

#46

JAN 24 2013



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM Economic Development – Council Memo ED13-009

DATE: JANUARY 16, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PATRICK MCDERMOTT, ASSISTANT CITY MANAGER *PM*

FROM: CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR *CM*

SUBJECT: SUBORDINATION FOR INNOVATIONS TENANT EQUIPMENT PURCHASE

RECOMMENDATION: Staff recommends approval of Resolution No. 4667 authorizing the City to partially waive its landlord lien over the premises subleased to Healthtell at Innovations Technology Incubator as set forth in Exhibit A, and authorize the Mayor to execute the related documents as approved by the City Attorney.

BACKGROUND/DISCUSSION: Healthtell, a tenant at Innovations Technology Incubator is in the process of purchasing two significant pieces of equipment, outlined on Exhibit A, related to their work at the incubator. Their bank is requesting that the City waive any landlord lien against this equipment so that it can go forward with financing. This will allow Healthtell to purchase the equipment and have it installed in their suite at the incubator. Healthtell's purchase of this equipment is anticipated to contribute to their continued vitality as a start-up company at the Incubator

FINANCIAL IMPLICATIONS: None

PROPOSED MOTION: Move to approve Resolution No. 4667 authorizing the City to partially waive its landlord lien over the premises subleased to Healthtell at Innovations Technology Incubator as set forth in Exhibit A, and authorize the Mayor to execute the related documents as approved by the City Attorney.

Resolution No.

RESOLUTION NO. 4667

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF CHANDLER, ARIZONA APPROVING AND AUTHORIZING
THE CITY TO EXECUTE A LANDLORD WAIVER IN FAVOR OF BANK OF
AMERICA, N.A AT THE INNOVATIONS TECHNOLOGY INCUBATOR**

WHEREAS, the City of Chandler, Arizona ("City") has entered a lease for certain real property at 149 S. 79th St. in Chandler, Arizona (the Innovations Technology Incubator) and has subleased a portion of the space to Healthtell, Inc. ("Healthtell");

WHEREAS, Healthtell desires to purchase equipment to be financed by Bank of America ("Bank") and place such equipment on the subleased premises; and

WHEREAS, Bank will only finance Healthtell's purchase if the City will agree to waive any landlord lien it may have in the future against said equipment; and

WHEREAS, it is in the best interest of the City to execute a Landlord Lien partial waiver in favor of Bank so as to foster the continued economic vitality of the Innovations Technology Incubator,

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

1. That approval is granted for the City to partially waive its landlord lien over the premises subleased to Healthtell at the Innovations Technology Incubator as set forth in the attached Exhibit A.
2. That the Mayor of the City of Chandler is hereby authorized to execute the Landlord Waiver attached hereto as Exhibit A on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ___th day of January, 2013.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

(EA)

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4667 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the ____ day of _____, 2013, and that a quorum was present thereat.

City Clerk

Exhibit "A"

TmplvlCoverPageDocLvlCoverPage



ImageBarCode

LANDLORD WAIVER

The undersigned has an interest either as owner, lessor, mortgage holder or trust deed holder in certain real property commonly known as 145 South 79th Street, Chandler, Arizona 85226 (the "Real Property").

Healthtell Inc. ("Borrower") has requested an extension of credit from Bank of America, N.A. ("Bank") and has granted or will grant a security interest to Bank in the following personal property (the "Personal Property"):

- Model 5008A System – Proximity/Contact Mask Alignment
- Exposure System; and P9000 Cluster System

Some or all of the Personal Property is or may become attached or affixed to the Real Property.

In order to induce Bank to extend credit to Borrower, and in consideration of such extension of credit, the undersigned agrees as follows:

1. The Personal Property shall be deemed to be personal property and shall not be considered a part of the Real Property, regardless of whether or by what means it is or may become attached or affixed to the Real Property.
2. To the extent the undersigned has any interest in or lien on the Personal Property, the undersigned hereby subordinates such interest or lien to the security interest which Bank now has or may hereafter acquire in the Personal Property.
3. The undersigned consents to Bank, its agents, employees and invitees entering upon the Real Property for the purpose of exercising any right Bank may have under the terms of any security agreement with Borrower or otherwise, and to remove the Personal Property; provided, however, that Bank shall repair any physical damage to the Real Property caused by its removal of the Personal Property.

This Agreement is governed by and shall be interpreted according to federal law and the laws of Arizona. If state or local law and federal law are inconsistent, or if state or local law is preempted by federal law, federal law governs. If Bank has greater rights or remedies under federal law, whether as a national bank or otherwise, this paragraph shall not be deemed to deprive Bank of such rights and remedies as may be available under federal law. This Agreement shall inure to the benefit of and be binding upon the successors, heirs and assigns of the undersigned and Bank.

Dated: January 16, 2013

Landlord Name

By: _____

Printed Name: _____

Title: _____