

**MEMORANDUM**

TO: Mayor and Town Council

FROM: Ralph D. Karpinos, Town Attorney

SUBJECT: Proposed Lease to Kidzu Children's Museum: Additional Changes to Draft Agreement

DATE: October 28, 2009

In the memorandum included with the agenda materials we noted that we would provide an update this evening regarding on-going discussions with Kidzu representatives on the proposed changes to the draft Lease Agreement.

Attached to this memorandum are drafts of four sections of the Lease Agreement indicating proposed modifications. This revised language for these four sections has been developed as a result of our review of Kidzu's draft prepared following the October 9 work session and further communications with Kidzu's representatives.

We will refer to these draft provisions in the introduction at the public forum.

**ATTACHMENT**

1. Revised language for Draft Lease Agreement: **Sections 6.3; 11.3; 20.17; and 20.18**

### 6.3 (Page 20)

1. Tenant shall, within one hundred twenty (120) days after Tenant's receipt of Landlord's notice, perform the structural analysis described in Section 6.3(e)(i) above and cause a copy to be delivered to Landlord. If such structural analysis indicates that the museum building is structurally habitable for its current use, Landlord shall, subject to the provisions of Section 6.3(e)(2) below, proceed with its maintenance and improvement obligations under this Lease in full. If such structural analysis indicates that the museum building is not structurally habitable for its current use, Tenant shall perform the repairs and replacements recommended by the structural analysis within six (6) months after the date of such analysis, and if Tenant does not perform such repairs and replacements within such six (6) month period, then Landlord shall have the right to send written notice to Tenant demanding Tenant's performance of such repairs and replacements and if Tenant does not complete such repairs and replacements within thirty (30) days after Tenant's receipt of Landlord's demand letter, Landlord shall have the right, as its sole and exclusive remedy, to either (A) waive the condition stated in Section 6.3(e)(i) above and, subject to the provisions of Section 6.3(e)(2) below, proceed with Landlord's maintenance and repair obligations under this Lease in full, or (B) terminate this Lease by providing written notice of such termination to Tenant. If this Lease is terminated under the provisions of this section, Landlord shall have full title and right to the Improvements remaining and may occupy them or permit others to occupy them after providing Tenant with reasonable opportunity to remove any exhibits or fixtures provided said removal efforts do not cause structural damage to the Improvements or may remove them.

### 11.3 (Page 25)

Section 0.3 Casualty to Parking Deck. ~~After January 1, 2059, in~~In the event that the Parking Deck is damaged by fire or other insured casualty ~~to the extent of fifty percent (50%) or more of its replacement value, Landlord shall be entitled to terminate this Lease by providing written notice of such termination to Tenant within ninety (90) days following the date of the casualty. Notwithstanding anything to the contrary set forth in this Lease, if Landlord terminates this Lease pursuant to this Section 11.3, then in no event may Landlord occupy (or permit others to occupy) any Improvements constructed by Tenant on the Premises after the effective date of the termination of this Lease, and the insurance proceeds received and receivable under any policy of insurance covering the Improvements shall be paid to Tenant to be used by Tenant in Tenant's sole and absolute discretion.~~ Landlord shall promptly repair, replace and restore the Parking Deck (provided, however, after the date that is ten (10) years after the date on which Tenant opens its museum on the Premises to the public, Landlord may elect to redevelop the Parking Deck site, in which case the provisions of Section 20.18 below shall automatically become applicable). Except as otherwise provided in this Lease, this Lease shall not terminate or be affected in any manner by reason of the damage or destruction, by fire or other casualty, in whole or in part, of the Parking Deck, or by reason of the untenability of the Premises, and Landlord shall be obligated to promptly repair, replace and restore the Parking Deck following any such damage or destruction by fire or other casualty.

### 20.17 (Page 38)

Section 20.17. Museum to Remain Accessible by Public. Tenant is committed to ensuring that its museum is available to the public, regardless of ability to pay. To that end, Tenant has implemented policies designed to provide access for families from impoverished and low-income backgrounds (as defined by federal and/or state income standards) in its current operating practices and shall ensure that similar policies remain in place during the entire time that Tenant operates a museum from the Premises. These policies shall be subject to review and approval by the Town Manager, which approval shall not be unreasonably withheld.

20.18 ( Page 38-39) (substantial revisions from draft included in agenda)

Section 20.18 Redevelopment of the Parking Deck Site. (a) Commencing on the date that is ten (10) years after the date on which Tenant opens its museum on the Premises to the public, Landlord shall have the right to redevelop the Parking Deck site (the "Redevelopment Plan") as long as the Redevelopment Plan incorporates Tenant's museum and outdoor exhibits in an alternate location on the Parking Deck site or provides an alternative location acceptable to Tenant (the "Substitute Premises"), and provided:

i. The Substitute Premises shall be of a size greater than or equal to the original Premises, shall include adequate outdoor space for Tenant's outdoor exhibits and programming, and shall provide for building and exhibit expansion options greater than or equal to the expansion options available for the Premises; and

ii. The Substitute Premises shall be in a location that is acceptable to Tenant; and

iii. If the Substitute Premises will be within the redeveloped Parking Deck site, any other uses that would be made of the Parking Deck site as part of the Redevelopment Plan, whether commercial or residential, shall not be incompatible with a children's museum; and

iv. The Redevelopment Plan shall make adequate parking available; and

v. If the Substitute Premises will be within the redeveloped Parking Deck site, the Redevelopment Plan shall include plans to relocate Tenant, at Landlord's expense, to an acceptable alternate location (the "Interim Premises") during the entire period of reconstruction, not to exceed two (2) years, and if the Substitute Premises will be in an alternative location, the Redevelopment Plan shall include plans to relocate Tenant to the alternative location so that Tenant will not be required to suspend its business operations for a period exceeding one hundred twenty (120) days in order to accommodate the move.

(b) Except as expressly set forth in this Section 20.18, any Redevelopment Plan shall be subject to the terms and conditions of this Lease. Notwithstanding the foregoing provisions, it is the parties' intent that Tenant shall be made whole upon any redevelopment (or proposed redevelopment) by Landlord of the Parking Deck site and that Tenant shall not bear any expense in connection therewith. Therefore, at such time as a Redevelopment Plan is approved by Tenant, the parties shall enter into a written redevelopment or relocation agreement (the "Redevelopment Agreement"), which Redevelopment Agreement shall provide that Tenant shall be reimbursed for all actual and documented costs incurred by Tenant in connection with any redevelopment or proposed redevelopment, including (i) costs incurred by Tenant to evaluate any proposed Substitute Premises and Interim Premises (if applicable) (including, without limitation, architectural, engineering, design, title and surveying costs), (ii) the cost of designing and

installing leasehold improvements and exhibits in the Interim Premises (if applicable), (iii) the cost of designing and installing leasehold improvements and exhibits in the Substitute Premises, which shall be equal to or better than the improvements and exhibits that Tenant had previously constructed and installed in the original Premises, (iv) the cost of redesigning any then existing working drawings and plans and specifications for future phases of improvements and exhibits, (v) the cost of a survey and title policy for the Substitute Premises, (vi) the cost of relocating Tenant's furniture, equipment, supplies and telephone equipment to the Interim Premises (if applicable) and the Substitute Premises, and (vii) the cost of reprinting Tenant's stationery for the Interim Premises (if applicable) and the Substitute Premises and (viii) if the Substitute Premises will be in an alternative location, lost revenue (not to exceed \$1,500.00 per day) Tenant incurs during the time period that Tenant is required to suspend its business operations in order to accommodate the move from the Premises to the Substitute Premises. Tenant, in Tenant's sole discretion, shall approve the plans and specifications in writing prior to the commencement of construction thereof. Landlord shall be solely responsible for all costs and expenses associated with the design and construction of the Substitute Improvements (including, without limitation, architect, design, permitting, engineering and construction costs).

(c) Any Redevelopment Agreement shall include an amendment to this Lease whereby the Substitute Premises shall be substituted for the original Premises upon the completion of construction of improvements and exhibits in the Substitute Premises. Once the redevelopment has been completed, a certificate of occupancy has been issued for the Substitute Premises, and Tenant has approved the completed Substitute Improvements in writing, then the Substitute Premises shall be substituted for the Premises so that the Substitute Premises shall, for all intents and purposes, be deemed to be the Premises hereunder, and all of the terms, covenants, conditions, provisions and agreements of this Lease, except as otherwise amended by agreement of the parties or no longer applicable due to changed circumstances, shall continue in full force and effect.