

**NURA BOARD MEMORANDUM  
14-08**

**DATE:** December 10, 2014

**TO:** NURA Board of Directors

**FROM:** Debbie Tuttle, NURA Executive Director

**COPY:** Honorable Mayor Joyce Downing & City Council  
John Pick, City Manager

**SUBJECT:** N-14/26 - Texas Roadhouse Business Incentive Agreement

**PROJECT OVERVIEW**

Texas Roadhouse is finalizing its due diligence and negotiations with the owners of the Marketplace (LNR) to relocate its Thornton restaurant to the Northglenn Marketplace at 104<sup>th</sup> Avenue and I-25. Texas Roadhouse wants to demolish the former Bennigan's restaurant and construct a new \$3.2 million facility. The 7,818 square-foot restaurant would be built on the former Bennigan's restaurant pad site (**Attachment A** - Site Location). Construction and opening of the new facility is estimated in Fall/Winter 2015.

The following is a summary of the proposed project:

**Facility**

- 7,818 Square Foot Restaurant
- 140 Employees
- Land Lease - 15 Years with 3 Additional Five-Year Extension Options
- 400,000+ Customers Annually

**Project Costs**

- Est. \$1.74 Million Construction Costs
- Est. \$1.4 Million in Furniture, Fixtures & Equipment (FF&E) & Misc. Operating Start-Up Costs

**COMPANY BACKGROUND**

Texas Roadhouse has been in business for 21 years and has 450+ stores nationally. The restaurant wants to move from its current facility on Grant Street due to a lack of parking and the need to expand to serve its growing customer base. The proposed facility will also serve as the company's staff training center which will bring in more people to the Marketplace and the city

## **INCENTIVE REQUEST**

Texas Roadhouse is requesting incentives to help off-set construction and relocation expenses to move to the Marketplace. The construction of the building, start-up costs, and FF&E are estimated at approximately \$3.2 million. Additionally, it is estimated that relocation costs will exceed \$1 million.

A \$500,000 business assistance incentive is being requested for consideration by the NURA board. As outlined in **Exhibit A** of the Agreement, the incentive is structured to pay \$150,000 the first year after opening (2015), and \$175,000 on the second and third years on the anniversary date of the first payment.

Additionally, on December 22, 2014, a Business Incentive Zone (BIZ) Agreement will be presented to City Council for their consideration which would provide for allowable permit and building-related fee waivers, and 3% abatement of use taxes on construction materials and FF&E for up to the first year not to exceed \$65,030.

If approved, between the City and NURA business assistance incentives would be provided up to \$565,030 to Texas Roadhouse to construct a new 7,800 square restaurant at the Marketplace.

## **STAFF RECOMMENDATION**

Texas Roadhouse is making a long term commitment to the Marketplace with a 15-year land lease obligation, with three additional five-year term options on the property (30 year potential), and the capital investment of \$3.2 million.

The former Bennigan's restaurant has been closed since 2007, and therefore is not generating any sales taxes. The Texas Roadhouse restaurant estimates more than 400,000 guests annually visiting the Marketplace, generating sales tax, property and use tax revenues, and the creation of 140 new jobs. Additionally, it would create new synergy for the Marketplace, and new traffic in the Center which would be valuable to existing and new tenants

It is staff's recommendation to approve Resolution N-14/26 to enter into a Business Assistance Agreement (**Exhibit A**) in an amount not to exceed \$500,000.

## **BUDGET IMPACT**

This project is located in the Urban Renewal Area #1, and if approved the incentive would be allocated under the Business Incentive budget category.

## **STAFF REFERENCE:**

If you have any comments or questions please contact Debbie Tuttle at 303-450-8743 or dtuttle@northglenn.org.

NORTHGLENN URBAN RENEWAL AUTHORITY

RESOLUTION NO.

N/14-26  
Series of 2014

**A RESOLUTION APPROVING AN INCENTIVE AGREEMENT WITH TEXAS ROADHOUSE HOLDINGS LLC FOR THE PROPERTY LOCATED AT 231 W. 104<sup>th</sup>, NORTHGLENN, COLORADO**

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE NORTHGLENN URBAN RENEWAL AUTHORITY, THAT:**

Section 1. The incentive agreement attached hereto as **Exhibit A** is hereby approved and the Chair is authorized to execute the same on behalf of the Authority.

DATED this 10th day of December, 2014.

\_\_\_\_\_  
Rosie Garner  
Chair

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Debbie Tuttle  
Executive Director

\_\_\_\_\_  
Jeff Parker  
Board Attorney

**NORTHGLENN URBAN RENEWAL AUTHORITY  
TEXAS ROADHOUSE  
IMPROVEMENT REIMBURSEMENT AGREEMENT**

THIS NORTHGLENN URBAN RENEWAL AUTHORITY TEXAS ROADHOUSE IMPROVEMENT REIMBURSEMENT AGREEMENT (this “Agreement”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2014 (the “Effective Date”) by and between the NORTHGLENN URBAN RENEWAL AUTHORITY, a Colorado Urban Renewal Authority (“NURA”), and TEXAS ROADHOUSE HOLDINGS LLC, a Kentucky limited liability company (“Tenant”) (individually a “Party” or collectively the “Parties”).

**W I T N E S S E T H**

**WHEREAS**, NURA is authorized under the provisions of Colorado’s Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, to enter into agreements and provide financial incentives for the redevelopment of property to eliminate blight;

**WHEREAS**, such redevelopment may be made and encouraged by granting financial assistance to persons who reside within NURA boundaries, to businesses within the NURA boundaries, and to owners of property within NURA boundaries;

**WHEREAS**, Tenant currently is leasing property located at 10310 Grant Street, Thornton, Colorado 80229;

**WHEREAS**, Tenant has entered into a land lease for certain real property having an address of 231 W. 104th Avenue, Northglenn, Colorado (the “Premises”) and within that certain commercial shopping center commonly known as Northglenn Marketplace (the “Marketplace”);

**WHEREAS**, the Marketplace is located within the NURA boundaries and it provides an important economic base for the City of Northglenn (the “City”);

**WHEREAS**, NURA desires to maintain the viability of the Marketplace as a commercial hub for the City by providing an incentive to Tenant to relocate its existing restaurant to the Premises;

**WHEREAS**, as part of such relocation, Tenant has requested funding to assist with constructing a new restaurant, and installing furniture, fixtures and equipment (“FF&E”) at the Premises;

**WHEREAS**, Tenant is an important tenant at the Marketplace, and will increase traffic at the Marketplace significantly, positively impacting the marketability of other spaces at Marketplace;

**WHEREAS**, NURA desires to contribute funding for the construction costs and FF&E to

improve and promote the viability of all businesses located within the Marketplace, and increase business to the Marketplace in general (the “Incentive”);

**WHEREAS**, the Incentive is intended to preserve the public appearance of the Marketplace, by protecting against its deterioration, maintaining a positive business environment in the City, and helping the Marketplace serve as an anchor commercial center to attract other businesses to the City and the Northglenn Urban Renewal Area;

**WHEREAS**, the Incentive will further the public purpose of NURA as set forth in C.R.S. § 31-25-102; and

**WHEREAS**, NURA desires to partially reimburse Tenant for its expenditures by paying up to Five Hundred Thousand and 00/100 Dollars (\$500,000.00) to Tenant for the cost of improvements Tenant desires to make to the Premises at Marketplace, which reimbursement to Tenant shall be made pursuant to the terms set forth in this Agreement.

**NOW, THEREFORE**, in order to promote redevelopment, fulfill NURA’s urban renewal purpose as set forth in Colorado’s Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, and achieve the above-referenced goals, and in consideration of the performance of the mutual covenants and promises set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**I. REIMBURSEMENT**

A. NURA agrees to reimburse Tenant in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for actual direct costs paid by Tenant for the construction and FF&E costs associated with building a new facility (“Improvements”) at the Premises (“Actual Direct Costs”), subject to the following conditions:

1. The Improvements shall be constructed in compliance with all applicable laws, rules and regulations, including without limitation, local building codes, rules and regulations (collectively, the “Laws”);
2. All required approvals of any governmental authority with jurisdiction over the Improvements shall be obtained by Tenant prior to construction of the Improvements; (collectively, the “Approvals”); and
3. Tenant shall provide NURA with an architect’s certification or general contractor’s certification, itemized detailed invoices or other financial documentation that to NURA’s reasonable satisfaction confirm the Actual Direct Costs, including invoices from contractors performing work on the Improvements and suppliers supplying materials for the Improvements.

The phrase “Actual Direct Costs” means costs invoiced to Tenant by the designers, architects, general contractors, and/or suppliers of the Improvements (or applicable portions thereof), including, without limitation, “hard” and “soft” costs associated with the Improvements, construction management fees, labor costs, and fixture costs, but shall not include internal Tenant costs, such as Tenant staff time or Tenant travel expenses related to the Improvements.

B. Reimbursement to Tenant shall be made as follows:

1. Upon completion of the Improvements and issuance of a permanent certificate of occupancy for the Premises from the applicable governmental authority, NURA shall pay to Tenant an initial payment of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) for the Actual Direct Costs incurred by Tenant (the “Initial Payment”).

2. On the one-year anniversary of the Initial Payment and on the same date of the following calendar year (the two-year anniversary), NURA shall pay to Tenant One Hundred Seventy Five Thousand and 00/100 Dollars (\$175,000.00) per anniversary.

3. Subject to force majeure, Tenant shall have the Improvements substantially completed and invoices delivered to NURA on or before December 31, 2015. In the event fails to substantially complete the Improvements and deliver the invoices to NURA by December 31, 2015 (subject to force majeure) and such failure continues for thirty (30) days following written notice from NURA, then NURA shall have the right to terminate this Agreement upon which NURA’s obligation to reimburse Tenant for the Actual Direct Costs shall terminate and be of no further force and effect. For purposes of this Agreement, “force majeure” shall mean the failure or delay in the performance of a Party’s duties or obligations hereunder on account of strikes or labor unrest, riots, insurrection, fire, flood, storm, extreme and unusual weather conditions, explosions, acts of God, war, governmental action, earthquakes, or any other cause beyond the reasonable control of such Party without fault or negligence of such Party.

**II. ONGOING TENANT OBLIGATIONS**

In addition to any ongoing obligations set forth in Section I above, Tenant shall have the following ongoing obligations:

1. Continual operation. Tenant shall continuously operate from its Premises at the Marketplace (except for a Permitted Closure [as hereinafter defined]) (“Continuous Operation”) for two (2) years from the Initial Payment. NURA’s payment obligation to Tenant as set forth in Section I above is expressly conditioned upon Tenant’s Continuous Operation for the year immediately preceding NURA’s payment due date (except for a closure constituting a Permitted Closure). In the event that Tenant ceases Continuous Operation (except for a closure constituting a Permitted Closure), NURA’s payment

obligation for that year shall be reduced on a prorated basis by the number of days Tenant was not in operation at an amount of Four Hundred Eighty and 00/100 Dollars (\$480.00) per day. As used in this Agreement, the term "Permitted Closure" shall mean a closure of Tenant's operation from the business due to (a) federal governmental holidays, (b) force majeure and/or other casualty or condemnation event, or (c) necessary and diligently-pursued repairs and/or maintenance to the Premises (not to exceed forty-five [45] days during any single year period measured from Initial Payment).

For example, if Tenant fails to operate for twenty (20) days in a single year period and such failure is not due to a Permitted Closure, then NURA's One Hundred Seventy-Five Thousand and 00/100 Dollar (\$175,000.00) payment obligation shall be reduced by Nine Thousand Six Hundred and 00/100 Dollars (\$9,600.00).

### **III. INDEMNIFICATION**

Except to the extent caused by the negligence or willful misconduct of NURA and/or NURA's agents, employees and/or contractors, Tenant agrees to indemnify and hold harmless NURA and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney's fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Tenant, any subcontractor of Tenant, or any officer, employee, representative, or agent of Tenant, or which arise out of any worker's compensation claim of any employee of Tenant or of any employee of any subcontractor of Tenant.

### **IV. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Adams County, Colorado. Each Party hereby waives its rights to a jury trial of any such suit, action or proceeding.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either Party shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Tenant and NURA, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail or sent by nationally recognized overnight courier, to the Party at the following addresses:

If to NURA: Northglenn Urban Renewal Authority  
Attn: Debbie Tuttle  
11701 Community Center Drive  
Northglenn, CO 80233

Copies to: Hayes, Phillips, Hoffmann & Carberry, PC  
Attn: Jeff Parker  
1530 16<sup>th</sup> Street, Second Floor  
Denver, Colorado 80202

If to Tenant: Texas Roadhouse Holdings LLC  
6040 Dutchmans Lane  
Louisville, KY 40205  
Attn: Legal Department

Either Party may change such notice address upon prior written notice to the other Party.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other. NURA may withhold its consent to an assignment of this Agreement in its sole discretion; provided that if a request for an assignment is made due the conveyance of ownership of the Marketplace, NURA shall not unreasonably withhold its consent.

I. Governmental Immunity. NURA, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to NURA and its officers or employees.

J. Rights and Remedies. The rights and remedies under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit either Party's remedies against the other Party, including, without limitation, NURA's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.



K. Subject to Annual Appropriations. Under Colorado's Local Government Budget Law, any financial obligations of NURA not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of NURA hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

*[Signatures on Following Pages]*

THE NORTHGLENN URBAN RENEWAL  
AUTHORITY

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Rosie Garner  
Chair

ATTEST:

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Debbie Tuttle  
Executive Director

APPROVED AS TO FORM:

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Jeff Parker  
NURA Attorney

—Signatures Continue on Following Page—

—Signatures Continued from Previous Page—

TENANT:

TEXAS ROADHOUSE HOLDINGS LLC,  
a Kentucky limited liability company

By: Texas Roadhouse, Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_  
Name: Russell Arbuckle  
Title: Director of Real Estate

COMMONWEALTH OF KENTUCKY §  
§  
COUNTY OF JEFFERSON §

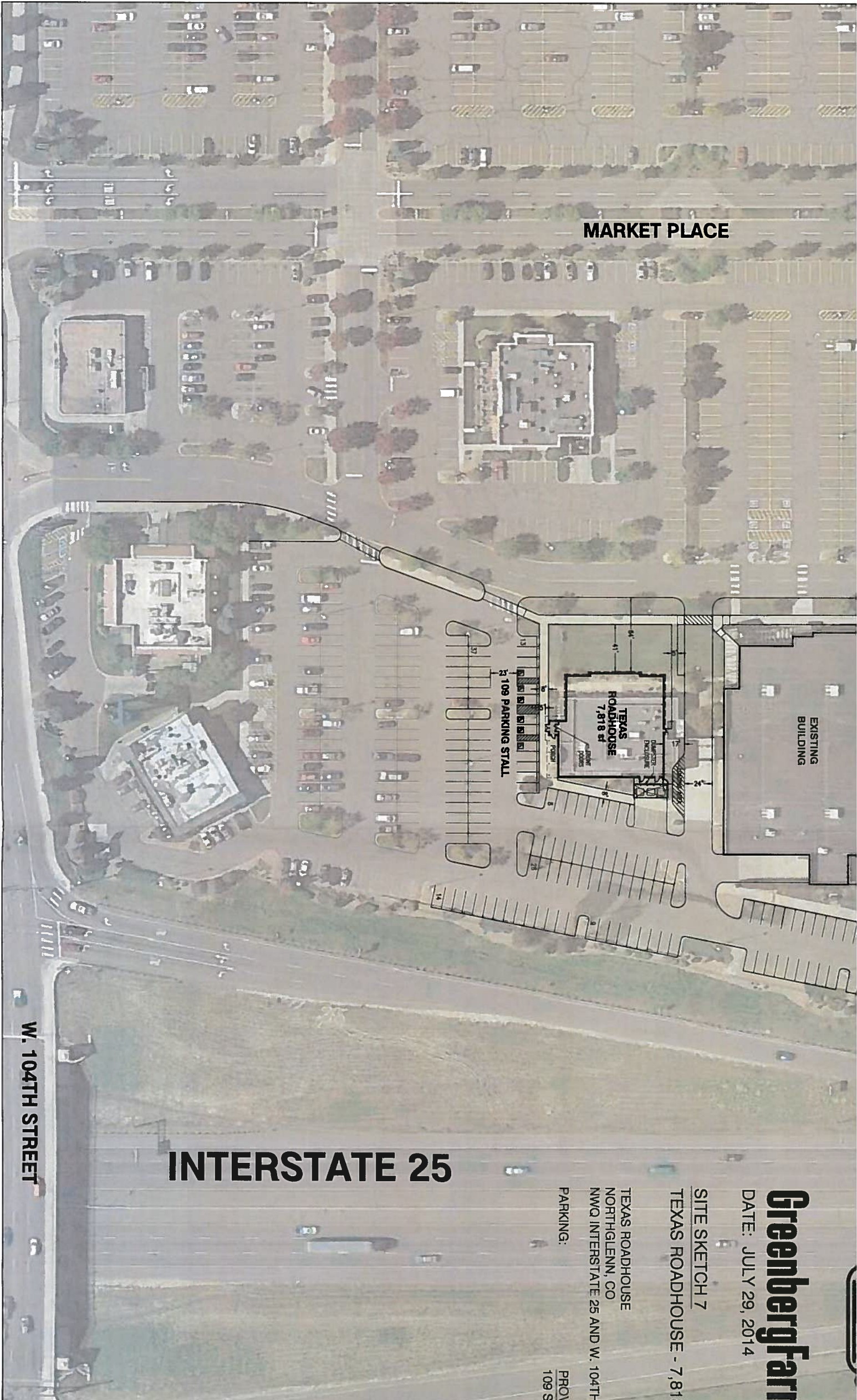
Before me, the undersigned authority, on this day personally appeared Russell Arbuckle, the Director of Real Estate of Texas Roadhouse, Inc., a Delaware corporation, Manager of TEXAS ROADHOUSE HOLDINGS LLC, a Kentucky limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

Given under my hand and seal of office on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, Commonwealth of Kentucky

\_\_\_\_\_  
Printed Name

My Commission Expires:\_\_\_\_\_



**MARKET PLACE**

EXISTING BUILDING

TEXAS ROADHOUSE  
7,818 sq ft

109 PARKING STALL

**W. 104TH STREET**

**INTERSTATE 25**

**GreenbergFarr**

DATE: JULY 29, 2014

SITE SKETCH 7

TEXAS ROADHOUSE - 7,818

TEXAS ROADHOUSE  
NORTHGLENN, CO  
NWQ INTERSTATE 25 AND W. 104TH

PARKING:

PROV  
109 S