

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Airport

AGENDA DATE: April 6, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780 4793

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign the Lessor's Approval of Assignment of a Butterfield Trail Industrial Park Lease by and between the City of El Paso ("Lessor:), Marvin L. Oates, as Trustee of Marvin L. Oates Trust ("Oates Trust")("Assignor")and Buzz Oates LLC ("Assignee").

BACKGROUND / DISCUSSION:

Marvin L. Oates, as Trustee of the Marvin L. Oates Trust has been a Butterfield Trail Industrial Park ("BTIP") lessee at #16 Zane Grey and #21 Butterfield Trail since March 2002 when Texas Builders/Mueller assigned ownership.

The initial term of the Lease is for 35 years, terminating on October 31, 2026 and presently generating annual revenues of \$83,002.68 on approximately 535,993 square feet of land. There are 16½ years remaining on the initial lease term, with two – 10 year options. All terms and conditions of Lease are to remain the same.

Marvin L. Oates, as Trustee of Marvin L. Oates Trust ("Oates Trust") now desires to assign the current Lease to Buzz Oates LLC, a California limited liability company.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A. This is a revenue generating lease.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor"), Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 ("Assignor"), and Buzz Oates LLC ("Assignee") for the following described property:

Lots 4, 5 and 6, Block 7, Butterfield Trail Industrial Park Unit One, Replat "A", municipally known and numbered as #16 Zane Grey; and Lot 1, Block 12, Butterfield Trail Industrial Park Unit Two, municipally known and numbered as #21 Butterfield Trail, City of El Paso, El Paso County, Texas.

ADOPTED this ____ day of _____ 2010.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A. A. E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR’S APPROVAL OF ASSIGNMENT

The City of El Paso (“Lessor”) entered into a Butterfield Trail Industrial Park Lease dated may 12, 1992 (effective November 1, 1991) (“Lease”), between Lessor and Texas Builders (“Lessee”), for the property legally described as:

Lots 4, 5 and 6, Block 7, Butterfield Trail Industrial Park Unit One, Replat “A”, municipally known and numbered as #16 Zane Grey; and Lot 1, Block 12, Butterfield Trail Industrial Park Unit Two, municipally known and numbered as #21 Butterfield Trail, City of El Paso, El Paso County, Texas.

Thereafter, effective January 1, 1993, Lessor approved Lessee’s assignment all of its right, title and interest in the Lease to Texas Builders/Mueller, a Texas joint venture. On March 5, 2002, Lessor approved Lessee’s assignment pursuant to an Agreement of Assignment and Assumption of Leases dated September 1, 2001 to Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 (an undivided 75% interest) and, Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, (an undivided 25%). On Oct. 14, 2003, Lessor approved a Lessor’s Approval of Assignment which approved Mueller Capital Plaza-Sacramento assigning one-half of its 25% undivided interest in the Lease to Buzz Oates Development Limited Partnership, a California limited partnership and one-half of its 25% undivided interest in the Lease to Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995. This assignment resulted in Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 owning an 87.50% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 12.50% undivided interest in the Lease.

Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995(Assignor”) now desires to assign all of his 87.50% undivided interest in the Lease to Buzz Oates LLC, a California limited liability company. Effective Dec. 31, 2009, this would result in Buzz Oates LLC owning an 87.50% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 12.50% undivided interest in the Lease.

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of Assignor’s 87.50% undivided interest in the Lease to Buzz Oates LLC (“Assignee”), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Assignor guarantees payment of rent and other charges or fees due to the Lessor and shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Lease.
4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignors shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Marvin L. Oates, as Co-Trustee of the Marvin L. Oates Trust
dated March 7, 1995, as amended
615 Elder Creek Road
Sacramento, CA 95828
Attn: Brian Marty, Esq.

ASSIGNEE: Buzz Oates LLC
8615 Elder Creek Road
Sacramento, CA 95828
Attn: Brian Marty, Esq.
6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee, Assignor, and Guarantor represent and warrant that they have the legal authority to bind the Assignee, Assignor or Guarantor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be April 6, 2010.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On 2/24/10 before me, Bonnie Allerhand, Notary Public

personally appeared Marvin L. Oates, Phillip D. Oates

Larry E. Allbaugh

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Bonnie Allerhand

Place Notary Seal and/or Stamp Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lessor's Approval of Assignment

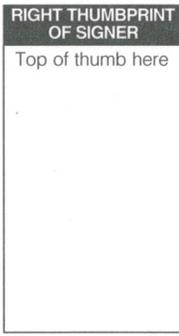
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



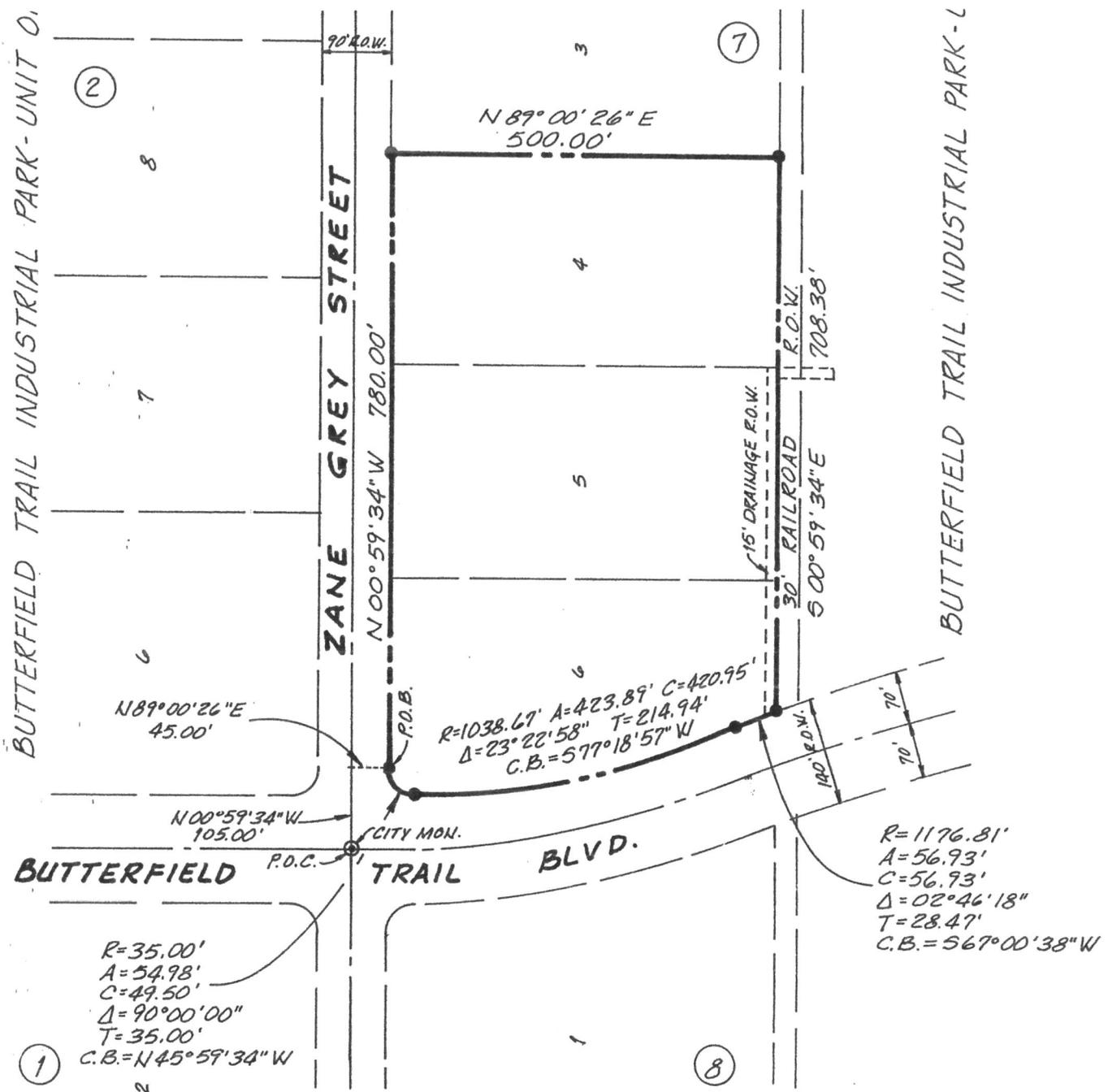
Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____



$R=35.00'$
 $A=54.98'$
 $C=49.50'$
 $\Delta=90^{\circ}00'00''$
 $T=35.00'$
 $C.B.=N45^{\circ}59'34''W$

$R=1176.81'$
 $A=56.93'$
 $C=56.93'$
 $\Delta=02^{\circ}46'18''$
 $T=28.47'$
 $C.B.=S67^{\circ}00'38''W$

NOT A GROUND SURVEY

Faught & Associates Inc.
 Consulting Engineers

433 Executive Center Blvd.
 El Paso, Texas 79902
 (915) 542-4900

390,637 SQ.FT.
 OR
 8.968 ACRES

PLAT SHOWING LOTS 4, 5, & 6, BLOCK 7,
 BUTTERFIELD TRAIL INDUSTRIAL PARK,
 UNIT ONE - REPLAT "A"
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Drawn By: LM	Date: 10-17-91	Scale: 1"=200'	Job No. 5010-90G
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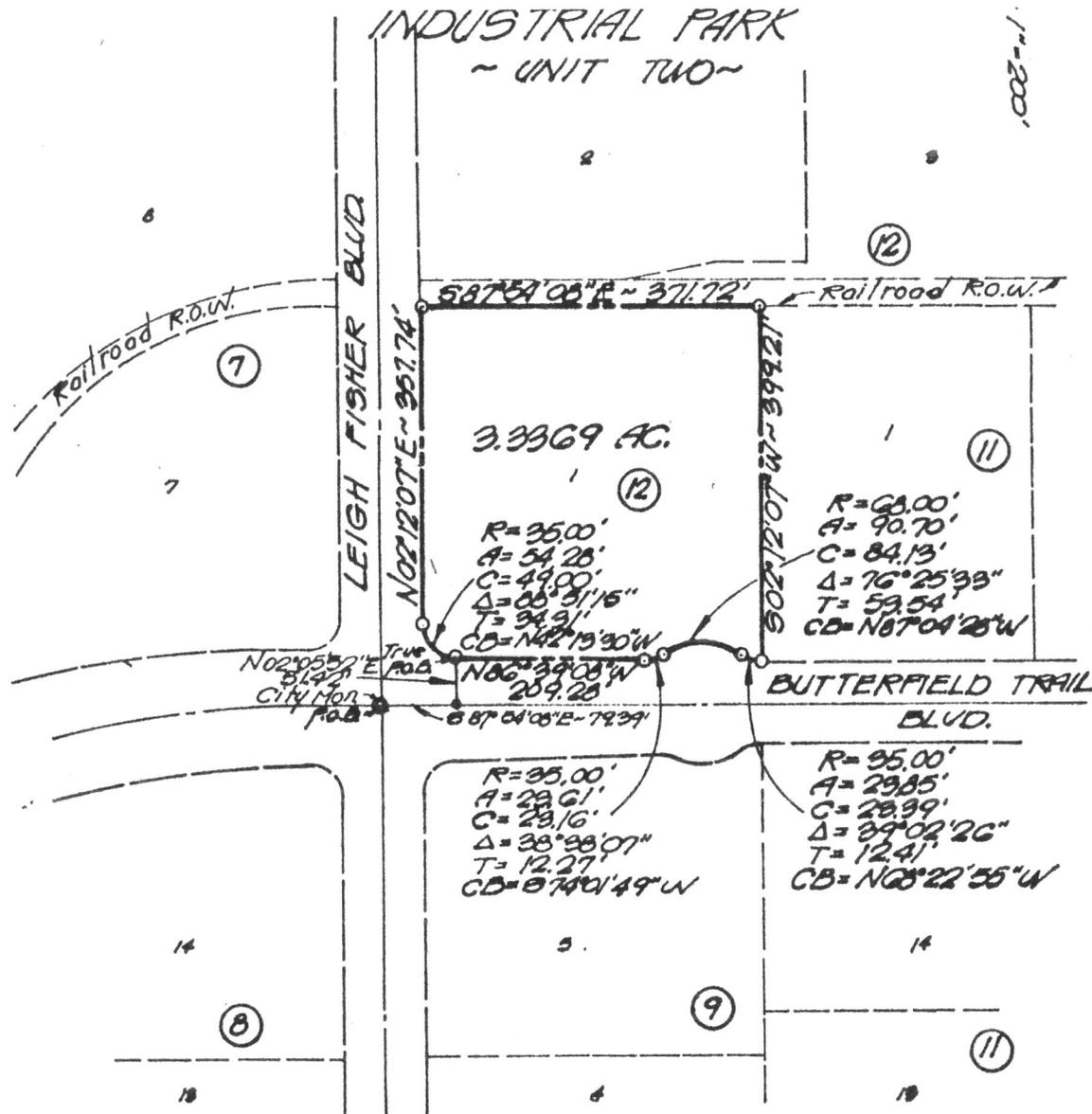


EXHIBIT
A

Turner Collier & Braden Inc.
 Consulting Engineers

1651 Montana Ave.
 El Paso, Texas 79902
 (915) 842-4800

PLAT SHOWING LOT 1, BLOCK 12,
 BUTTERFIELD TRAIL INDUSTRIAL
 PARK ~ UNIT TWO, CITY OF EL PASO,
 EL PASO COUNTY, TEXAS.

Drawn by L.R.	Date 11-29-84	Job No. 5010-45
		W.O. No.

21 butterfield trail (4250x2750x24b jpeg)

