

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

DEPARTMENT: Aviation

AGENDA DATE: August 9, 2016

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E., 212-7301

DISTRICT(S) AFFECTED: All

CITY STRATEGIC GOAL #1:

Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

A resolution that the City Manager be authorized to sign a Lessor's Approval of Assignment of the Industrial Site Lease by and among the City of El Paso ("Landlord"), Durham Properties, L.L.C. ("Assignor") and Infinity Nine at El Paso, L.L.C. ("Assignee") for the following described property:

Lot 1, Block 14, El Paso International Airport Tracts, Unit 11, El Paso County, Texas and municipally known and numbered as 1701 Hawkins Boulevard, El Paso, Texas.

BACKGROUND / DISCUSSION:

This property is located at 1701 Hawkins Boulevard in the Southern Industrial Park is used as the FedEx Express Ship Center.

Existing Terms:

- 40 year lease, expires in 2040, with two (2) five year options to extend, rent will be adjusted on each fifth (5th) anniversary based on 8% of the fair market value of the leased premise
- Lease area- 235,245 square feet
- Rate- \$0.28 per square foot, \$66,691.96 annually
- Sub Tenant: FedEx

PRIOR COUNCIL ACTION:

November 23, 1999- Right of entry for pre-lease inspection

April 25, 2000- Approval of lease and Estoppel with FedJones El Paso, L.L.C.

July 24, 2001- Approval of assignment to Bit-Tel Investments L.L.C.

February 14, 2012- Approval of assignment to Durham Properties, L.L.C.

AMOUNT AND SOURCE OF FUNDING:

Revenue Generating- \$66,691.96 annually

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

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

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 of the Industrial Site Lease by and among the City of El Paso ("Lessor"), Durham Properties, L.L.C. ("Assignor") and Infinity Nine at El Paso, LLC ("Assignee") for the following described property:

Lot 1, Block 14, El Paso International Airport Tracts, Unit 11, El Paso County, Texas and municipally known and numbered as 1701 Hawkins Boulevard, El Paso, Texas.

ADOPTED this the ____ day of _____ 2016.


THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



for 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 an Industrial Site Lease effective May 1, 2000 ("Lease") between the Lessor and FedJones El Paso, L.L.C. for the following described property:

Lot 1, Block 14, El Paso International Airport Tracts, Unit 11, El Paso County, Texas and municipally known and numbered as 1701 Hawkins Boulevard, El Paso, Texas. ("Property")

WHEREAS, on July 24, 2001, Lessor approved the assignment of the Lease to Bit-Tel Investment LLC by that Lessor's Approval of Assignment effective August 1, 2001; and

WHEREAS, on February 14, 2012, Lessor approved the assignment of the Lease to Durham Properties, L.L.C. ("Assignor"); and

WHEREAS, Assignor desires to execute a Lessor's Approval of Assignment with Infinity Nine at El Paso, LLC, a Texas limited liability company ("Assignee"), wherein Assignor will agree to assign to Assignee and Assignee will agree to assume Assignor's obligations under the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Assignee, on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under 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.

Assignee does hereby assume and agree to be 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 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.** Assignee shall, as of the effective date of the assignment, enjoy all rights and privileges and be responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee. Provided,

however, Assignee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director of Aviation ("Security Deposit") in an amount equal to three (3) months of Rental to guarantee the faithful performance of Lessee of its obligations under this Lease and the payment of all Rental due hereunder. Assignee shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Effective Date of this Lessor's approval of Assignment. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Assignee has occurred, Lessor will return the Security Deposit to Assignee.

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 Assignor and Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Durham Properties, L.L.C.
1326 Regency Ct
Southlake, Texas 76092-9515
Attn: Philip R. Wood

ASSIGNEE: Infinity Nine at El Paso, LLC
c/o William M. Braden
16607 Blanco Road, Suite 803
San Antonio, Texas 78232-1941

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Assignor represent and warrant that they have the authority legally to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** This 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 the date this document is signed by Lessor.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ADOPTED this ____ day of _____, 2016.

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

/s/ 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 _____, 2016,
by **Tomás González** 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:

DURHAM PROPERTIES, L.L.C.,
a Texas limited liability company

Philip R. Wood

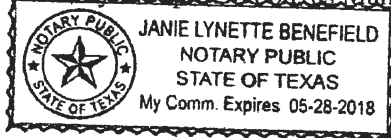
Printed Name: Philip R. Wood

Title: Manager

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
 DALLAS)
COUNTY OF TARRANT)

This instrument was acknowledged before me on this 28 day of July,
2016, by Philip R. Wood, as Manager of Durham Properties, L.L.C. (Assignor)



Janie Lynette Benefield
Notary Public, State of Texas

My Commission Expires:
05/28/2018

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

INFINITY NINE AT EL PASO, LLC, a
Texas limited liability company

By: [Signature]
Print Name: William M. Braden
Title: Manager

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF Bexar)

This instrument was acknowledged before me on this 28 day of July, 2016, by William M. Braden, Manager of Infinity Nine at El Paso, LLC, a Texas limited liability company (Assignee).

My Commission Expires:
8-31-2019

[Signature]
Notary Public, State of Texas

