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MEMORANDUM Downtown Redevelopment – Council Memo DT16-012

DATE: JANUARY 14, 2016

TO: MAYOR AND CITY COUNCIL

THRU: MARSHA REED, ACTING CITY MANAGER *MR*

FROM: KIM MOYERS, DOWNTOWN REDEVELOPMENT MANAGER *km*

SUBJECT: RESOLUTION NO. 4926 AUTHORIZING AN AGREEMENT WITH Zoolikins, LLC, FOR MUTUAL TERMINATION OF A LEASE AND MUTUAL RELEASES, FOR THE PREMISES AT 51 EAST BOSTON STREET IN CHANDLER, ARIZONA; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

RECOMMENDATION: Staff recommends City Council pass and adopt Resolution No. 4926 authorizing an agreement with Zoolikins, LLC, for mutual termination of a lease and mutual releases, for the premises at 51 East Boston Street in Chandler, Arizona; and authorizing the City Manager to execute the agreement.

BACKGROUND/DISCUSSION: In May 2013, City Council approved Ordinance No. 4660 authorizing and approving a lease agreement between Zoolikins, LLC, and the City of Chandler at 51 E. Boston for a term of 5 years. Zoolikins opened in the Fall of 2013 and has been punctual with lease payments.

Zoolikins put tremendous amount of marketing into their Downtown Chandler location, including spearheading special events such as the Diaper Challenge. In spite of these efforts, Zoolikins has been unable to make this location viable. Over the past 18 months, City of Chandler staff and the Downtown Chandler Community Partnership (DCCP) spent time evaluating Zoolikins' business model and assisting in marketing efforts.

Zoolikins, LLC, has requested an early termination of their lease.

FINANCIAL IMPLICATIONS: The original monthly lease payment was \$2,437. Approximate loss of rent revenue over the next 30 months is \$73,110. Staff is evaluating options for future use of property to minimize financial impacts.

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PROPOSED MOTION: Move City Council pass and adopt Resolution No. 4926 approving an agreement with Zoolikins, LLC, for mutual termination of a lease and mutual releases, for the premises at 51 East Boston Street in Chandler, Arizona; and authorizing the City Manager to execute the agreement.

Attachments: Resolution No. 4926

Agreement for Mutual Termination of Lease and Mutual Releases

RESOLUTION NO. 4926

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AN AGREEMENT WITH ZOOLIKINS, LLC FOR MUTUAL TERMINATION OF A LEASE AND MUTUAL RELEASES, FOR THE PREMISES AT 51 EAST BOSTON STREET IN CHANDLER, ARIZONA.

WHEREAS, the City, as Landlord, leased to Zoolikins, LLC, as Tenant, the premises at 51 East Boston Street, Chandler, Arizona, for a period of five (5) years beginning on July 1, 2013, and ending on June 30, 2018; and

WHEREAS, Zoolikins has occupied and used the premises for a small, commercial retail business, but can no longer continue to do so and remain solvent; and

WHEREAS, the parties desire to execute an agreement for the mutual termination of the lease to be effective as of the end of December, 2015, and for mutual releases of any and all claims arising from early lease termination;

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

Section 1. The City is authorized to enter into an Agreement for Mutual Termination of Lease and Mutual Releases with Zoolikins, LLC, in substantially the form attached hereto as Exhibit A.

Section 2. Pursuant to said Agreement, the security deposit provided by Zoolikins to City under the lease shall remain in possession of City and shall be applied against the lost rental incurred by City as a result of the early termination of the lease.

Section 3. The City Manager of the City of Chandler is authorized to execute the Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this _____ day of _____, 2016.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4926 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2016, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *GAB*

**AGREEMENT FOR MUTUAL TERMINATION OF LEASE
AND MUTUAL RELEASES**

This Agreement for Mutual Termination of Lease and Mutual Releases (this "Agreement") is made and entered into this ____ day of January, 2016, by and between the CITY OF CHANDLER, an Arizona municipal corporation ("Landlord"), and ZOOLIKINS, LLC, an Arizona limited liability company ("Tenant").

Recitals

A. Pursuant to that certain written lease agreement dated June 24, 2013 (the "Lease"), Landlord leased to Tenant, and Tenant leased from Landlord, for a period of five (5) years beginning on July 1, 2013, and ending on June 30, 2018, the premises located at 51 East Boston Street, Chandler, Arizona, which premises consists of that certain land legally described in attached Exhibit "A", together with a commercial building of approximately 1,950 square feet with a rear patio (the "Leased Premises").

B. Landlord and Tenant now desire to mutually terminate the Lease and to settle fully and finally all differences between them with respect the Lease for the Leased Premises.

IN CONSIDERATION of the matters set forth in the Recitals set forth above and the covenants and conditions set forth below, Landlord and Tenant agree as follows:

1. Landlord and Tenant agree to the mutual termination of the Lease for the Leased Premises in its entirety, with the termination to be deemed effective as of December 31, 2015.

2. Landlord and Tenant agree that the Security Deposit provided by Tenant to Landlord pursuant to Section 7 of the Lease shall remain in possession of Landlord and shall be applied against the lost rental incurred by Landlord as a result of the early termination of the Lease.

3. As a material inducement to each of the parties to enter into this Agreement, Landlord and Tenant, each on behalf of itself, its predecessors, successors, assigns, governing body, officers, employees or agents, does hereby irrevocably and unconditionally release, acquit and forever discharge and covenant not to sue the other party and the other party's predecessors, successors, assigns, governing body, officers, employees or agents, or any of them, from any and all charges, complaints, claims, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including, but not limited to, attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown, which either party now has, owns, or holds, or claims to have, own, or hold, or which such party at any time heretofore had, owned, or held, or claimed to have, owned, or held, arising out of or in connection with the Lease for the Leased Premises.

4. This Agreement shall be binding upon each party to this Agreement and upon each such party's successors and assigns, and it shall inure to the benefit of each of the parties being released, their successors and assigns.

5. This Agreement shall not in any way be construed as an admission of any wrongdoing or liability on the part of any party to this Agreement, and all parties specifically disclaim any wrongdoing or liability of any kind on the part of themselves, their governing body, officers, employees or agents.

6. Each of the parties represent and warrant that they have executed this Agreement solely in reliance upon their own judgment and advise of independent counsel and not in reliance upon any representations or promises of the other party hereto or the other party's attorneys or representatives. All of the parties hereto have been or have had an opportunity to be represented by legal counsel in connection with this Agreement. This Agreement is the product of extensive negotiations and the fact that this Agreement was prepared by one of the parties or its legal counsel shall not affect the interpretation or application of this Agreement.

7. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

8. This Agreement contains the entire agreement of the parties hereto with respect to its subject matter and supercedes all prior arrangements and understandings between the parties, and no other agreement, statement or promise made by any party hereto relating to the subject matter of this Agreement which is not contained herein shall be binding or valid.

9. The individual executing this Agreement for Tenant represents and warrants that he or she is duly authorized to execute this Agreement on behalf Tenant; that all corporate, partnership, trust or other actions necessary for Tenant to enter into this Agreement have been duly taken by Tenant; and that no other signature and/or authorization is necessary for Tenant to enter into and perform the terms of this Agreement.

10. This Agreement is subject to approval of Landlord's governing body, i.e. City Council. Such approval shall be indicated by the signature of the City Manager of the City of Chandler.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LANDLORD: CITY OF CHANDLER, an
Arizona municipal corporation

By: _____

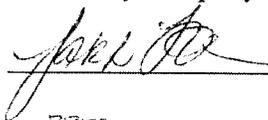
Its: City Manager

APPROVED AS TO FORM:

CITY ATTORNEY *Graf*



TENANT: ZOOLIKINS, LLC, an Arizona
limited liability company

By: 

Its: PRESIDENT