

When Recorded, Please Return to:
Lodi City Clerk
P.O. Box 3006
Lodi, CA 95241-1910

RESOLUTION NO. 2004-259

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING ENCROACHMENT AGREEMENT AND REIMBURSEMENT COSTS AND ACCEPTING IMPROVEMENTS FOR WOOLWORTH PLACE ALLEY, 115 SOUTH SCHOOL STREET, AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE ENCROACHMENT AGREEMENT ON BEHALF OF THE CITY OF LODI

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves Encroachment Agreement between the City of Lodi and Downtown Lodi Partners LLC, attached hereto marked Exhibit A, related to the improvements known as Woolworth Place Alley: and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes and directs the City Manager to execute the Encroachment Agreement on behalf of the City of Lodi; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby approves reimbursable costs by granting the remaining \$50,000 left in the Business Attraction Fund and closing the program; and

FURTHER RESOLVED that the Lodi City Council hereby accepts improvements for Woolworth Place Alley, located at 115 South School Street.

Dated: November 17, 2004

I hereby certify that Resolution No. 2004-259 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 17, 2004, by the following vote:

AYES: COUNCIL MEMBERS - Beckman, Hitchcock, Howard, Land, and Mayor Hansen
NOES: COUNCIL MEMBERS - None
ABSENT: COUNCIL MEMBERS - None
ABSTAIN: COUNCIL MEMBERS - None


SUSAN J. BLACKSTON

EXHIBIT A

WHEN RECORDED, RETURN TO:

City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

ENCROACHMENT AGREEMENT
115 S. SCHOOL STREET
(APN 043-043-08)

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City", and DOWNTOWNLODI PARTNERS, LLC, hereinafter referred to as "Owner".

WITNESSETH:

WHEREAS, Owner is the owner of that certain real property known as 115 S. School Street (APN 043-043-08) described in Exhibit A attached hereto and hereby made a part hereof; and

WHEREAS, Owner has requested the right to encroach on and use the public rights-of-way adjacent to the east property line (sidewalk) and north property line (alley) of said real property to allow construction of private improvements, including a trellis structure and aboveground planters with irrigation, as well as outdoor restaurant seating, display, sales or similar activities by Owner or Owner's tenants; and

WHEREAS, Owner has requested the right to encroach on City-owned property at 117 W. Walnut Street (APN 043-043-13) to install a waste interceptor and pump to serve Owner's property; and

WHEREAS, Owner has installed public improvements in the public right-of-way as shown on the approved improvement plans, Drawing Nos. 003D022-01 through 003D022-04, which are on file in the Public Works Department; and

WHEREAS, Owner has installed private improvements in the public right-of-way and abovementioned City-owned property in conformance with the approved plans for Building Permit Nos. 807613 and 809748 on file in the Community Development Department;

NOW THEREFORE, in order to allow activities and private improvements of Owner or Owner's tenants to encroach on said public right-of-way and City-owned property, the parties agree as follows:

1. Owner's private improvements include architectural projections from Owner's building, a trellis structure and aboveground planters with associated irrigation system in the alley and a waste interceptor and pump to serve Owner's property located on City-owned property at 117 W. Walnut Street, all constructed in conformance with the above referenced approved plans.
2. Modification of Owner's existing private improvements or installation of additional private improvements by Owner shall be to the approval of the Public Works Director and Community Development Director, Owner is responsible for obtaining all required building permits.
3. A corridor having minimum horizontal and vertical clearances of six (6) feet and thirteen (13) feet, respectively, and providing a clear line of sight through the alley shall be maintained along the entire length of the alley alignment. Alley openings onto the adjacent sidewalk and parking lot shall be kept open at all times unless express written permission for alley closure is obtained from the Public Works Director.
4. Access to the loading area of the building adjacent to the north side of the alley shall be kept free of obstructions at all times.
5. Use of the alley by Owner's tenants for outdoor restaurant seating, displays, sales or similar activities shall be limited to a four (4) foot wide strip and eight (8) foot wide strip immediately adjacent to the east and north walls of the building, respectively, as shown on Exhibit B. Entrances to the building shall be kept free of obstruction of any nature at all times.
6. For tenant use, Owner shall submit to the Public Works Department a dimensioned drawing or plan showing the area to be used, the proposed improvements and proximity to existing improvements. Owner shall also submit color photographs or catalog information for furniture, planters, enclosures or other fixtures to be placed in the public right-of-way. Any barriers, such as planters, railings, etc., proposed to delineate seating or display areas for individual tenants shall be movable to allow access to the alley by emergency or City maintenance personnel and equipment. If alcoholic beverages are to be served, a copy of the Alcoholic Beverage Control license is required. A separate submittal shall be made for each tenant. All encroachments and proposed improvements shall be in conformance with City of Lodi encroachment criteria and shall be approved by the Public Works Department and Community Development Department prior to installation or use by Owner's tenants.
7. Owner shall be responsible for limiting tenant use to the approved plan for each tenant and shall be responsible for the removal of any and all unapproved tenant improvements, including, but not limited to, furniture, planters, enclosures or other fixtures.
8. Owner is responsible for cleaning and trash pickup in the public right-of-way covered by this agreement. Cleaning shall be done on a regular basis as needed to keep the area clean or as requested by the City. Washdown of the alley and sidewalk into the public storm drain system is prohibited.
9. Owner shall maintain aboveground planters and operate the irrigation system in a manner that prevents irrigation water from entering the public right-of-way and storm drain system or damaging adjacent structures. Broken or cracked planter structures shall be removed or replaced.
10. Owner shall be responsible for damage to any private or public improvements or private or public utility lines caused by the use of the public right-of-way or City-owned property by Owner, Owner's tenants or their invitees.
11. Owner shall take out and maintain, during the life of this agreement, insurance, in conformance with City requirements, as shall insure City, its elective and appointive boards,

commissions, officer, agents and employees, and Owner from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from use of the public right-of-way or City-owned property by Owner or Owner's tenants in such amounts and on such terms as may be required by the City of Lodi Risk Manager.

12. Owner agrees to save, defend, indemnify and hold harmless the City of Lodi, its' officers, agents and employees, from liability of any nature whatsoever arising from use or occupation of the public right-of-way and City-owned property by Owner or Owner's tenants.
13. Owner further agrees to save, defend, indemnify and hold harmless the City of Lodi, its' officers, agents and employees from damage of any sort occasioned by the City's necessary entry upon or excavation of the public facilities located in the public right-of-way or City-owned property for the purpose of emergency work on those facilities.
14. Owner further agrees, that for non-emergency work in the public right-of-way or on City-owned property, Owner at its sole expense, will give prompt access to the City of Lodi for the purpose of non-emergency work on the utilities thereon. Further, if required, Owner will move at Owner's cost and expense the necessary structures required to permit the City of Lodi to perform their non-emergency work.
15. In the event Owner abandons use of the public right-of-way or City-owned property, Owner shall be responsible for removal of all private improvements and restoration of said right-of-way and City-owned property to the approval of the Public Works Director
16. This agreement does not cover activities, such as amplified music, requiring special use or supplemental permits as set forth in the Lodi Municipal Code. Owner is responsible for obtaining the required permits for those uses.
17. Owner agrees to disclose the terms of this Agreement to all of Owner's tenants by either inserting the information in the lease agreements or by separate written notification.
18. The City reserves the right to allow the exclusive or non-exclusive use of the north side of the alley by the adjacent property owner to the north, if requested, under the terms of an encroachment permit to be issued by Public Works Department.
19. This agreement shall run with the land and be binding on the Owner, its heirs, successors or assigns.
20. A copy of the Agreement shall be recorded in the office of the San Joaquin County Recorder, P.O. Box 1968, Stockton, California 95201-1968.

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

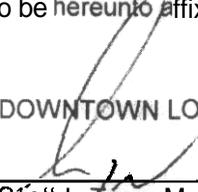
Richard C. Prima, Jr.
Public Works Director
221 West Pine Street
P. O. Box 3006
Lodi, CA 95241-1910

Notices required to be given to Owner shall be addressed as follows:

DowntownLodi Partners LLC
7663 East Via De Ventura
Scottsdale, AZ 85258
Attn: Scott L. Tonn, Member

In Witness Whereof, Owner and City have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

11-05-04
Date

DOWNTOWN LODI PARTNERS, LLC

Scott L. Tonn, Member

(CORPORATE SEAL)

CITY OF LODI, A MUNICIPAL CORPORATION

By: _____
Janet S. Keeter, interim City Manager Date

ATTEST:

Susan J. Blackston, City Clerk Date

APPROVED AS TO FORM:

D. Stephen Schwabauer, City Attorney

EXHIBIT A

The land referred to is situated in the State of California, County of San Joaquin, City of Lodi, and is described as follows:

A portion of Lots **5** and **6** in Block **8** as shown upon map entitled 'Mokelumne' (now City of Lodi) filed for record August **25, 1869**, in the office of the County Recorder of San Joaquin County. described as follows:

PARCEL ONE:

Beginning at the Northwest corner of said Lot **6** thence South **3° 44-½'** West along the West line of said Lot **6** a distance of **60.31** feet to a point; thence South **86° 18-½'** East, and parallel with the South line of the North one-half of said Lots **5** and **6** a distance of **159.97** feet to the East line of said Lot **5**; thence North **3° 45'** East along the East line of said Lot **5** a distance of **60.24** feet to the Northeast corner of said Lot **5**; thence North **86° 17'** West along the North line of said Lots **5** and **6** a distance of **159.99** feet to the point of beginning.

PARCEL TWO:

Commencing at a point on the West line of said Lot **6** a distance of **60.31** feet South **3° 44-½'** West of the Northwest corner of said Lot **6**; thence South **3° 44-½'** West along said West line of said Lot **6** a distance of **25** feet to the South line of the North one-half of said Lot **6**; thence South **86° 18-½'** East along the South line of the North one half of said Lots **5** and **6**, a distance of **159.97** feet to the East line of said Lot **5**; thence North **3° 45'** East along the East line of said Lot **5** a distance of **25** feet; thence North **86° 18-½'** West, a distance of **159.97** feet, more or less, to the point of beginning.