Staff Summary Report

Tempe

Council Meeting Date: June 11, 2009 **Agenda Item Number:** 36

SUBJECT: This is the introduction and first public hearing to approve Ordinance 2009.26 authorizing the Mayor to execute an Assignment and Assumption of Leases on Units 1 and 2 of the Brickyard, and a Deed reconveying Units 1 and 2 to ASU. The second public hearing is set for July 2, 2009

DOCUMENT NAME: 20090611dscm02 **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADM (0403-01)** Ordinance #2009.26

COMMENTS: In 1999, the City entered into a Development Agreement with MCW whereby the City would own title to Unit 1 (Brickyard parking garage) and Unit 2 (Brickyard office building, Artisan Court and the first floor of the Orchid house) of the Brickyard on Mill project. The City would then lease the property back to MCW as Part of a GPLET agreement.

In 2004, ASUF Brickyard, LLC (a subsidiary of ASU Foundation) acquired the Leases for Unit 1 and 2, of the Brickyard on Mill and sub-leased the property to ASU. As permitted by the terms of the Unit 1 and Unit 2 Leases, ASUF Brickyard, LLC has requested that the City assign its interest as lessor under the Leases, and convey title to the Unit 1 Premises and the Unit 2 to the Arizona Board of Regents on behalf of ASU. After the transfer ASU will continue to lease the property to ASUF Brickyard and ASU Brickyard will continue to lease property to ASU.

The attached Ordinance Authorizes the Mayor to execute documents necessary to effectuate the conveyance of the Leases and the Premises.

PREPARED BY: Chris Messer, Principal Planner (350-8562)

REVIEWED BY: Chris Salomone, Community Development Manager (350-2912)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (350-2187)

DEPARTMENT APPROVAL: Chris Salomone, Community Development Manager (350-2912)

FISCAL NOTE: n/a

RECOMMENDATION: Approve ordinance as submitted

ORDINANCE NO. 2009.26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS TRANSFERRING OWNERSHIP OF PROPERTY AND LEASES TO THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY .

WHEREAS, the City of Tempe, as Lessor, and 7th & Mill Parking Assessment, L.L.C., as Lessee, were parties to that certain Condominium Unit Lease October 8, 1999 (the "Unit 1 Lease"), pertaining to the real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Unit 1 Premises"). The Unit 1 Lease was conveyed to various parties, with the last assignment to ASUF Brickyard, LLC, an Arizona limited liability company, as evidenced by Memorandum of Assignment and Assumption of Lease dated as of July 1, 2004 and recorded July 1, 2004 at Document No. 2004-0758220, Official Records of the Maricopa County, Arizona Recorder.

WHEREAS, the City of Tempe and MCW Brickyard Commercial, L.L.C., as Lessee, were parties to that certain Condominium Unit Lease October 8, 1999 (the "Unit 2 Lease"), pertaining to the real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Unit 2 Premises"). The Unit 2 Lease was conveyed to various parties, with the last assignment to ASUF Brickyard, LLC, an Arizona limited liability company, as evidenced by Memorandum of Assignment and Assumption of Lease dated as of July 1, 2004 and recorded July 1, 2004 at Document No. 2004-0758221, Official Records of the Maricopa County, Arizona Recorder.

WHEREAS, as permitted by the terms of the Unit 1 Lease and the Unit 2 Lease (the "Leases"), ASUF Brickyard, LLC has requested that the City assign its interest as lessor under the Leases, and convey title to the Unit 1 Premises and the Unit 2 Premises (the "Premises"), to the Arizona Board of Regents, and the City has agreed to do so.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. The Mayor is authorized to execute an Assignment and Assumption of Leases and a Deed in substantially the forms on file with the Clerk, and to take such other actions as may be necessary to effectuate the conveyance of the Leases and the Premises.

Section 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2009.

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

WHEN RECORDED, RETURN TO:

Arizona State University
P. O. Box 87-7405
Tempe, AZ 85287-7405
Attn: Lisa Loo

EXEMPT from the requirement for an Affidavit per 11-1134A3

DEED

For consideration of Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, **CITY OF TEMPE,** an Arizona municipal corporation (**"Grantor"**) does hereby convey to **The Arizona Board of Regents for and on behalf of Arizona State University (**"**Grantee"),** the real property described on the attached Exhibit A which is incorporated herein by this reference (the **"Property"**).

Grantor warrants to Grantee that it is conveying the Property subject only to: (i) matters affecting title as of the date Grantor obtained title to the Improvements by that Special Warranty Deed recorded as Document No. 99-950975, (ii) matters created by or with the consent of Grantee or at the sufferance of Grantee, and (iii) matters created by or with the consent of ASUF Brickyard, LLC, an Arizona limited liability company ("Brickyard") or at the sufferance of Brickyard, or its predecessors in interest . Grantor conveys the Property in its "as-is" condition without representation or warranty whatsoever.

Dated _____, 2009.

CITY OF TEMPE, an Arizona municipal corporation

By_____
Hugh L. Hallman, Mayor

ATTEST:

By_____
City Clerk

KCH:kch 1039979.3 6/1/2009

APPROVED AS TO FORM:

By_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by Hugh L. Hallman, the Mayor of **THE CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of said City.

_____
Notary Public

My Commission Expires:

_____

KCH:kch 1039979.3 6/1/2009

EXHIBIT A

Legal Description

Units 1 and 2, BRICKYARD ON MILL CONDOMINIUMS, a condominium as created by that certain Declaration recorded October 15, 1999, as 99-0950957 and as shown on the plat of said condominium recorded as Book 514 of Maps, Page 29, in the Official Records of the Maricopa County Recorder.

WHEN RECORDED, RETURN TO:

Arizona State University
P. O. Box 87-7405
Tempe, AZ 85287-7405
Attn: Lisa Loo

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment") dated as of _____, 2009 is between **CITY OF TEMPE,** an Arizona municipal corporation ("Assignor") and **THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY** ("Assignee").

A. Assignor is the lessor under certain leases executed with respect to that certain real property and improvements thereon located in Tempe, Arizona, more particularly described in Exhibit A attached hereto (the "Property"), which leases are described in Exhibit B attached hereto (the "Leases").

B. Assignor has executed and delivered to Assignee a Deed dated _____, 2009, transferring the Property to the Assignee.

C. Assignor desires to assign its interest as lessor in the Leases to Assignee, and Assignee desires to accept the assignment thereof and assume Assignor's obligations thereunder, on the terms and conditions below,

ACCORDINGLY, the parties hereby agree as follows:

1. As of the date on which the Property is conveyed to Assignee pursuant to the Deed (the "Closing Date"), Assignor hereby assigns to Assignee all of its right, title and interest in and to the Leases.

2. As of the Closing Date, Assignee hereby assumes all of Assignor's obligations under the Leases, arising on or after the Closing Date.

3. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

4. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Assignor and Assignee have executed this Assignment the day and year first above written.

"Assignor"

CITY OF TEMPE, an Arizona municipal corporation

By_____
Hugh L. Hallman, Mayor

ATTEST:

By_____
City Clerk

APPROVED AS TO FORM:

By_____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by Hugh L. Hallman, the Mayor of **THE CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of said City.

_____
Notary Public

My Commission Expires:

_____

KCH:kch 1039990.2 6/1/2009

"Assignee"

ARIZONA BOARD OF REGENTS, a body corporate with perpetual succession acting for and on behalf of Arizona State University

By:_____

Name:_____

Title:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009 by _____ the _____ of **ARIZONA BOARD OF REGENTS,** a body corporate with perpetual succession acting for and on behalf of Arizona State University.

_____
Notary Public

My Commission Expires:

_____

KCH:kch 1039990.2 6/1/2009

CONSENT

(ASUF Brickyard)

The undersigned hereby consents to that certain ASSIGNMENT AND ASSUMPTION OF LEASES dated _____, _____, by and between CITY OF TEMPE, a municipal corporation, and THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY, and to the deed referred to therein, as being in accordance with Section 23(b) of the Condominium Unit Leases entered October 3, 1999, by and between the undersigned's predecessors and CITY OF TEMPE.

ASUF BRICKYARD, LLC, an Arizona limited liability company

By: **ARIZONA STATE UNIVERSITY FOUNDATION**, an Arizona nonprofit corporation, as the sole member

By:_____
Name:_____
Title:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, by _____, the _____ of the ARIZONA STATE UNIVERSITY FOUNDATION, an Arizona nonprofit corporation, as the sole member of ASUF BRICKYARD, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

My commission expires:

_____

KCH:kch 1039990.2 6/1/2009

Exhibit A

to Assignment and Assumption of Leases

LEGAL DESCRIPTION

Units 1 and 2, BRICKYARD ON MILL CONDOMINIUMS, a condominium as created by that certain Declaration recorded October 15, 1999, as 99-0950957 and as shown on the plat of said condominium recorded as Book 514 of Maps, Page 29, in the Official Records of the Maricopa County Recorder.

Exhibit B
to Assignment and Assumption of Leases

LEASES

A Condominium Unit Lease dated October 8, 1999 (the "Unit 1 Lease") by and between the Assignor, as Lessor, and 7th & Mill Parking Assessment, L.L.C., as Lessee, with respect to Unit 1, Brickyard on Mill Condominiums. A Memorandum of the Lease was recorded on October 15, 1999 at Document No. 99-0950977, Official Records of the Maricopa County Recorder. The Lessee's interest in the Unit 1 Lease was conveyed to various parties, with the last assignment to ASUF Brickyard, LLC, an Arizona limited liability company ("ASUF Brickyard"), being evidenced by Memorandum of Assignment and Assumption of Lease dated as of July 1, 2004 and recorded July 1, 2004 at Document No. 2004-0758220, Official Records of the Maricopa County, Arizona Recorder.

A Condominium Unit Lease dated October 8, 1999 (the "Unit 2 Lease") by and between the Assignor, as Lessor, and MCW Brickyard Commercial, L.L.C., as Lessee, with respect to Unit 2, Brickyard on Mill Condominiums. A Memorandum of the Lease was recorded on October 15, 1999 at Document No. 99-0950978, Official Records of the Maricopa County Recorder. The Lessee's interest in the Unit 2 Lease was conveyed to various parties, with the last assignment to ASUF Brickyard, being evidenced by Memorandum of Assignment and Assumption of Lease dated as of July 1, 2004 and recorded July 1, 2004 at Document No. 2004-0758221, Official Records of the Maricopa County, Arizona Recorder.