

RESOLUTION NO. 30-06-04

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE REDEVELOPMENT COMPETITIVE SUB-GRANT AGREEMENT WITH DOCKSIDE SEA GRILLE, INC. & SAB ONE LLC TO PROVIDE \$25,000.00 IN MATCHING TOWN FUNDING; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, The Town of Lake Park ("Town") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, at its March 17, 2004 meeting, the Town Commission approved the application submitted by Dockside Sea Grille, Inc. & SAB One LLC for submittal to the Palm Beach County Board of County Commissioners for Round VII Development Regions Grant Program funding in substitution of the project S & G Partnership and The Baron Group doing business as Baron Sign Manufacturing, and for \$25,000.00 in matching Town funding; and

WHEREAS, at its May 18, 2004 meeting, the Palm Beach County Board of County Commissioners approved the substitution of Dockside Sea Grille, Inc. & SAB One LLC for The Baron Group doing business as Baron Sign Manufacturing for Round VII of the Development Regions Grant Program; and

WHEREAS, the Town Commission has determined that it is in the best interests of the residents and citizens of the Town of Lake Park to execute the redevelopment competitive subgrant agreement with Dockside Sea Grille, Inc. & SAB One LLC.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The foregoing whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The Town Commission hereby authorizes the Mayor to execute the redevelopment competitive sub-grant agreement with Dockside Sea Grille, Inc. & SAB One LLC, a copy of which agreement is attached hereto as Exhibit A and incorporated herein by reference.

Section 3. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner BALIUS, who moved its adoption. The motion was seconded by Commissioner GARRETSON, and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR PAUL W. CASTRO	<u>X</u>	—
VICE-MAYOR G. CHUCK BALIUS	<u>X</u>	—
COMMISSIONER PAUL GARRETSON	<u>X</u>	—
COMMISSIONER ED DALY	<u>X</u>	—
COMMISSIONER JEFF CAREY	<u>X</u>	—

The Mayor thereupon declared the foregoing Resolution No. 30-06-04 duly passed and adopted this 2nd day of June, 2004.

TOWN OF LAKE PARK, FLORIDA

BY: Paul W. Castro
PAUL W. CASTRO
MAYOR

ATTEST:

Carol Simpkins
CAROL SIMPKINS
TOWN CLERK

(TOWN SEAL)



Approved as to form and legal sufficiency:

By: Thomas J. Baird
THOMAS J. BAIRD,
TOWN ATTORNEY

**TOWN OF LAKE PARK
REDEVELOPMENT COMPETITIVE SUBGRANT AGREEMENT**

THIS AGREEMENT is made as of June 2, 2004, ("Effective Date") by and between the Town of Lake Park, a municipal corporation of the State of Florida, 535 Park Avenue, Lake Park, Florida 33404, (hereinafter referred to as the "TOWN"), and Dockside Sea Grille, Inc., and SAB One LLC, a Florida corporation and Florida limited liability company, located at 750-758, and 766 Northlake Blvd., Lake Park, Florida 33408 (hereinafter collectively referred to as the "SUBGRANTEE").

WITNESSETH:

WHEREAS, the Lake Park Town Commission has determined that providing assistance and support within redevelopment areas of Lake Park would promote a stronger, more balanced, and stable economy for both the TOWN and Palm Beach County; and

WHEREAS, pursuant to the administration of the Palm Beach County Development Regions VII Competitive Grant Agreement, the TOWN wishes to provide financial assistance and support by participating in the redevelopment and revitalization of the SUBGRANTEE's business; and

WHEREAS, the TOWN has determined that awarding a grant to the SUBGRANTEE pursuant to the terms of this Agreement would further the public's health, safety and welfare and be consistent with the TOWN's redevelopment plan; and

WHEREAS, at its March 17, 2004 meeting, the TOWN Commission approved the application submitted by the SUBGRANTEE for submittal to the Palm Beach County Board of County Commissioners for Round VII Development Regions Grant Program funding in substitution of the project S & G Partnership and The Baron Group doing business as Baron Sign Manufacturing, and for \$25,000.00 in matching Town funding; and

WHEREAS, at its May 18, 2004 meeting, the Palm Beach County Board of County Commissioners approved the substitution of SUBGRANTEE for The Baron Group doing business as Baron Sign Manufacturing for Round VII of the Development Regions Grant Program.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties do agree as follows:

A. SUBGRANTEE'S PERFORMANCE OBLIGATIONS

1. The SUBGRANTEE agrees to carry out the redevelopment project and activities set forth in **Exhibit "A"** attached hereto and incorporated herein. The SUBGRANTEE agrees that the redevelopment activities contemplated by this Agreement shall be completed in accordance with the terms of this Agreement. The SUBGRANTEE agrees that it is solely liable to the TOWN for performance under this Agreement and that in event of default, the SUBGRANTEE shall, refund to the TOWN any monies paid pursuant to this Agreement.

2. The SUBGRANTEE agrees to hire or retain adequate staffing to oversee execution of its performance obligations under this Agreement and the execution of each of the performance obligations of the SUBGRANTEE.

3. As a condition to retaining the maximum of Twenty-five Thousand Dollars (\$25,000) from the TOWN, the SUBGRANTEE shall cause, as a direct result of the activities set forth in **Exhibit "A"** to this Agreement, the creation of at least 5.75 full-time equivalent jobs in the Town by no later than February 16, 2005, and shall maintain the same, until February 16, 2007. The SUBGRANTEE shall be entitled to retain such lesser amounts as may be equal to the grant award per job, multiplied by the number of positions created pursuant to this Agreement. In accordance with the provisions of paragraph A.6 herein below, the number, dates and salaries of all employees hired shall be substantiated by the SUBGRANTEE with written confirmation thereof submitted to the TOWN and to the TOWN's satisfaction, within twenty-five (25) months of completion of the project as set forth in **Exhibit "A."** For the purposes of this Agreement, the term salary means wages, gratuities, salaries, commissions, bonuses, drawing accounts (against future earnings), prizes and awards (if given by an employer for the status of employment), vacation pay, sick pay, and other payments consistent with the Florida Department of Labor and Employment Security definitions, paid to employees.

4. As a further condition to retaining all grant amounts received from the TOWN, the SUBGRANTEE shall cause to be paid an average salary equal to, or greater than, the minimum wage as established by the Department of Labor.

5. In the event a job becomes available, the SUBGRANTEE shall mail the job description to the Executive Director of the Workforce Development Board of Palm Beach County, Inc. at the address shown below:

Kenneth E. Montgomery, Executive Director
Workforce Development Board of Palm Beach County, Inc.
2051 Martin Luther King Boulevard, Suite 302
Riviera Beach, FL 33404

It is the intent of this paragraph to make all opening positions available on a competitive basis.

6. As a further condition to retaining any Grant funds from the TOWN, the SUBGRANTEE shall provide written verification, satisfactory to the TOWN, evidencing compliance by the SUBGRANTEE with all agreed performance standards as set forth in Paragraph A of this Agreement. The SUBGRANTEE may provide to the TOWN this verification once all applicable portions of the performance standards set forth in Paragraph A of this Agreement have been met, provided however, the SUBGRANTEE shall provide this verification on or before the expiration of the twenty-fourth (24th) calendar month following completion of the project as set forth in **Exhibit "A."** Within one hundred and twenty (120) days from the date written verification is submitted to the TOWN, the SUBGRANTEE shall refund to the TOWN the sum of One Thousand Two Hundred and Fifty Dollars (\$1,250) for each employment position not created until the expiration of the twenty-fourth (24th) month following completion of the project as set forth in **Exhibit "A."**

7. The SUBGRANTEE shall immediately notify the TOWN of any material change of circumstances at the business identified on **Exhibit "A"** hereto (hereinafter referred to as the "business"). For the purposes hereof, material change of circumstances shall include, but not be limited to, the failure of the business to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of more than ten percent (10%) of the assets or stock or ownership interest in the business, the suspension, closing or cessation of operation of the business, voluntary or involuntary bankruptcy or an assignment for the benefit of the business's creditors. In the event of a material change of circumstances, the TOWN shall have the right to terminate this Agreement, whereupon the TOWN shall have no further obligation to the SUBGRANTEE under this Agreement. Any agreement entered into between the SUBGRANTEE and the business shall contain a provision which requires the business to immediately notify the SUBGRANTEE and the

TOWN of any material change of circumstances and furthermore shall provide for the potential termination of funding under this Agreement in the event of a material change of circumstances. The SUBGRANTEE shall use reasonable diligence to monitor the business to ensure that no material change of circumstances occurs at the business of which the TOWN is not informed, and the SUBGRANTEE shall certify to the TOWN the absence of same at the time SUBGRANTEE makes any requests for payment hereunder.

B. PAYMENT PROCEDURES AND CONDITIONS

1. The Grant funds available under this Agreement shall be used only for the reimbursement of expenses directly related to the Scope of Work as set forth in **Exhibit "A."** To be eligible for reimbursement, such expenses must be:

- a. Incurred on or after June 17, 2004; and
- b. Incurred no later than February 16, 2005.

2. The TOWN shall make payments to the SUBGRANTEE for all eligible types of expenditures as set forth in **Exhibit "A"**. Requests by the SUBGRANTEE for payment shall be accompanied by proper supporting documentation. For the purposes of this paragraph, copies of invoices, receipts or other evidence of indebtedness shall be considered proper documentation. When original documentation cannot be presented, the SUBGRANTEE shall justify to the Town's satisfaction the absence of proper documentation, in writing. In the case of invoices that have not first been paid by the SUBGRANTEE, the SUBGRANTEE shall certify to the TOWN that each invoice presented for payment relates directly to work satisfactorily completed as contemplated by this Agreement.

3. Requests for payment for costs incurred after the effective date of this Agreement, shall be submitted to the TOWN no later than forty-five (45) days after the date the indebtedness was incurred. Requests for payment for costs incurred prior to the effective date of this Agreement shall be submitted to the TOWN no later than fifteen (15) days after the Effective Date of this Agreement. Requests for payment shall not be honored if received by the TOWN no later than the expiration of the twenty-fifth (25th) calendar month following the Effective Date of this Agreement. If the SUBGRANTEE fails to submit any requests for payment by March 16, 2007, then this Agreement shall automatically terminate, thereby relieving the Town of any payment obligations.

4. If the SUBGRANTEE fails to comply with any of the provisions of this Agreement, the TOWN may withhold all or any, unpaid portion of the funds upon giving written notice to the SUBGRANTEE and/or terminate this Agreement whereupon the TOWN shall have no further funding obligation to the SUBGRANTEE.

5. The SUBGRANTEE shall repay the TOWN for all unauthorized, illegal or unlawful expenditures of funds, including unlawful and/or unauthorized expenditures discovered after the expiration of this Agreement.

6. In the event the SUBGRANTEE ceases to exist, or ceases or suspends its operation for any reason, any remaining unpaid portion of this Agreement shall be retained by the TOWN and the TOWN shall have no further funding obligation to the SUBGRANTEE with regard to those unpaid funds. The determination that the SUBGRANTEE has ceased or suspended its operation shall be made solely by the TOWN based on such factual information as the TOWN deems adequate. Such information shall be provided to the SUBGRANTEE at the time of the written determination. The SUBGRANTEE shall have ten (10) days in which to provide such factual information. The SUBGRANTEE, its successors or assigns in interest, agree to be bound by the TOWN's determination.

7. Funds which are to be repaid to the TOWN pursuant to this Agreement, shall be repaid by delivering to the TOWN a cashier's check or money order for the total amount due, and shall be made payable to the "Town of Lake Park," and delivered to the TOWN within thirty (30) days of the TOWN's written demand for payment.

8. The above provisions do not waive any rights of the TOWN, or preclude the TOWN from pursuing any other remedy which may be available to it under law. Nothing contained herein shall act as a limitation on the TOWN's right to be repaid in the event the SUBGRANTEE fails to comply with the terms of this Agreement.

C. DEFAULT

In the event that a party fails to comply with the terms of this Agreement, other than payment of funds, then the non-defaulting party shall provide to the defaulting party written notice of the default and the defaulting party shall have thirty (30) days within which to initiate action to cure the default and ninety (90) days within which to cure the default to the satisfaction of the non-defaulting party.

In the event that the defaulting party fails to cure the default, the non-defaulting party shall have the right to terminate the Agreement. The effective date of the termination shall be the notice of termination.

D. MAXIMUM GRANT AMOUNT

In no event shall the reimbursements made to the SUBGRANTEE pursuant to this Agreement exceed the maximum total grant of Twenty-Five Thousand Dollars (\$25,000.00) from the TOWN.

E. AUDIT RIGHTS AND RECORDS

The TOWN reserves the right to have a financial system analysis and an internal fiscal control evaluation and audit of the SUBGRANTEE performed by an independent auditing firm employed by the TOWN at any time the TOWN deems necessary to determine the capability of the SUBGRANTEE to fiscally manage the grant award. Upon completion of all tasks contemplated under this Agreement, copies of all documents and records relating to this Agreement shall be provided to the TOWN. All records of the SUBGRANTEE shall be kept in such a way so as to permit inspection pursuant to Chapter 119, Florida Statutes.

F. TIME IS OF THE ESSENCE

The parties expressly agree that time is of the essence with regard to performance as set forth in this Agreement and failure by the SUBGRANTEE to complete performance within the times specified, or within a reasonable time if no time is specified herein shall, at the option of the TOWN without liability, in addition to any of the TOWN's rights or remedies, relieve the TOWN of any obligation under this Agreement.

G. INDEMNIFICATION

To the fullest extent permitted by law, the SUBGRANTEE shall indemnify, protect, defend, reimburse, save and hold harmless the TOWN, its agents, its employees, and elected or appointed officials, free and harmless at all times from and against any and all claims, liabilities, expenses, losses, costs, fines and damages, (including reasonable attorney's fee and costs), whether direct, indirect or consequential, arising out of, or in

consequence of the services or operations of the SUBGRANTEE, or its subcontractors, agents, employees, officers and /or independent contractors pursuant to the performance of this Contract. The SUBGRANTEE in accepting this Agreement also agrees to indemnify the TOWN and hold it harmless from and against all claims, liability, loss, damage, or expenses, (including reasonable attorney's fee and costs), arising from or by reason of any actual or claimed trademark, patent, or copyrights infringement or litigation based thereon, with respect to goods used in the performance of this Agreement or otherwise, or any part covered by this Agreement. The SUBGRANTEE recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the TOWN in support of this obligation in accordance with the laws of the State of Florida. This Paragraph shall survive the termination of the Agreement.

H. LIABILITY INSURANCE

SUBGRANTEE shall procure and maintain, at its own expense and keep in effect during the full period of this Agreement, a policy or policies of insurance, which must include the following coverages and minimum limits of liability: Commercial General Comprehensive Liability and Comprehensive Business Auto Liability insurance with limits not less than \$500,000.00 combined single limit, per occurrence. All insurance policies shall specifically provide that the "TOWN OF LAKE PARK" is endorsed as an "Additional Named Insured" with respect to the required coverages and the operations of the SUBGRANTEE under this Agreement.

I. WORKERS' COMPENSATION AND EMPLOYER LIABILITY

The SUBGRANTEE agrees to maintain, or self-insure, Workers' Compensation and Employers' Liability insurance in accordance with Chapter 440, Florida Statutes. The SUBGRANTEE agrees to be responsible for the employment, control, and conduct of its employees and for any injury sustained by such employees in the course of their employment.

J. STATEMENT OR CERTIFICATE OF INSURANCE

Upon execution of this Agreement, the SUBGRANTEE agrees to provide a statement, or Certificate of Insurance, evidencing insurance or self-insurance for the above required coverages to the attention of Finance Director, Town of Lake Park, 535 Park Avenue, Lake Park, FL 33403.

K. CHANGES IN INSURANCE

The TOWN, in cooperation with the Palm Beach County Office of Economic Development, reserves the right to review, modify, reject or accept any required self-insurance, policies of insurance, including limits, coverages, or endorsements, throughout the life of this Agreement. The TOWN reserves the right, but not the obligation, to review and reject any self-insurer or insurer providing coverage because of its poor financial condition or failure to operate legally. All policies of insurance shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed, or renewal refused until at least thirty (30) days written notice has been given to the TOWN by certified mail. All required insurance shall preclude any underwriter's rights of recovery or subrogation against the TOWN with the express intention of the parties being that the required coverages protect both parties as the primary insurance for any and all losses covered by the above-described insurance. SUBGRANTEE shall not commence work under in the furtherance of this Agreement until it has obtained all of the minimum insurance required herein.

L. AVAILABILITY OF FUNDS

The TOWN's obligation to pay under this Agreement is contingent upon having received payment from Palm Beach County, pursuant to the terms of that certain Palm Beach County Development Regions Competitive Grant Agreement, (Round VII) dated June 17, 2003, which said Agreement is hereby incorporated herein by reference and made a part hereof.

M. RECORDING AND EXECUTION OF DOCUMENTS

The parties agree to execute any and all other documents that may be necessary to effectuate the provisions and intent of this Agreement including, but not limited to, the execution and filing of Uniform Commercial Code financing statements in accordance with the requirements of Florida statutory law and listing the Town of Lake Park, Florida and Palm Beach County, Florida, as secured parties.

N. RECORDING

This Agreement may be recorded in the public records in and for Palm Beach County by the Town. Once recorded, the Agreement shall constitute a lien or

encumbrance against the SUBGRANTEE'S real and personal property. Upon the SUBGRANTEE'S notice of its performance under the Agreement, the Town shall record a satisfaction of lien.

O. REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

P. CIVIL RIGHTS COMPLIANCE

The SUBGRANTEE warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, martial status, or sexual orientation.

Q. ATTORNEY'S FEES AND COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs, and expenses (even if not taxable as court costs) incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled provided, however, that this clause pertains only to the parties to this Agreement.

R. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

S. ENTIRE AGREEMENT

The TOWN and the SUBGRANTEE agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

T. AUTHORSHIP OF AGREEMENT

No party shall be considered the author of this Agreement since both parties hereto have participated in drafting this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based on who drafted it.

U. ASSIGNMENT

The SUBGRANTEE may not assign this Agreement or any interest herein without prior written consent of the TOWN, which may be granted or withheld at the TOWN's sole and absolute discretion. Violation of the terms of this Paragraph shall constitute a material breach of this Agreement, and the TOWN, any at its discretion, cancel the Contract and all rights, title and interest, of the SUBGRANTEE shall thereupon cease and terminate.

V. GOVERNING LAW AND VENUE

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

W. PARTIES BOUND

This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

X. WAIVERS

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

Y. NOTICE

All notice required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the TOWN, shall be mailed to:

Town Manager
Town of Lake Park
535 Park Avenue, FL 33403
Fax: 561-8813314

with a copy to:

Thomas J. Baird, Esq.
Town Attorney
11891 U.S. Highway One, Suite 105
North Palm Beach, FL 33408
Fax: 561-625-0610

and if sent to SUBGRANTEE, shall be mailed to:

Robert E. "Bob" Parker
636 U.S. Highway One, Suite 108
North Palm Beach, FL 33408
Fax: 561-844-6115

IN WITNESS WHEREOF, the Mayor of the Town of Lake Park has made and executed this Agreement on behalf of the TOWN, and the SUBGRANTEE has hereunto set its hand the day and year above written.

ATTEST:



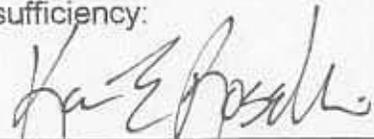
Town Clerk

TOWN OF LAKE PARK

By: 

Paul W. Castro, Mayor

Approved as to form and legal
sufficiency:



to Thomas J. Baird, Esq., Town Attorney

**DOCKSIDE SEA GRILLE, INC., and SAB
ONE LLC.**

By: 

Robert E. Parker, Vice President

E:\TJB\LP.General\Agreements\RedevelopmentCompetitiveSubgrantAgr-Dockside Sea Gille1.rtf

EXHIBIT A

Project Name: Dockside Sea Grille, Inc. & SAB One LLC

Project Description: A seafood restaurant. Phase I – purchase of commercial/retail building (completed) to share parking. Phase II – decking, air conditioning, equipment purchase and installation of exterior awning (completed). **Phase III – building structural improvements, dock extension, new façade, landscaping.**

Location: 750-758 & 766 Northlake Boulevard, Lake Park, Florida

Performance Goal: Full time equivalent jobs to be created 5.75

Funding Sources:

Palm Beach County	\$ 48,000.00
City/CRA	25,000.00 (cash match from Town of Lake Park)
Private Investment	647,738.00

Contact: Robert E. "Bob" Parker

Mailing Address: 636 U.S. Highway 1, Suite 108
North Palm Beach, Florida 33408

Telephone: (561) 844-9322, Ext. 3

FAX: (561) 844-6115