

**MEMORANDUM**

TO: Roger L. Stancil, Town Manager

FROM: Butch Kisiah, Director of Parks and Recreation  
Ralph D. Karpinos, Town Attorney

SUBJECT: Proposed Lease of the Wallace Parking Deck to Kidzu Children's Museum

DATE: September 28, 2009

**PURPOSE**

This report is an update on the development of a lease agreement between the Town of Chapel Hill and the Kidzu Children's Museum for the construction of a new museum and exhibit space on top of the Wallace Parking Plaza.

**DISCUSSION**

On September 8, 2008, the Town Council authorized the Town Manager to execute a non-binding letter of intent and good faith stating the Town's intent to provide the upper level of the Wallace Parking Plaza for Kidzu's expansion needs. (Attachment #1)

Attorneys for Kidzu drafted an Air Rights Lease Agreement (the Agreement) detailing proposed terms and conditions for use of the parking deck structure. Over the last several weeks Town staff and Kidzu representatives have been meeting and reviewing the terms contained in this proposed Agreement. More recently, we have sought the guidance and expertise of the law firm which has worked with the Town on the Lot 5 project (and on earlier negotiations during which a project on the Wallace Plaza was also being discussed with the Lot 5 developer) to advise us on the more technical provisions of the Agreement. Attached to this memo is a draft of the Agreement for Town Council consideration, reflecting the results of discussions between Town staff and Kidzu representatives and the attorneys. (Attachment #2)

**BRIEF SUMMARY OF PROPOSED LEASE**

Under the terms of the Agreement, Kidzu could construct a building of up to approximately 20,000 square feet on the western end of the roof of the Wallace Parking Plaza and could use approximately one half of the remaining outdoor space for exhibits and outdoor events. With notice to Kidzu, the Town could use this outdoor space for Town-sponsored events. The proposed lease is for 99 years, subject to earlier termination in the event of substantial deterioration to the deck itself.

There are a number of detailed key issues for which we believe we need Council direction. Some of these are noted in the draft Agreement as remaining unresolved between Town staff and

Kidzu representatives. In addition, there may be issues in the Agreement which Town staff and Kidzu representatives have tentatively resolved but for which the Council may choose to take a different approach.

### **RECOMMENDATION**

We recommend that the Town Council receive the Agreement this evening and provide guidance to Town staff on its interest in pursuing this Agreement and the process for considering this proposal in detail, including the opportunity for public comment and conversations between Kidzu representatives and the Council. In addition, we seek Council authorization to continue to engage private counsel to assist in these efforts. With Council's approval we will bring a resolution and recommendation for funding to support these efforts. While we have not received a formal statement at this time, we have been advised that Town legal fees thus far for review and revisions to the Agreement will total approximately \$12,000.

### **ATTACHMENTS**

1. Letter of Intent and Good Faith Agreement (p. 3).
2. Draft Air Rights Lease Agreement (p. 4).