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NOV 19 2009



MEMORANDUM **Downtown Redevelopment – Council Memo DT10-005**

DATE: NOVEMBER 6, 2009

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER 
 RICH DLUGAS, ASSISTANT CITY MANAGER

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER 

SUBJECT: DOWNTOWN IMPROVEMENT FUND TO D&B RENTAL PROPERTIES
 FOR 58 SOUTH SAN MARCOS PLACE IMPROVEMENTS

RECOMMENDATION: Staff recommends approval of a Downtown Improvement Fund matching grant to D&B Rental Properties for an amount not to exceed \$23,489 for the purpose of construction of tenant improvements at 58 S San Marcos Place.

BACKGROUND/DISCUSSION: The City has created the Downtown Improvement Fund (DIF) for the purpose of encouraging investment by viable retail and restaurant businesses that will generate employment and complement the current business mix in Historic Downtown Chandler. Specifically, the funds are to be used to reimburse the property or business owner for costs associated with the necessary tenant improvements to renovate the existing space for the specified retail uses in the Downtown Improvement Fund target area. The business owner is reimbursed up to \$50,000, or half of the costs, whichever is less. The program language does allow larger grant amounts “if the applicant can show that the project will yield substantial economic benefit to the City of Chandler.”

Murphy’s Law is leasing space located at 58 South San Marcos Place, on the Historic Square. The owners offer a unique dining experience featuring traditional pub fare. The business is operational and has been quite successful.

This has been a complicated situation, as the previous business owner at T’z Marketplace did not complete the work on the DIF grant that was awarded in 2006. Of the \$49,093 that was approved by Council, only \$25,605 was paid for work completed, including the installation of fire sprinklers.

When the new business owners of Murphy's Law signed the lease, Staff communicated the current program guidelines including that DIF Program requirements state that all work be pre-approved. Additionally, they were notified that program revisions were being prepared for Council consideration that would change the grant program and were encouraged to submit their application before the guidelines changed. Most significantly, the program changed to where the grant was given to the property owner, not the business owner. Additionally, the program was clarified that one grant per property was allowed under the new guidelines. The application from Murphy's came in after the program guidelines and after a significant portion of work was already complete.

Staff and the business and property owner have been working on a resolution. A new application was submitted by the property owner, D&B Rental Properties, LLC. It was found that this application was invalid for new grant monies; however, it became apparent that much of the work done by the Baldwins actually finished the incomplete work from the prior grant to T'z Marketplace. The review committee concluded that the balance of the monies awarded to T'z Marketplace, but never paid (\$23,489) should be awarded to D&B Rental Properties, LLC.

Staff is recommending that an amount not to exceed \$23,489 be granted for reimbursement of interior tenant improvement costs to the property owner. Receipts have already been provided and the work inspected so monies are payable immediately.

FINANCIAL IMPLICATIONS: The funding source of this matching grant is available in the Downtown Improvement Fund monies reserved in cost center 1290.

PROPOSED MOTION: Move to authorize a DIF matching grant to D&B Rental Properties, LLC in an amount not to exceed \$23,489 to Murphy's Law for the purpose of construction of tenant improvements for property located at 58 South San Marcos Place, and authorize the City Manager to execute all documents necessary to complete the grant.

Attachment:
Matching Grant Agreement with Exhibits

When Recorded, Return to:
Chandler City Clerk
P.O. Box 4008, Mail Stop 606
Chandler, AZ 85244-4008

DIF MATCHING GRANT AGREEMENT AND COVENANT

THIS MATCHING GRANT AGREEMENT AND COVENANT (this "Agreement") is made and entered into as of the _____ day of November, 2009, (the "Effective Date"), by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City") and D&B RENTAL PROPERTIES, LLC ("Developer"), the owner of certain real property located at 58 S San Marcos Place, Chandler, Arizona, and legally described in attached Exhibit "A" (the "Development Site").

Recitals

A. On December 13, 2001, the Chandler City Council approved the Downtown Improvement Fund program (the "DIF Program" or "DIF"). Thereafter, the DIF Program was revised by Council action taken on April 27, 2006, and again on April 24, 2008. The DIF Program, as currently approved, is designed (i) to assist owners of non-residential real property located within the DIF funding area, which is generally within Downtown Chandler, in making interior renovations or significant improvements needed to allow such property to be used for retail and/or restaurant business purposes in compliance municipal code requirements, (ii) to stimulate private-sector investment and (iii) to attract distinct businesses to Downtown Chandler that will generate employment opportunities and tax benefits for the City.

B. Developer has applied for DIF funds to be used in making interior renovations or significant improvements needed to conduct a restaurant business at the Development Site to be known as Murphy's Law (the "Business").

C. Developer represents that Developer will incur the expense of making the renovations or improvements to the Development Site that are needed for the Business, which are generally depicted in site plan or map shown in attached Exhibit "B" and which are specifically listed or itemized in attached Exhibit "C" (the "business improvements").

D. The City Manager has determined that Developer's application satisfies the DIF Program requirements, criteria and standards that must be met in order to be eligible to receive DIF matching grant funds for the Development Site. The DIF Program requirements, criteria, and standards are set out in the "Information and Guidelines" document, which can be found at www.chandleraz.gov/Content/DIFDescription.pdf.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and representations set

forth in the recitals hereto, the City and Developer agree as follows:

1. Developer shall complete or cause to be completed, within one (1) year after the Effective Date, the business improvements for the Development Site in accordance with the requirements, criteria, and standards of the DIF Program. The business improvements shall be deemed complete at such time as the City's Building Official has completed final inspection of the business improvements and Developer (or Developer's business lessee, as the case may be) has received a Certificate of Occupancy issued by the City for the Business.

2. Developer is responsible for obtaining all building permits, meeting applicable building and zoning codes and obtaining any additional licenses or permits associated with the business improvements.

3. Within thirty (30) days after the business improvements are complete, Developer shall deliver to the City a written statement of the total expenses that Developer claims to have actually and reasonably incurred in completing the business improvements. The written statements shall be accompanied by documentation that the City deems sufficient to support or prove the claim.

4. Within thirty (30) days after receiving the written statement and the required supporting documentation, as described in paragraph 3 above, the City shall deliver to Developer matching grant funds to reimburse Developer for one-half (1/2) of the actual, reasonable expenses incurred by Developer in making the business improvements, up to a total amount of Twenty-Three Thousand Four Hundred Eighty-Nine and No/100 Dollars (\$23,489.00). The date such funds are delivered shall be deemed the "Payment Date."

5. The City's obligation is limited to reimbursing Developer pursuant to the terms of this Agreement. The City shall not contract with or be responsible for paying contractors, material suppliers, or others for any of the expenses, costs, bills or charges incurred in connection with or otherwise related to the building improvements to the Development Site.

6. Developer covenants and agrees that, for the period of sixty (60) consecutive months beginning with the first month following the Payment Date, the Business shall be open and operating during regular business hours at the Development Site; but if, at any time during this period, the Business ceases operation at the Development Site for 365 days without reopening or without a new like-type business legally operating at the Development Site, then Developer shall reimburse to the City an amount equal to the following: DIF funds paid by City times 60 and then divided by the number of months in the period during which the Business or a new like-type business is not operating at the Development Site. Developer shall make such reimbursement payment no later than the 366th day following the date that the Business ceases operation at the Development Site.

7. Developer agrees to indemnify, defend, and save harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, from all losses, claims, suits actions, payments and judgments,

demands, expenses, attorney's fees, defense cost, or actions of any kind and nature resulting from personal injury to any person, including employees of the Developer or of any subcontractor employed by the Developer (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Developer for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officer, employees, individually and collectively, are to be fully indemnified for their negligent acts unless those negligent acts are the sole cause of the injury to persons or damages to property.

8. Developer's reimbursement obligation under paragraph 6 above shall constitute a covenant running with the real property that is described in attached Exhibit "A", and shall be binding upon Developer, and Developer's successors, heirs and assigns, and shall inure to the benefit of the City of Chandler, its successors and assigns.

9. Each of the Recital paragraphs and each exhibit identified herein is incorporated into this Agreement by reference as if fully set forth herein. The "Information and Guidelines" document as found at www.chandleraz.gov/Content/DIFDescription.pdf is also incorporated into this Agreement by reference as if fully set forth herein.

10. Nothing in this Agreement shall preclude City from the reasonable exercise of its normal zoning, platting, and development and building review processes.

11. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified or rescinded, except in writing, signed by all parties and any attempt at oral modification of this Agreement shall be void and of no effect.

12. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Arizona. If any provisions, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

13. This Agreement is subject to the provisions of A.R.S. § 38-511.

14. In the event that either party institutes proceedings against the other for a violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall include in this judgment against such party all expenses, including but not limited to reasonable attorney's fees, court costs and witness fees, incurred by such party in connection therewith.

15. Nothing in this Agreement shall be deemed or construed by either party or by any third party to create the relationship of principal and agent, or limited or general partnership or a

joint venture or any other association of the parties thereto, and the covenants, conditions and obligations contained herein are for the mutual benefit of the parties hereto and shall not create the right or relationship of a third-party beneficiary on behalf of any person or persons.

16. Developer warrants and represents that Developer is the owner of fee title to the Development Site; that no other person, other than Developer, has an ownership interest in the Property; and that the individual or individuals signing this Agreement as, for or on behalf of Developer is/are authorized to bind Developer to the provisions set out in this Agreement.

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

CITY OF CHANDLER, an Arizona municipal corporation

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney GAB

(If Developer consists of one or more individuals)

OWNER:

DAVID SABA SR.

Print Name

David Saba Jr.

Sign Name

OWNER:

Print Name

Sign Name

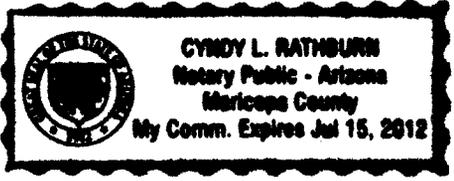
STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN to before me this 5th day of November, 2009, by
David Saba Jr.

Cindy L. Rathburn
Notary Public

My commission expires:

7/15/2012



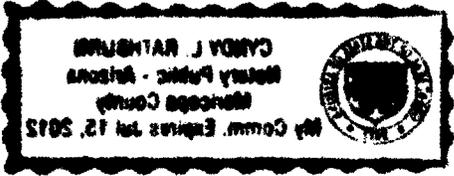
STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ___ day of _____, 20____, by
_____.

Notary Public

My commission expires:

[If there are additional individual owners, add an additional signature page and notarization.]



(For Developer consists of one or more legal entities)

OWNER: _____

OWNER: _____

By: _____
Print Name

By: _____
Print Name

Sign Name

Sign Name

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who is the _____ of _____, a(n) _____, and who acknowledged that this document was executed for the purposes therein contained.

My Commission Expires: _____

Notary Public

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who is the _____ of _____, a(n) _____, and who acknowledged that this document was executed for the purposes therein contained.

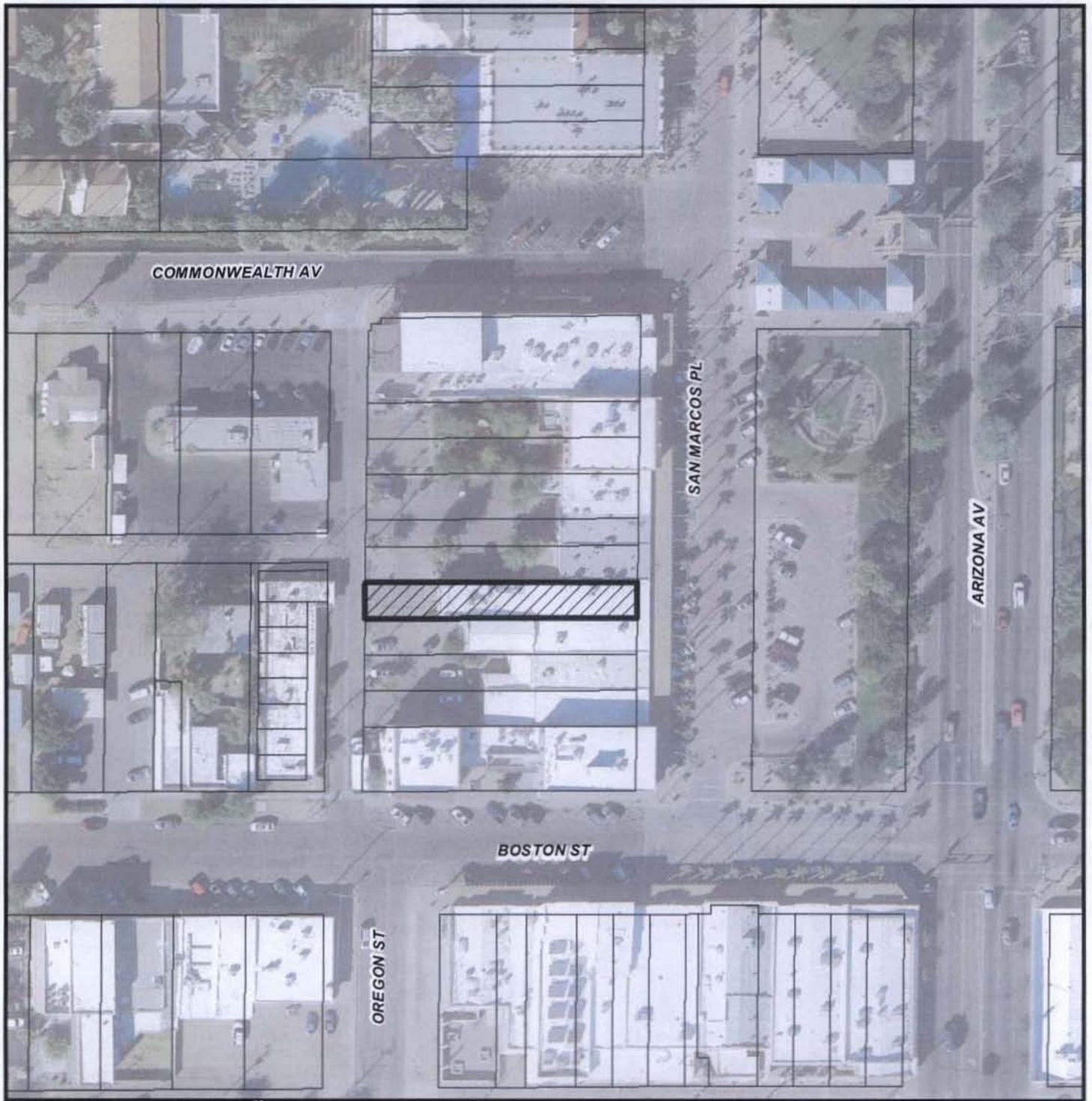
My Commission Expires: _____

Notary Public

[If there are additional owners, add an additional signature page and notarization.]

EXHIBIT "A"
Legal Description

Lot 21, Townsite of Chandler, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 5 of Maps, Page 34.



58 S. SAN MARCOS PLACE



 58 S. SAN MARCOS PLACE



EXHIBIT "C"
Scope of Work (Business Improvements)

As part of the grant given to T'z Marketplace, the Scope of Work included the following tenant improvements, most of which were completed by the new tenants, Roger and Tresha Baldwin as owners of Murphy's Law:

- Fire sprinklers
- Electrical
- Framing including new doors
- Kitchen fixtures
- New ADA bathrooms including exhaust & fixtures
- Scrape ceiling, paint walls & ceiling
- Plumbing including a grease trap and new water heater