agrees to and shall maintain the easement areas on both Parcel A and Parcel B (the "Easement Area") in good condition and repair. Maintenance shall include the following:

- (1) maintaining the surface in a level, smooth and evenly covered and properly striped condition with the type of surface material and paint originally installed, or such substitute as shall in all respects be equal in quality, use and durability;
- (2) repairing or replacing the driveways or parking areas when necessary;
- (3) placing, keeping in repair, and replacing any necessary directional signs, markers and lines; and;
- (4) keeping in repair and replacing when necessary any curbing or drainage facilities required for the driveways or paved areas.

b. Cost sharing. The cost of maintenance and repair of the Easement Area shall be shared based on the proportion of parking spaces on each:

Parcel A:	67%	(Armadillo; 102/152 spaces)
Parcel B:	33%	(City; 50/152 spaces)

At least 30 days before the beginning of each calendar year, Armadillo shall submit to the owner of Parcel B an estimated budget of Operating Costs for the following year. The Parcel B owner shall pay its proportionate share of the Operating Costs in 12 equal installments, which shall be due and payable on the first day of every month of the year. Within 60 days of the end of every calendar year, Armadillo shall submit a statement containing the actual Operating Costs for the prior year to the owner of Parcel B. If the actual Operating Costs are higher than the total amount paid by Armadillo, the owner of Parcel B shall pay such difference within 30 days of receipt of such statement. If the actual Operating Costs are less than the total amount paid by Armadillo, the owner of Parcel B

shall include the difference with the delivery of the statement. Each budget and statement shall be accompanied by such documents as may be reasonably necessary to enable the owner of Parcel B to verify the accuracy of the statement.

Any payment not paid when due shall bear interest from the date due until paid at the rate of 10% per year, or the maximum lawful rate under California law, whichever is less.

- c. Operating Costs. The Operating Costs shall include:
- (1) the costs of the services described in Section 5.a above;
 - (2) any agreed-upon costs of supervising or providing security for the parking area;
 - (3) insurance costs for the Easement Area;
 - (4) utility services for the Easement Area; and
 - (5) the cost of complying with all laws applicable to the Easement Area.

Armadillo has the right to contract out the operation, maintenance and repair of the Easement Area to a third party, and the reasonable costs of such a contract are deemed an Operating Cost.

Operating Costs shall not include, and Armadillo shall not be obligated to pay for, replacement of the Easement Area.

6. Miscellaneous provisions.

a. Indemnification, defense, hold harmless. The owners of Parcel A and Parcel B shall indemnify, defend and hold harmless the other owner, and their respective successors, from any and all claims, expenses (including attorneys' fees), and liabilities arising from the exercise of the easement rights granted here.

b. Attorneys' fees. If a dispute arises between the parties regarding this Mutual Easement and Maintenance Agreement, the prevailing party is entitled to reasonable attorneys' fees and costs and expenses of any action or proceeding, whether or not the dispute is litigated to final judgment.

c. Modifications. This document may only be modified in writing, signed by both parties, and recorded in the County Recorder's Office of San Joaquin County.

CITY OF TRACY, a municipal corporation

ARMADILLO REALTY, LLC, a Nevada limited liability company

By: _____
City Manager, as authorized by City Council Resolution No. _____

By: [Signature] *

Name: STEPHEN C. MADWEN

Dated: _____

Its: President

Attest: _____
City Clerk

Dated: 3-12-11

Approved as to form:

*Notary acknowledgement required.

Daniel G. Sodergren,
City Attorney

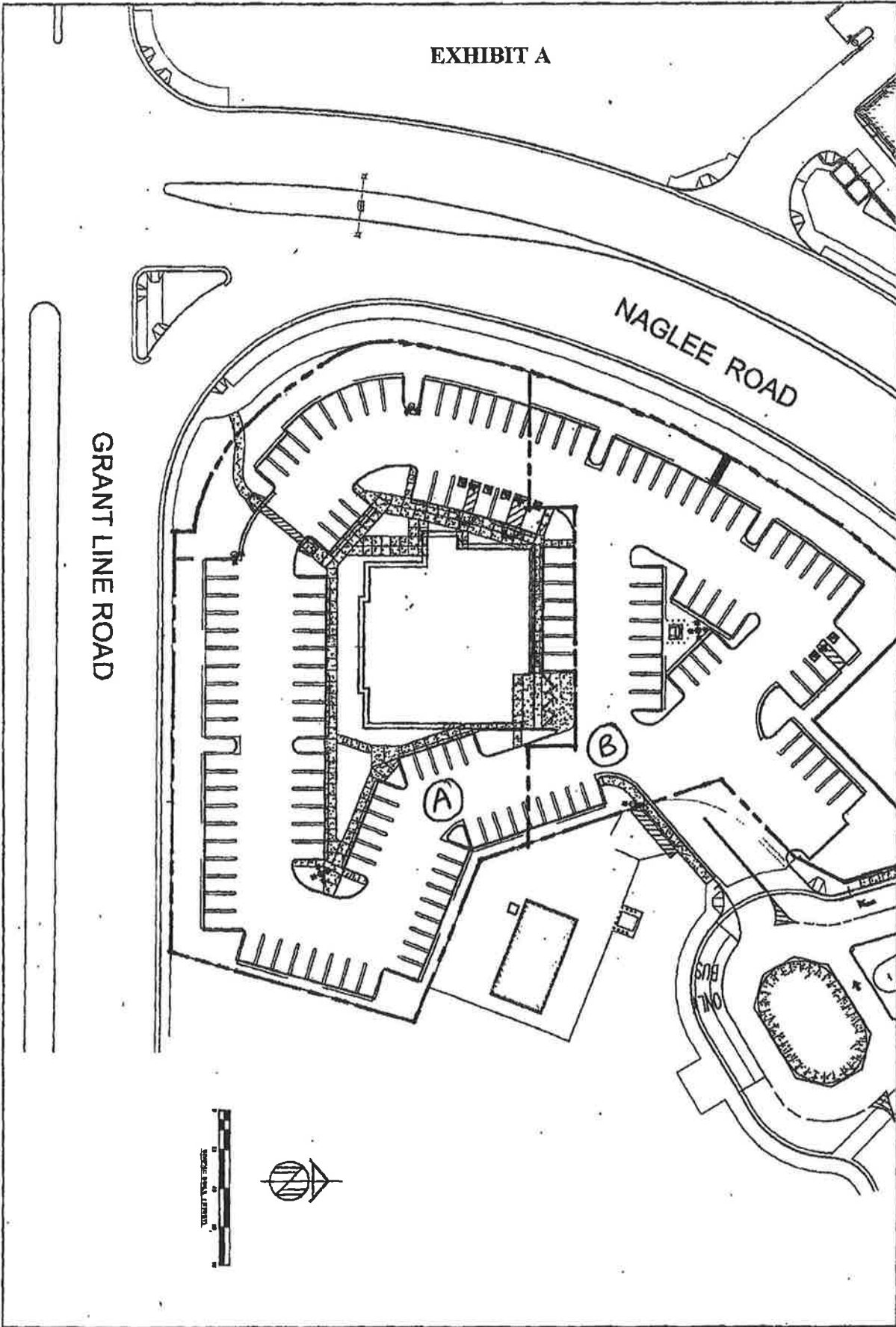


Exhibits:

- A The Easement Area, including the Parcel A Parking Easement and the Parcel B Parking Easement

[Handwritten initials]

EXHIBIT A



ITEM #5
PARKING CONFIG
AFTER U/A

Signature

**Exhibit C
Form of Declaration of Restrictions applicable to Parcel B (Agr. §3)**



Recorded by
and When Recorded Return to:
City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: parcel near Naglee Road and Grant Line Road, Tracy, CA
APN No. 212-290-41

DECLARATION OF RESTRICTIONS

This Declaration is made on _____, 2011 by the City of Tracy, a municipal corporation, referred to as "Declarant" or "City".

A. The Declarant is the owner of real property (after the concurrent recording of a lot line adjustment) located near the corner of Naglee Road and Grant Line Road in the City of Tracy, shown as Parcel B on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011 (the "Property"); and

B. Armadillo Realty, LLC is the owner of Parcel A on the Parcel Map recorded as Document No. 2005-169772, as amended by the Grant Deed from City to Armadillo recorded _____, 2011.

C. Under the Settlement Agreement and Mutual Release between the City and Armadillo Realty, LLC, City agreed to limit use of its property as a steakhouse restaurant, among other things; and

D. The City/Declarant desires and intends to impose on the Property the beneficial restrictions contained in this Declaration in conformance with the Settlement Agreement for the overall benefit of the Property and its present and future owners.

NOW, THEREFORE, Declarant declares that the Property described in Recital A shall be held, conveyed, leased, rented, used, occupied and improved subject to the following restrictions:

1. The Property shall not be used as a steakhouse as long as Parcel A is used as a steakhouse by Armadillo (doing business as Texas Roadhouse) or by any successor steakhouse restaurant, or for 50 years, whichever is less.

Steakhouse means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items a steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon).

ash

2. This restriction is also reflected in the Amended Disposition and Development Agreement recorded concurrently with this Declaration.

3. These restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part of it.

This Declaration was executed on the date first written above.

Declarant:

CITY OF TRACY, a municipal corporation

By: _____
City Manager, as authorized by City Council Resolution No. _____

Dated: _____

Attest: _____
City Clerk

Approved as to form:

Daniel G. Sodergren
City Attorney

**Exhibit D
Form of DDA Amendment (Agr. §4)**

GR

**First Amendment to the Disposition and Development Agreement
By and Between the Community Development Agency of the City of Tracy
and Armadillo Realty, LLC**

This First Amendment to the Disposition and Development Agreement By and Between the Community Development Agency of the City of Tracy and Armadillo Realty, LLC is entered into on _____, 2011.

Recitals. This First Amendment is based on the following facts:

A. On April 19, 2005, the Community Development Agency of the City of Tracy, California (Agency) and Armadillo Realty, LLC, a Nevada Limited Liability Company (Developer) entered into a Disposition and Development Agreement (DDA).

B. The DDA concerns the 2.2-acre Property located at the corner of Naglee Road and Grant Line Road in the City of Tracy, including:

- modified Parcel A (1.23 acres to 1.302 acres), owned by Armadillo/Developer; and
- modified Parcel B (1.01 acres to .938 acres), now owned by the City.

The modified parcel descriptions are those as modified by the conveyance of a portion of Parcel B to Parcel A, and recorded by Grant Deed from City to Developer. The modifications are shown in the legal description and diagram attached as Exhibit A.

C. To resolve certain issues between the Parties regarding the payment of fees to the City, and other matters, the Parties have entered into a Settlement Agreement, agreed to corresponding modifications to the DDA, and conveyance of property from the Agency to Developer.

D. The parties wish to amend the DDA by this First Amendment.

NOW, THEREFORE, the Parties agree that:

1. Recital C of the DDA is amended to read:

“C. The Property is made up of Parcel A, which is more particularly described in Exhibit A and Parcel B, which is more particularly described in Exhibit B. The property descriptions are modified by the conveyance of .072-acres from City (Parcel B) to Developer (Parcel A) as set forth in the descriptions and diagram set forth in the First Amendment Exhibit A, attached.

All references in this DDA to Parcel 1 shall mean the modified Parcel A, and all references to Parcel 2 shall mean the modified Parcel B.”

2. Section 1.05, second paragraph, is amended to read:



“1.05 Construction Plans and City Approvals.

....

Developer shall diligently pursue the City’s approval of the PDP, FDP and Conditional Use Permit. Developer shall also diligently pursue the City’s issuance of the building permit allowing the construction of the Project in conformance with the Construction Plans. In connection with the issuance of the building permit for the Project, Developer shall pay mitigation fees required by the “Finance Plan” to be provided to Developer by the City, *except as modified by the separate Settlement Agreement and Mutual Release entered into in 2011*. The Agency shall render all reasonable assistance to Developer in expediting the PDP, FDP, Conditional Use Permit and building permit process. Developer acknowledges that Agency assistance or approval does not constitute City approval. Nothing in this Agreement shall obligate the City to approve the PDP, FDP, Conditional Use Permit or building permit.”

3. A new Section 3.04, Limitation on Use, is added to Article 3, Disposition of Parcel 2, to read:

ARTICLE 3. DISPOSITION OF PARCEL 2

“ 3.04 Limitation on Use.

As of the date of the First Amendment to this DDA, the City has acquired Parcel B from the Agency. Pursuant to the Settlement Agreement and Mutual Release between the Agency, City and Armadillo, the City has agreed to the following:

“City agrees to record a Declaration of Restrictions against Parcel B to provide that Parcel B not be used as a steak house. This restriction shall remain in effect for as long as Parcel A is used as a steakhouse by Texas Roadhouse or any successor steakhouse restaurant, or for 50 years, whichever occurs first. In this Agreement, “steakhouse” means a full-service, sit-down restaurant offering steak-type items as 20% or more of its menu entrees (including such items as steak, T-bone, sirloin, rib eye, prime rib, New York strip, filet mignon).”

4. Except as amended here, the original DDA remains in effect.

The parties have executed this First Amendment on the date first written above.


COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF TRACY,
a public body, corporate and politic

By: _____
Chairperson

Approved as to form:

Daniel G. Sodergren, Agency Attorney

DEVELOPER:
ARMADILLO REALTY, LLC
a Nevada Limited Liability Company

By:  _____
Its: PRESIDENT _____

Exhibits:

- A Modified Parcel A
- B Modified Parcel B
- C Description and Diagram of Modifications to Parcels A and B

CM

Exhibit A: Modified Parcel A

CPH

EXHIBIT "A"

**LEGAL DESCRIPTION
RESULTANT PARCEL A**

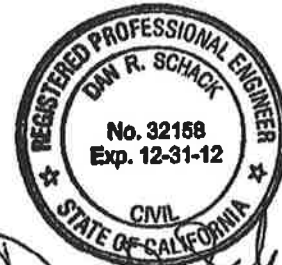
THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL A, AS SHOWN UPON SAID PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 125, SAN JOAQUIN COUNTY RECORDS:

TOGETHER WITH THE FOLLOWING DESCRIBED STRIP OF LAND:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89 FEET 37 MINUTES 10 SECONDS WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.



Dan R. Schack
03/04/11

gmm

Exhibit B: Modified Parcel B

CSM

EXHIBIT "A"

**LEGAL DESCRIPTION
RESULTANT PARCEL B**

THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF TRACY, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF LOTS 39 AND 40 OF "NAGLEE BURK TRACT" ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN VOLUME 5 OF MAPS AND PLATS, PAGE 18, SAN JOAQUIN COUNTY RECORDS AND ALSO AS SHOWN UPON THAT CERTAIN PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS, PAGE 125, SAN JOAQUIN COUNTY RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL OF PARCEL B, AS SHOWN UPON SAID PARCEL MAP, FILED FOR RECORD JULY 13, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 125, SAN JOAQUIN COUNTY RECORDS:

EXCEPT THEREFROM THE FOLLOWING DESCRIBED STRIP OF LAND:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON ABOVE SAID PARCEL MAP; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, ALONG THE NORTH LINE OF SAID PARCEL A, 64.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 22 MINUTES 50 SECONDS EAST, 25.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 37 MINUTES 10 SECONDS EAST, PARALLEL TO SAID NORTH LINE OF PARCEL A, 125.94 FEET TO A POINT; THENCE SOUTH 00 DEGREES 22 MINUTES 50 SECONDS WEST, 25.00 FEET TO A POINT ON SAID NORTH LINE OF PARCEL A; THENCE NORTH 89 FEET 37 MINUTES 10 SECONDS WEST, ALONG SAID NORTH LINE OF PARCEL A, 125.94 FEET TO THE POINT OF BEGINNING.

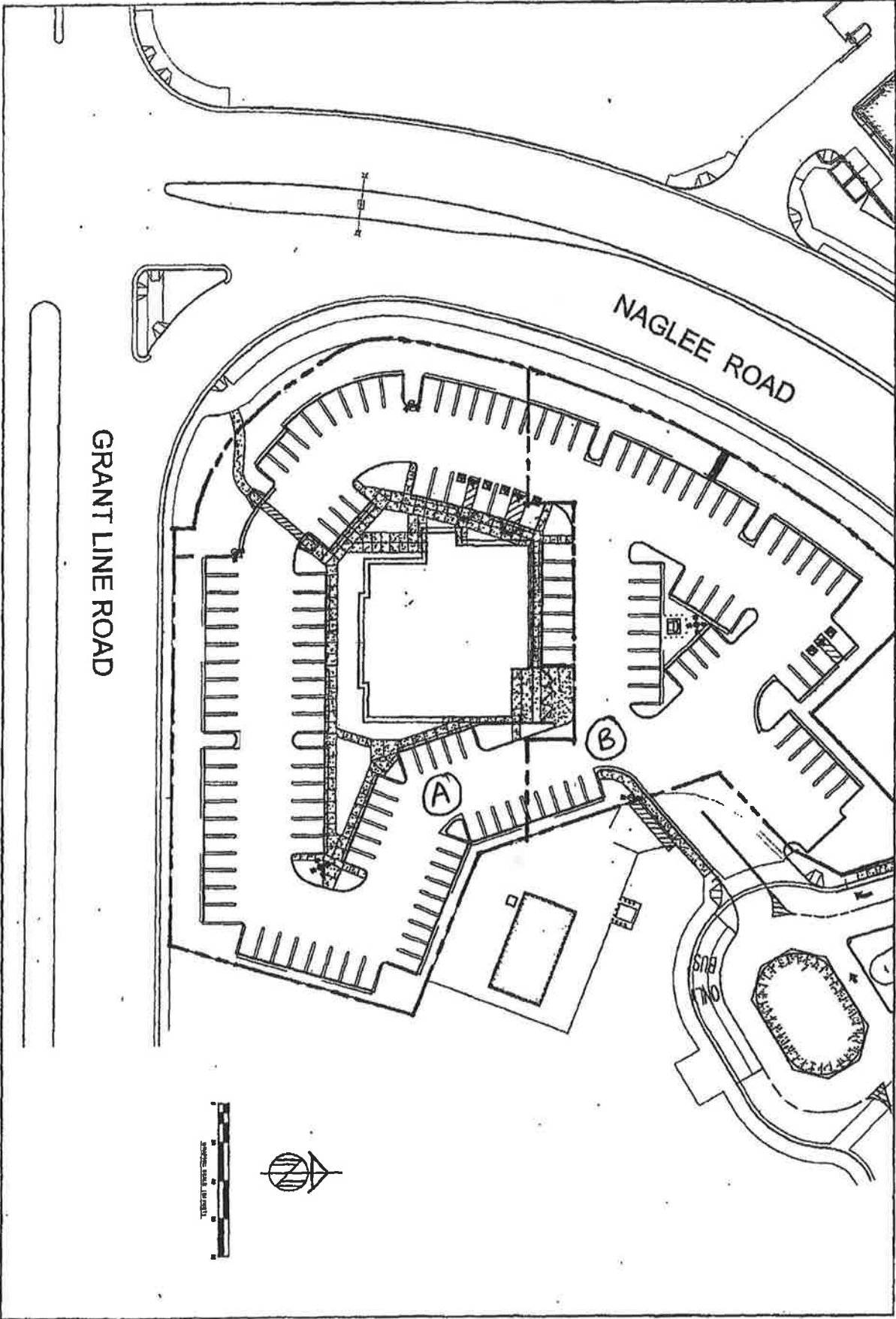


Dan R. Schack
03/04/11

gfr

Exhibit C: Description and Diagram of Modifications to Parcels A and B





ITEM #5
PARKING CONRG
AFTER U/A