

CITY OF EL PASO, TEXAS

AGENDA ITEM

DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Aviation

AGENDA DATE: October 15, 2019

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E., Managing Director of
Aviation and International Bridges
915 212-7301

DISTRICT(S) AFFECTED: District 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This Resolution is to authorize the City Manager to sign a the Lessors Approval of Correction of Partial Assignment dated October 15, 2019 which corrects an error identified from the assignment dated September 1, 1994 for a portion of property leased to Azar-Coleman Properties, ("**Lessee**").

BACKGROUND / DISCUSSION:

The Correction of Partial Assignment corrects an error in the land description listed in the Assignment dated September 1, 1994 for a portion of property leased.

TERM:

The effective date of the lease is May 1, 1982. The lease term is 43 years with no options.

RENTAL FEES:

Annual Rental Fees for Remaining SF:

138,975.96 SF x \$0.1244 per SF = \$17,288.61 (Cattle Barons, Applebee's, Office Space)

288,727.35 x \$0.35 per SF = \$101,054.57 (Chase Hotel)

54,958.78 x \$0.1209 per SF = \$6,647.81 (Airport Trade Center)

Total Minimum Guarantee is \$124,990.00 annually

PRIOR COUNCIL ACTION:

Original lease approved by council on June 8, 1982. Amendment One approved November 23, 1982. Amendment Two approved May 8, 1984. Amendment Three December 16, 1986. Amendment Four approved June 30, 1987. Amendment Five Approved May 24, 1984. Amendment Six approved February 4, 2004. Amendment Seven will be presented to Council October 15, 2019.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

for:

Monica Lombraña, A.A.E.
Managing Director of Aviation & International Bridges

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 is authorized to sign a Lessor's Approval of the Correction Partial Assignment of Ground Lease, Assignment of Sublease and Assumption by and between the City of El Paso ("Lessor"), Azar-Coleman Properties ("Assignor"), and Richard N. Azar Testamentary Trust ("Assignee") for the following described property:

A portion of Block 19, El Paso International Airport Tracts, Unit 10,
City of El Paso, El Paso County, Texas, containing 5.625 acres of land,
more or less.

Dated this ____ day of _____ 2019.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Kristen Lynn Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



for: Monica Lombraña, A.A.E.
Managing Director of Aviation and
International Bridges

STATE OF TEXAS

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**LESSOR'S APPROVAL OF CORRECTION
PARTIAL ASSIGNMENT**

COUNTY OF EL PASO

THIS LESSOR'S APPROVAL OF CORRECTION PARTIAL ASSIGNMENT OF GROUNDLEASE is made and entered into as of the _____ day of _____, 2019 ("Effective Date"), by and between the City of El Paso, Texas ("Lessor") and Azar-Coleman Properties, a Texas General Partnership ("Assignor"), and Richard N. Azar Testamentary Trust ("Assignee").

WHEREAS, Lessor and Lessee are parties to a Lease Agreement dated June 8, 1982, as amended by those certain six amendments (collectively, the "Existing Lease") covering two tracts of land (the "Ground Leased Property"): one containing 8.272 acres and noted as Parcel No. 1 on Exhibit A to the Existing Lease, and the other containing 10.782 acres and noted as Parcel No. 3 on Exhibit A to the Existing Lease. Said amendments are described as follows: (i) First Amendment to Lease Agreement dated November 23, 1982, (ii) Second Amendment to Lease Agreement dated May 8, 1984, (iii) Third Amendment to Lease Agreement dated December 16, 1986, (iv) Fourth Amendment to Lease Agreement dated June 30, 1987, (v) Fifth Amendment to Lease Agreement dated May 17, 1994 and (vi) Sixth Amendment to Lease Agreement dated February 3, 2004. The Existing Lease is evidenced of record by a Memorandum of Lease filed in Book 1378, Page 786 of the Real Property Records of El Paso County, Texas (the "Real Property Records"), re-recorded in Book 1380, Page 1482 of the Real Property Records;

WHEREAS, On April 9, 2013, the City of El Paso ("Lessor") signed a Certificate Concerning Ground Lease and Lessor's Approval of an Assignment dated September 1, 1994 for a portion of property leased to Azar-Coleman Properties ("Lessee"), and an error in such assignment has been identified;

WHEREAS, Assignor has requested the Lessor's approval and consent to a Correction Partial Assignment of the Lease to **RICHARD N. AZAR TESTAMENTARY TRUST**.

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.

A. Lessor hereby approves and consents to the partial assignment of a portion of the **Existing Lease** from Assignor to **Richard N. Azar Testamentary Trust**. ("Assignee") identified as:

A portion of Block 19, El Paso International Airport Tracts, Unit 10, City of El Paso, El Paso County, Texas, containing 5.625 acres of land, more or less, and being more particularly described by metes and bounds on Exhibit A attached hereto and made a part hereof for all purposes.

More particularly described in **Exhibit "A."**

- B. **Lessor's** consent is based 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 **Existing Lease** from and after the effective date of the assignment of the portion of property assigned from the **Existing Lease** to **Assignee**, and upon the further condition that **Assignee** agrees to accept and abide by all the terms, covenants, and conditions of the **Existing Lease**.
- C. **Assignee** does hereby assume and agrees to be liable to pay any and all sums owing or becoming due **Lessor** under the terms of the **Existing Lease** as relates to the portion assigned from and after the effective date of the assignment of the **Existing Lease** to **Assignee**, and **Assignee** agrees to accept and abide by all the terms, covenants, and conditions of the **Existing Lease**.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** **Assignee** has provided a certificate of insurance to evidence compliance with the insurance requirements of the **Existing Lease** and expressly agrees to be bound by the indemnification provisions contained in the **Existing Lease**.
3. **RELEASE.** **Assignor** is hereby released and discharged by **Lessor** from all rights, privileges, responsibilities and obligations under the **Existing Lease** as pertains to the portion assigned to **Assignee** identified in **Exhibit "A"** first arising and accruing from and after the effective date of the assignment of a portion the **Existing Lease** and **Lessor** and **Assignee** each hereby acknowledges that, as of the effective date of the assignment, **Assignee** enjoys all such rights and privileges and is responsible for satisfying all such obligations the same as if the **Existing Lease** had originally been executed between **Lessor** and **Assignee**.
4. **SECURITY DEPOSIT.** No Security Deposit is required as a condition to this Approval.
5. **RATIFICATION OF LEASE.** Except as expressly set forth herein, no provision of this Approval alters or modifies any of the terms and conditions of the **Existing Lease**, and all other terms and conditions of the **Existing Lease** shall remain in full force and effect.
6. **ADDRESS FOR NOTICE.** Notices to **Assignee** and **Assignor** shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: AZAR-COLEMAN PROPERTIES
C/O Jerry M. Coleman
5259 Santa Elena Circle
El Paso, Texas 79932

ASSIGNEE: RICHARD N. AZAR TESTAMENTARY TRUST
2424 Altura
El Paso, Texas 79930
Attn: Suzanne S. Azar

7. **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 legal authority to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
8. **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.
9. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be the date this document is approved by the El Paso City Council.
10. **COUNTERPARTS.** This Lessor's Approval of Assignment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all of which shall constitute one and the same instrument as if all parties had signed the same signature page.


(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPROVED THIS ____ day of _____, 2019.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Kristen L. Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Managing Director of Aviation and
International Bridges

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2019, by
Tomás González as **City Manager** of the **City of El Paso, Texas** (Lessor).

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNOR: **AZAR-COLEMAN PROPERTIES,**
a Texas General Partnership

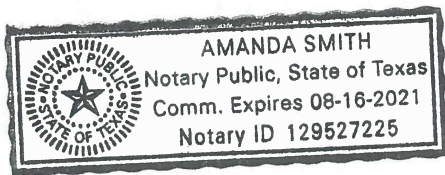
By: *Jerry M. Coleman*
Jerry M. Coleman, Partner

**RICHARD N. AZAR TESTAMENTARY
TRUST, A Partner**

By: *Suzanne Azar*
Suzanne S. Azar, Executrix

STATE OF TEXAS §
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COUNTY OF EL PASO §

This instrument was acknowledged before me on October 1, 2019, by Jerry M. Coleman, Partner of Azar-Coleman Properties, a Texas general partnership, on behalf of said partnership.



Amanda Smith
Notary Public in and for the State of Texas

STATE OF TEXAS §
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COUNTY OF EL PASO §

This instrument was acknowledged before me on September 20, 2019, by Suzanne S. Azar, Executrix of the **RICHARD N. AZAR TESTAMENTARY TRUST**, Partner of Azar-Coleman Properties, a Texas general partnership, on behalf of said partnership.

Merton B. Goldman



ASSIGNEE: **RICHARD N. AZAR TESTAMENTARY TRUST**

By: *Suzanne Azar*
Suzanne S. Azar, Executrix

STATE OF TEXAS

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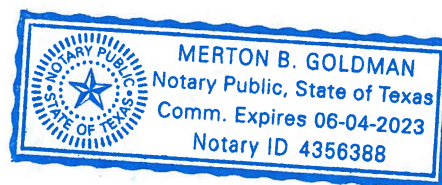
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COUNTY OF EL PASO

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This instrument was acknowledged before me on September 28, 2019, by Suzanne S. Azar, Executrix of the **RICHARD N. AZAR TESTAMENTARY TRUST**, Partner of Azar-Coleman Properties, a Texas general partnership, on behalf of said partnership.

Merton B. Goldman



Description of a parcel of land being a portion of Tract 4A25, Block 2 Ascarate Grant, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

From a point, said point being a city Monument at the intersection of the centerline of American Drive with the centerline of Boeing Drive; thence 352.75 feet along the centerline of Boeing Drive and along the arc of a curve to the left whose interior angle is 11 degrees 34' 07", whose radius is 1747.06 and whose chord bears North 06 degrees 57' 10" East a distance of 352.15 feet; thence, South 08 degrees 40' 53" East a distance of 34.00 feet to a point lying on the southerly right-of-way line of Boeing Drive and said point being the POINT OF BEGINNING;

Thence, North 81 degrees 10' 07" East along the southerly right-of-way line of Boeing Drive a distance 391.44 feet;

Thence, 31.42 feet along the arc of a curve to the right whose interior angle is 50 degrees 00' 00", whose radius is 20.00 feet and whose chord bears South 53 degrees 49' 63" East a distance of 28.28 feet to a point lying on the westerly right-of-way line of Slorsky Drive;

Thence South 08 degree 49' 53" East along said right-of-way line a distance of 241.89 feet;

Thence, South 81 degrees 10' 07" West a distance of 517.32 feet;

Thence, South 01 degree 01' 53" East a distance of 205.00 feet to a point lying on the northerly right-of-way line of Montana Avenue;

Thence, South 81 degrees 10' 07" West along said northerly right-of-way line a distance of 411.46 feet;

Thence, 143.47 feet along the arc of a curve to the left whose interior angle is 82 degrees 22' 00", whose radius is 100.00 feet and whose chord bears North 40 degrees 04' 07" East a distance of 131.48 feet;

Thence, North 01 degrees 01' 53" West a distance of 407.04 feet;

Thence, 29.54 feet along the arc of a curve to the left whose interior angle is 84 degrees 37' 17", whose radius is 20.00 feet and whose chord bears North 43 degrees 20' 31" West a distance of 36.93 feet;

Thence, 409.67 feet along the southerly right-of-way line of Boeing Drive and along the arc of a curve to the left whose interior angle is 13 degrees 10' 44" whose radius is 1,781.06 feet and whose chord bears North 87 degrees 45' 29" East a distance of 408.76 feet to the POINT OF BEGINNING and containing in all 288,727,345 square feet or 5.628 acres of land, more or less.