

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

DEPARTMENT: Airport

AGENDA DATE: October 23, 2013

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

DISTRICT(S) AFFECTED: All

SUBJECT:

This is a Resolution to authorize the City Manager to sign a Lessor's Acknowledgement of Assignment of the Butterfield Trail Industrial Park Lease by and between the City of El Paso & Buzz Oates LLC - Buzz Oates Development Limited Partnership ("Assignor"); and Buzz Oates El Paso LLC ("Assignee") regarding the following described property:

Lots 3, Block 7, Butterfield Trail Industrial Park Unit One, Replat "A", an Addition to the City of El Paso, El Paso County Texas, and municipally known and numbered as 20 Zane Grey St., City of El Paso, El Paso County, Texas;

BACKGROUND / DISCUSSION:

The City of El Paso entered into a Lease with Texas Builders effective November 1, 1991 for a term of thirty-five (35) years with two (2) additional ten (10) year Options.

On January 12, 1993, the Lease was assigned to Texas Builders/Mueller by that Lessor's Approval of Assignment with an effective date of January 1, 1993;

Effective September 1, 2001 the Lease was assigned to Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995, and undivided 75% interest and Mueller Capitol Plaza – Sacramento, an undivided 25% interest by that Lessor's Approval of Assignment dated March 5, 2002;

On September 30, 2003, Mueller Capitol Plaza-Sacramento assigned one-half of its 25% undivided interest to Buzz Oates Development Limited Partnership, and the remaining one-half of its 25% to Marvin L. Oates Trust dated March 7, 1995;

On April 6, 2010, a Lessor's Approval of Assignment was approved by the Lessor which acknowledged that effective December 31, 2009, Buzz Oates LLC ("Assignor") owned an 87.50% undivided interest in the Lease and Buzz Oates Development Limited Partnership owned a 12.50% undivided interest in the Lease (collectively "Assignor");

Assignor now desires to assign all of its one hundred percent (100%) interest in the Lease to Buzz Oates El Paso LLC with all terms and conditions remaining the same. The present annual rent is \$25,380.00 with 14 years, plus an additional 20 Option years. Remaining total on the term is 34 years. The property is located in Butterfield Trail Industrial Park and contains approximately 135,000 square feet of land.

PRIOR COUNCIL ACTION:

1/22/93, 3/5/02, 10,14/03

AMOUNT AND SOURCE OF FUNDING:

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 Approval of Assignment by and between the City of El Paso, Buzz Oates LLC and Buzz Oates Development Limited Partnership; and Buzz Oates El Paso LLC covering the following described property:

Lot 3, Block 7, Butterfield Trail Industrial Park Unit One,
Replat "A", municipally known and numbered as #20
Zane Grey St., City of El Paso, El Paso County, Texas.

Dated this ____ day of _____ 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

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

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

Lot 3, Block 7, Butterfield Trail Industrial Park Unit One,
Replat “A”, municipally known and numbered as #20
Zane Grey St., City of El Paso, El Paso County, Texas.

WHEREAS, effective January 1, 1993, Lessor approved an assignment of the Lease to Texas Builders/Mueller;

WHEREAS, on September 1, 2001, the Lease was assigned from Texas Builders/Mueller to Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995, an undivided 75% interest, and Mueller Capitol Plaza – Sacramento, a Hawaii limited partnership, an undivided 25% interest;

WHEREAS, on September 30, 2003, Mueller-Capitol Plaza – Sacramento assigned one-half of its 25% undivided interest in the Lease to Buzz Oates Development Limited Partnership, a California limited partnership, and the remaining one-half of its 25% interest to Marvin L. Oates Trust dated March 7, 1995 (collectively “Assignor”); and

WHEREAS, the Assignor now desires to assign all of its one hundred percent (100%) interest in the Lease.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Buzz Oates El Paso, LLC, a California limited liability company (“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.

11-1003-139/123515_3/LAA Buzz Oates
20 Zane Grey

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: Buzz Oates LLC
8615 Elder Creek Road
Sacramento, CA 95828
Attn: Brian Marty, Esq.

ASSIGNEE: Buzz Oates El Paso, 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 November 1, 2012.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPROVED THIS _____ day of _____, 2012.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ___ day of _____, 2012, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas** (Lessor).

My Commission Expires:

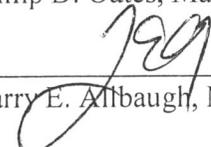
Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNOR: Buzz Oates LLC, a California limited liability company

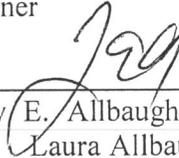
By: Oates Advisors LLC, a California limited liability company, Its Manager

By: 
Philip D. Oates, Manager

By: 
Larry E. Allbaugh, Manager

Buzz Oates Development, L.P., a California limited partnership, Its Manager

By: Oates Associates Investors, LLC, a California limited liability company, Its General Partner

By: 
Larry E. Allbaugh, Trustee of the
Larry and Laura Allbaugh Living Trust,
Manager

Date: _____, 2012

[ASSIGNOR'S ACKNOWLEDGMENTS ON THE FOLLOWING PAGE]

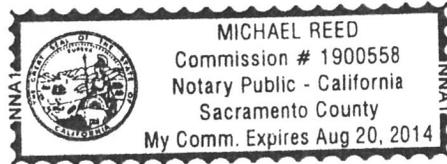
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
BUZZ OATES LLC (ASSIGNOR)

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

On Sep. 27, 2012 before me, Michael Reed, Notary Public
Date Name, Title of Officer-E.G., "Jane Doe, Notary Public"
personally appeared Philip D. Oates & Larry E. Aurbach
personally known to me (or 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 ~~h~~/~~s~~/~~he~~/they executed the same in ~~h~~/~~is~~/~~her~~/their authorized capacity(ies), and that by
~~h~~/~~is~~/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)
Notary Public Signature



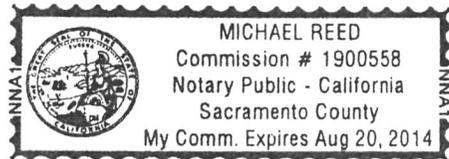
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
BUZZ OATES DEVELOPMENT, L.P. (ASSIGNOR)

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

On Sep. 27, 2012 before me, Michael Reed, Notary Public
Date Name, Title of Officer-E.G., "Jane Doe, Notary Public"
personally appeared Larry E. Aurbach
personally known to me (or 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 ~~h~~/~~s~~/~~he~~/they executed the same in ~~h~~/~~is~~/~~her~~/their authorized capacity(ies), and that by
~~h~~/~~is~~/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)
Notary Public Signature



[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNEE: Buzz Oates El Paso LLC, a California limited liability Company

By: Buzz Oates Development, L.P., a California limited partnership, Its Manager

By: Oates Associates Investors, LLC, a California limited liability company, Its General Partner

By: *[Signature]*
Larry E. Allbaugh, Trustee of the Larry and Laura Allbaugh Living Trust, Manager

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
BUZZ OATES EL PASO LLC (ASSIGNEE)

STATE OF CALIFORNIA)

COUNTY OF SACRAMENTO)

On Sept. 27, 2012 before me, Michael Reed, Notary Public
Date Name, Title of Officer-E.G., "Jane Doe, Notary Public"

personally appeared LARRY E. ALLBAUGH
personally known to me (or 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 h/s/he/they executed the same in his/her/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)
Notary Public Signature

