

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 05-06-08 [X] Consent [] Regular
[] Workshop [] Public Hearing

Department: County Administration
Submitted By: County Administration
Submitted For: Economic Development Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A) Amendment No. 1 to Agreement R2007-0911 with Bryan Boysaw & Associates a/k/a Law Offices of Bryan Boysaw and Associates, P.A., to extend the expiration date from April 1, 2008 to April 1, 2010; and
- B) A Subordination Agreement to the Declaration of Restrictions with Bryan Boysaw & Associates.

Summary: On June 19, 2007, the Board of County Commissioners approved the Community Development Block Grant (CDBG) Economic Set-Aside Agreement (R2007-0911) with Bryan Boysaw & Associates in the amount of \$60,000 for the acquisition of real property located at 501 Rosemary Avenue, West Palm Beach, Florida 33401 for the company's expansion. This amendment will allow for a twelve month extension to the existing agreement for the completion of construction and twelve months for the hiring of 4 full-time equivalent jobs. The Subordination Agreement will allow the company to close a \$500,000 construction loan with SunTrust Bank ("Suntrust") and the loan to be secured by a mortgage and security agreement encumbering the Property ("Suntrust Mortgage"). The project was delayed until funds could be secured for construction. **These are Federal funds and require no local matching funds.** District 7 (DW)

Background and Policy Issues: On November 5, 2007, the County filed a Declaration of Restrictions after reimbursing Bryan Boysaw & Associates \$60,000 for the purchase of the commercial property located at 501 Rosemary Avenue, West Palm Beach, Florida 33401. These funds were matched by the City of West Palm Beach, \$60,000, and Bryan Boysaw & Associates, \$30,000. The company completed the design, demolition and other predevelopment costs totaling \$70,000. The total project cost is estimated at \$720,000.

The Community Development Block Grant (CDBG) regulations at 24 CFR 570.203 list "special economic development" as an activity eligible for CDBG funding. At a budget workshop on Economic Development, held on July 7, 1997, Palm Beach County Department of Housing and Community Development (HCD) was requested by the Board of County Commissioners (BCC) to set aside ten percent (10%) of its annual Community Development Block Grant (CDBG) entitlement to fund economic development activities. As a result, HCD implemented its Economic Development Set-Aside Program in Fiscal Year 1998-99 and has funded the program each year subsequently. The Set-Aside Program's primary goals are to: a) create/retain jobs in which 51% must be held by low-and moderate-income persons; and b) to promote economic development in and adjacent to the development regions (areas identified as 10% or higher poverty). The Economic Development Office has administered the program since FY2006-2007.

Attachments:

- 1. Amendment No. 1
- 2. Subordination Agreement
- 3. Declaration of Restrictions
- 4. Contract R2007-0911

Recommended By: [Signature] 4/22/08
Economic Development Director Date

Approved By: [Signature] 4/28/08
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (PBC)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (PBC)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

NET FISCAL IMPACT

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included In Current Budget? Yes No
Budget Account No: Fund Department Unit Object
Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

No fiscal impact
Atwill hite 4.23.08
OFMB *HD*
4/23/08 *4/22/08*

Dr. J. Joseph 4/24/08
Contract Dev. and Control

B. Legal Sufficiency:

This amendment complies with our review requirements.

[Signature] *4/28/08*
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

FIRST AMENDMENT TO THE AGREEMENT BETWEEN PALM BEACH COUNTY
AND
BRYAN BOYSAW AND ASSOCIATES ALSO KNOWN AS LAW OFFICES OF
BRYAN BOYSAW AND ASSOCIATES, P.A.

THIS FIRST AMENDMENT, entered into this _____ day of _____, 2008, by and between Palm Beach County (hereinafter referred to as the "County"), a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and **Bryan Boysaw and Associates a/k/a Law Offices of Bryan Boysaw and Associates, P.A.**, a corporation duly organized and authorized to do business in the State of Florida, having its principal office at **771 Village Blvd., Suite 202, West Palm Beach, Florida 33409** and whose **Federal Tax Identification Number is 65-0995371**, hereinafter referred to as the "Company."

WITNESSETH

WHEREAS, on June 19, 2007, Palm Beach County and **Bryan Boysaw and Associates a/k/a Law Offices of Bryan Boysaw and Associates, P.A.** entered into an Agreement (R2007-0911) to provide \$60,000 in Community Development Block Grant funds for the acquisition of real property located at 501 Rosemary Avenue, West Palm Beach, Florida 33401 for the company's expansion and to create four (4) full-time equivalent jobs as specified in Exhibit "A" of the Agreement; and

WHEREAS, the Company's project has been delayed until a Subordination Agreement is approved by the County to assist the Company in closing a \$500,000 construction loan; and

WHEREAS, the Company has requested a twelve month extension for construction and a twelve month extension to hire the required four (4) full-time equivalent jobs; and

WHEREAS, the Palm Beach County Board of County Commissioners are aware of the need for economic revitalization and the creation of full-time equivalent jobs for low- and moderate income residents in the County's high poverty areas; and

WHEREAS, the County desires to modify the original Agreement entered into on June 19, 2007 by extending the project completion date from April 1, 2008 to April 1, 2010; and

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereby amend the Agreement as follows:

1. **PART III entitled COMPENSATION, TIME OF PERFORMANCE, METHOD AND CONDITIONS OF PAYMENT**

This Agreement will expire on April 1, 2010 and all services required hereunder shall be completed by the Company by April 1, 2010, with the exception of submittal of the annual reports as required by Exhibit "A".

2. **EXHIBIT "A" entitled WORK PROGRAM NARRATIVE**

I. **The COMPANY Agrees to:**

B. Paragraph 1, Section D. entitled REPORTS: The Company shall submit the reports listed below to EDO:

1) Sentence 3 is hereby deleted and replaced with:

For year two (2), year three (3), year (4), year (5), and year 6, the Company will only submit annual reports (due by May 1, 2009, May 1, 2010, May 1, 2011, May 1, 2012, and May 1, 2013, *respectively*).

(The remainder of this page has been left intentionally blank.)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Agreement on behalf of the COUNTY and the COMPANY has hereunto set its hand and seal the day and year above written.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, A
POLITICAL SUBDIVISION OF THE STATE
OF FLORIDA
BOARD OF COUNTY COMMISSIONERS

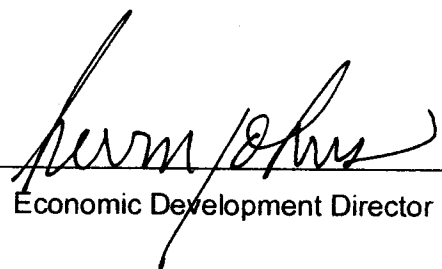
By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

APPROVED AS TO
TERMS AND CONDITIONS:

By: _____
Assistant County Attorney

By:  _____
Economic Development Director

COMPANY: **Bryan Boysaw and Associates**
a/k/a Law Office of Bryan Boysaw
and Associates, P.A.

By: _____
COMPANY Representative
Print Name & Title

Signature

By: _____
Witness Name

Signature

(CORPORATE SEAL)

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Lynn Solomon, Esq.
Lynn Solomon, P.A.
315 11th Street
West Palm Beach, Florida 33401

SUBORDINATION AGREEMENT

This Subordination Agreement is executed this ___ day of _____ 2008, by **Palm Beach County, Florida** ("the County"), a political subdivision of the State of Florida, whose post office address is c/o County Attorney's Office, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401 and **Bryan Boysaw & Associates also known as Law Offices of Bryan Boysaw and Associates, P.A.** ("Boysaw"), a Florida corporation whose address is 771 Village Boulevard, Suite 202, West Palm Beach, Florida 33409.

WITNESSETH

A. On or around June 4, 2007, Boysaw executed and delivered a Declaration of Restrictions in favor of the County as recorded November 5, 2007 in Official Records Book 22232, Page 1967 of the Public Records of Palm Beach County, Florida (the "Declaration") which Declaration encumbers the real property described in Exhibit "A" attached hereto (the "Property").

B. Boysaw has requested a construction loan in the amount of **FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$500,000.00)** (the "Loan") from SunTrust Bank, ("Suntrust"). The Loan shall be secured by a mortgage and security agreement encumbering the Property (the "Suntrust Mortgage").

C. As a condition of the Loan, Suntrust requires a lien paramount and superior to all liens or encumbrances on the Property and Boysaw has asked the County to enter into this Subordination Agreement to acknowledge that the Declaration is subordinate and inferior to the SunTrust Mortgage.

D. Subject to its terms and conditions, Suntrust is willing to make the Loan, provided the County agrees to subordinate its Declaration.

NOW THEREFORE, for valuable consideration, the parties agree as follows:

1. The recitals set forth in paragraphs A through D are true and correct and are incorporated herein by reference.

2. The County hereby acknowledges and consent to subordinate its interest in the Declaration to the Suntrust Mortgage which will encumber the Property.

3. This Subordination Agreement shall be binding on the successors and assigns of the County and Boysaw and shall be recorded in the Public Records of Palm Beach County, Florida.

4. This Subordination Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

5. In the event of litigation to enforce or interpret this Agreement, each party shall be responsible for their own attorney's fees, including at the appellate level and fees of paralegal and costs.

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COUNTERPART SIGNATURE PAGES FOR SUBORDINATION AGREEMENT

Palm Beach County, Florida, a political
subdivision of the State of Florida

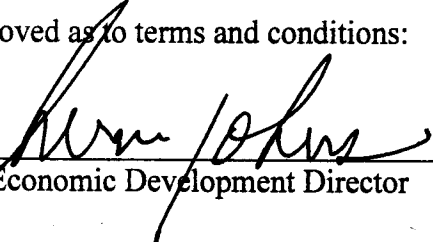
By:

ADDIE L. GREENE, Chairperson

Attested:
Sharon R. Bock, Clerk

By: _____
Deputy Clerk

Approved as to terms and conditions:

By: 

Economic Development Director

Approved as to form and legal sufficiency:

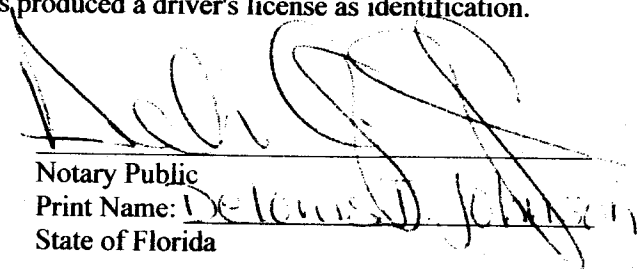
By: _____
Assistant County Attorney

COUNTERPART SIGNATURE PAGE SUBORDINATION AGREEMENT

**BRYAN BOYSAW AND ASSOCIATES aka
LAW OFFICES OF BRYAN BOYSAW AND
ASSOCIATES, P.A.**

By: _____
BRYAN K. BOYSAW, PRESIDENT

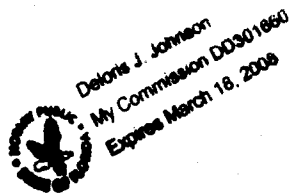
The foregoing instrument was acknowledged before me this 27th day of FEB., 2008, by Bryan Boysaw, as President of Bryan Boysaw and Associates aka Law Offices of Bryan Boysaw and Associates, P.A.. He is personally known to me or has produced a driver's license as identification.



Notary Public
Print Name: Deloris J. Johnson
State of Florida

My Commission Expires:

(Notary Seal)



COUNTERPART SIGNATURE PAGE FOR SUBORDINATION AGREEMENT

Exhibit A

Lot 20, Block 17, of MAP OF W. S. CLOW'S ADDITION TO THE TOWN OF WEST PALM BEACH FLORIDA, according to the Plat thereof, as recorded in Plat Book 1, Page 60, of the Public Records of Palm Beach County, Florida.

Parcel Identification Number: 74 43 43 21 06 017 0200



CFN 20070506740
 OR BK 22232 PG 1967
 RECORDED 11/05/2007 09:59:24
 Palm Beach County, Florida
 Sharon R. Bock, CLERK & COMPTROLLER
 Pgs 1967 - 1969; (3pgs)

EXHIBIT "F"

Return to:

Kevin Johns, Economic Development Director
Economic Development Office
301 North Olive Ave., 10th Floor
West Palm Beach, Florida 33401

DECLARATION OF RESTRICTIONS

The undersigned, **Bryan Boysaw & Associates**, a corporation duly authorized to do business in the State of Florida, having its principal office at **771 Village Blvd, Suite 202, West Palm Beach, Florida 33409**, hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount **sixty thousand dollars (\$60,000)** received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as "the Property," and described as:

501 Rosemary Avenue
West Palm Beach, FL 33401
PCN: 74-43-43-21-06-017-0200

Subdivision: CLOWS ADD TO WPB

Legal Description: Lot 20, Block 17, MAP OF W. S. CLOWS ADDITION TO THE TOWN OF WEST PALM BEACH, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 1, page 60; said lands situate, lying and being in Palm Beach County, Florida.

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, its heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners in writing, and executed with the same formalities as this document.

2. In consideration of the County's grant in the amount of **sixty thousand dollars (\$60,000)** (*in CDBG dollars*) as provided through a grant Agreement with the County dated **April 2, 2007**, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement, April 1, 2016 (*as may be amended from time to time*) to use the Property as a law office (*the use or planned use*) as described in the Declarant's funding application to the County, and as described in said grant Agreement, and the Declarant further agrees to maintain insurance as required in the grant Agreement.

3. The Declarant agrees in regard to the use of the Property whose acquisition or improvements were funded through the grant Agreement that for a period not less than ten (10) years after the expiration date of said Agreement, April 1, 2016 (*as may be amended from time to time*):

(a) The Declarant shall not change the use or planned use, or discontinue use, of the Property (*including the beneficiaries of such use*) from that for which the acquisition or improvements were made, unless the Declarant provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:

1. The new use of the Property, in the sole opinion of the County, qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or

2. The requirements of paragraph 3(b) of this section are met.

(b) If the Declarant determines, after consultation with affected citizens, that it is appropriate to change the use of the Property to a use which does not qualify under paragraph 3(a)(1) of this section or discontinue use of the Property, it may retain or dispose of the facility for such use if the County is first reimbursed in the amount of sixty thousand dollars (\$60,000) plus the highest legal rate of interest from the time of release of funds by the County to the Declarant for acquisition of, or improvements to the facility/Property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made solely by the County.

(c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to paragraph 3(b) above, the facility/Property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.