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AUG 15 2013



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MEMORANDUM Downtown Redevelopment – Council Memo DT14-001

DATE: AUGUST 7, 2013

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER 
 PATRICK MCDERMOTT, ASSISTANT CITY MANAGER 
 CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR 

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER 

SUBJECT: ORDINANCE NO. 4479 TO APPROVE THE ASSIGNMENT TO CS
 CHANDLER REAL ESTATE LLC OF THE REDEVELOPMENT
 AGREEMENT AND SPECIAL WARRANTY DEEDS BETWEEN ROM
 PROPERTIES, LLC AND CITY OF CHANDLER; AUTHORIZING
 THE MAYOR TO SIGN THE ASSIGNMENT AGREEMENT, AND
 DECLARING AN EMERGENCY.

RECOMMENDATION: Staff recommends that City Council approve the Ordinance No. 4479 on an Emergency basis enabling the assignment of an existing Redevelopment Agreement and Special Warranty Deed for breezeway patio space to CS Chandler Real Estate LLC, the new owner of 35 W Boston, previously Kokopelli Winery and Bistro.

BACKGROUND: In January 2002, the City entered in to a Redevelopment Agreement with ROM Properties LLC, the property owner of 35 W Boston, the prior home of Kokopelli Winery and Bistro. In July 2002, Council approved Ordinance No. 3387, which authorized the conveyance of real property to ROM Properties LLC (aka “Kokopelli”) for the purpose of enabling outdoor dining. This real property included the patio space directly in front of 35 W Boston under the City Colonnade (Exhibit A), as well as a portion of the City Breezeway at 45 W Boston (Exhibit B). A Special Warranty Deed was recorded for each of the two spaces.

DISCUSSION: Kokopelli (“Seller”) is currently in escrow to sell the building to CS Chandler Real Estate LLC (“Buyer”). As part of this transaction, Kokopelli desires to

transfer the rights of use for these outdoor patio spaces to the new owner. The original Special Warranty Deeds anticipated that there would be successors and like uses during the duration of the Deeds. However, City Council must approve the successor and the City Attorney has determined that an Assignment Agreement needs to be created between the buyer and seller to which the City would consent. This Assignment Agreement will outline those elements in the Redevelopment Agreement that are complete, as well as spell out any remaining responsibilities. It would also enable the assignment of the Special Warranty Deeds by the seller to the buyer. The City Attorney will work with the parties to develop the Assignment Agreement in accordance with the Ordinance specifications.

The new property owner intends to operate a new restaurant in the space that would be a similar use to Kokopelli, and may even retain a small portion of Kokopelli's operations in the rear of the building. Having visited their sister locations, staff believes this will be a complimentary use to the Downtown and will bring a new demographic to the area. Staff believes it is important to retain the reversionary clause that should the space cease to be used for outdoor dining, it would revert to the City. The Assignment Agreement will detail the maintenance and insurance obligations that remain in effect for both the patio space as well as the archways.

Given that close of escrow is August 16, 2013 and that closing cannot be delayed, staff is requesting that this Ordinance be adopted with an Emergency clause.

FINANCIAL IMPLICATIONS: There are no financial implications for the City in this transaction.

PROPOSED MOTION: Move to approve Ordinance No. 4479 to approve the assignment to CS Chandler Real Estate LLC of the Redevelopment Agreement and Special Warranty Deeds between ROM Properties and City of Chandler, authorizing the Mayor to sign the Assignment Agreement, and declaring an emergency.

Attachments:

Exhibit A Front Patio Legal Descriptions
Exhibit B Breezeway Patio Legal Descriptions
Ordinance No. 4479

EXHIBIT 'A'

LEGAL DESCRIPTION OF "FRONT PATIO RIGHT-OF-WAY"

A portion of the Boston Street right-of-way that is 6.0 feet wide located adjacent to and directly North of the East 7.9 feet of Lot 32, and adjacent to and directly North of Lot 33, 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.

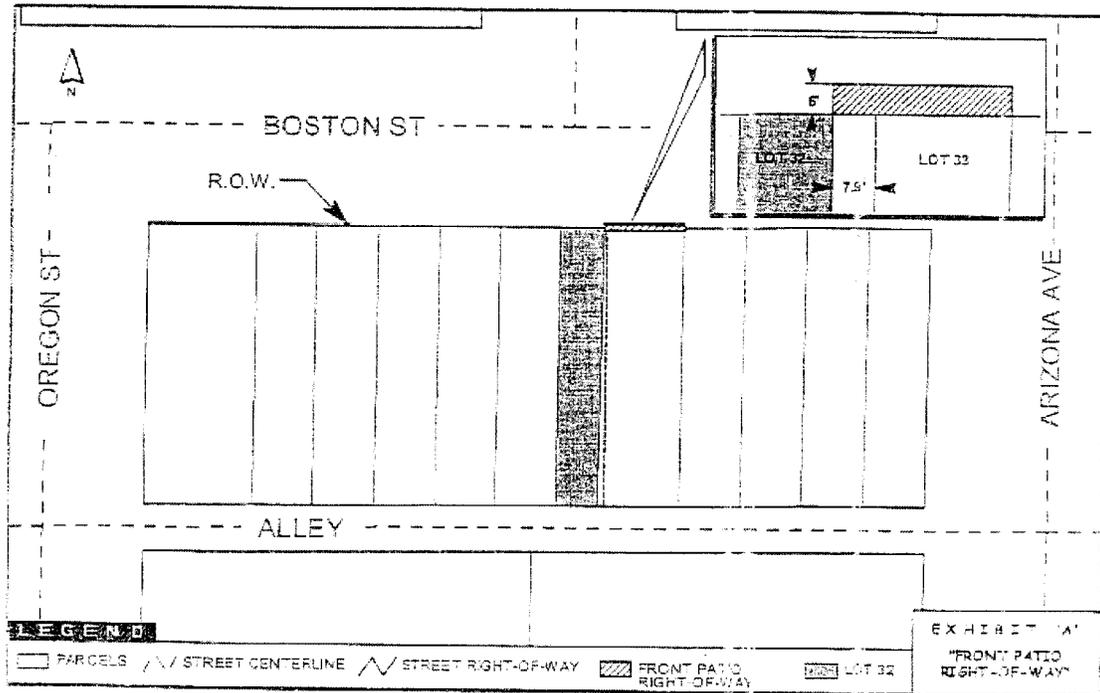
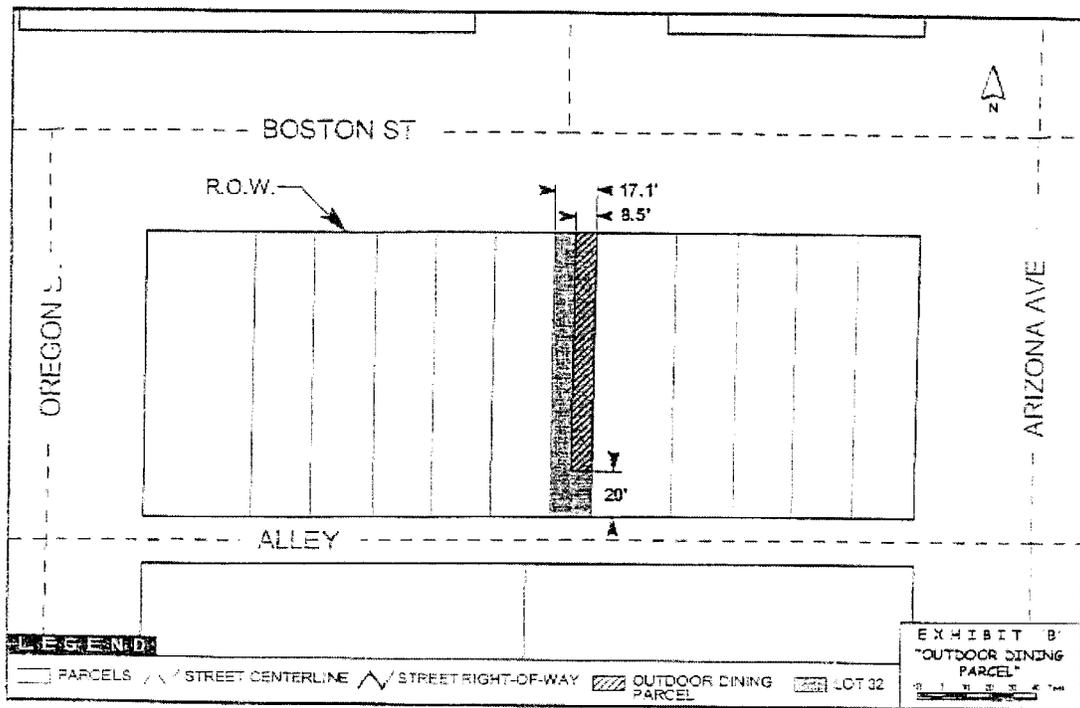


EXHIBIT 'B'

LEGAL DESCRIPTION OF "OUTDOOR DINING PARCEL"

The East 8.5 feet of the West 17.1 feet of Lot 32, 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, EXCEPT the South 20 feet thereof.



ORDINANCE NO. 4479

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, APPROVING THE ASSIGNMENT TO CS CHANDLER REAL ESTATE LLC OF THE REDEVELOPMENT AGREEMENT AND SPECIAL WARRANTY DEEDS BETWEEN ROM PROPERTIES, LLC AND CITY OF CHANDLER; AUTHORIZING THE MAYOR TO SIGN THE ASSIGNMENT AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Chandler owns the reversionary interest in real property legally described as set forth in Exhibit A, attached hereto and incorporated herein by this reference, which is generally referenced to as the "Walkway" at 35 West Boston, Chandler, Arizona, and which it deeded by Special Warranty Deed for 70 years from August 6, 2002 to ROM Properties, LLC, for its use as an outdoor dining area for Kokopelli Winery and Bistro in downtown Chandler; and

WHEREAS, the City of Chandler owns the reversionary interest in real property legally described as set forth in Exhibit B, attached hereto and incorporated herein by this reference, which is generally referenced to as the "Breezeway" to the west of 35 West Boston, Chandler, Arizona, and which it deeded by Special Warranty Deed for 70 years from August 6, 2002 to ROM Properties, LLC, for its use as an outdoor dining area for Kokopelli Winery and Bistro in downtown Chandler; and; and

WHEREAS, ROM Properties, LLC has completed all the construction and development requirements of its Redevelopment Agreement that consists of two documents entitled and recorded in the office of the Maricopa County Recorder as Redevelopment Agreement-ROM Properties, LLC-Kokopelli Winery Chandler, recorded January 11, 2002 as 2002-0034435 and First Amendment, recorded July 10, 2002 as 2002-0703921 (hereinafter collectively referred to as the "Redevelopment Agreement") but the Redevelopment Agreement contains on-going obligations, including but not limited to maintenance and insurance obligations for the areas subject to the deeds; and

WHEREAS, ROM Properties, LLC is selling its interest in Kokopelli Winery and Bistro to CS Chandler Real Estate, LLC and would like to transfer its interests in the Breezeway and the Walkway to be used for outdoor dining as part of the restaurant which is to replace Kokopelli Winery and Bistro; and

WHEREAS, Chandler City Council must approve the transfer of ROM Properties, LLC's interest in the Walkway and Breezeway as well as the assignment of the on-going obligations within the Redevelopment Agreement between Chandler and ROM Properties, LLC; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION I. COUNCIL FINDING

It is in the interest of the City to approve the transfer of ROM Properties, LLC's interests in the Redevelopment Agreement and special warranty deeds to CS Chandler Real Estates, LLC as the use and CS Chandler's acceptance of the on-going obligations of the Redevelopment Agreement are beneficial in the redevelopment of downtown Chandler.

SECTION II. COUNCIL APPROVAL

Council Approval of Assignment:

City Council hereby approves:

1. ROM Properties, LLC's assignment of the special warranty deeds and the Redevelopment Agreement upon CS Chandler Real Estate, LLC's assumption of the obligations in the Redevelopment Agreement that are on-going and continuing after ROM Properties, LLC's completion of the construction and installation of the improvements required by the Redevelopment Agreement.
2. Authorize the Mayor to execute, on behalf of the City, the City's consent to the Assignment and Assumption Agreement for the Redevelopment Agreement and Special Warranty Deeds to CS Chandler Real Estate, LLC as part of the close of escrow for the conveyance of property by ROM Properties, LLC to CS Chandler Real Estate, LLC in a form approved by the City Attorney as being consistent with this Ordinance 4479.

SECTION III. DECLARATION OF EMERGENCY

Whereas, it is necessary for the preservation of the peace, health and safety of the City of Chandler, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED by the City Council of the City of Chandler this 15th day of August, 2013.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4479 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 15th day of August 2013, and that the vote was ____ Ayes, ____ Nays.

CITY CLERK

APPROVED AS TO FORM:

ACTING CITY ATTORNEY

PUBLISHED

EXHIBIT A WALKWAY

TOGETHER WITH A PORTION OF THE BOSTON STREET RIGHT-OF-WAY THAT IS 6.0 FEET WIDE LOCATED ADJACENT TO AND DIRECTLY NORTH OF THE EAST 7.9 FEET OF LOT 32, AND ADJACENT TO AND DIRECTLY NORTH OF LOT 33, 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.

EXHIBIT B BREEZEWAY

THE EAST 8.5 FEET OF THE WEST 17.1 FEET OF LOT 32, 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, EXCEPT THE SOUTH 20 FEET THEREOF.