Action Item

Agenda Item No. 8

City Manager's Approval

Report to the Auburn City Council

To:	Honorable Mayor and City Council Members
From:	Andy Heath, Administrative Services Director
Date:	May 13, 2013
Subject:	Assignment of Auburn Airport Land Lease from Karl G. Schiller and Gundrun H. Schiller to Mad Kat Properties, LLC

The Issue

Shall the City Council consent to the assignment and assumption of a land lease from Karl G. Schiller and Gundrun H. Schiller (as individuals and as trustees of the Schiller Living Trust) to Mad Kat Properties, LLC, and authorize the execution of all related documents?

Conclusions and Recommendations

By **RESOLUTION,** authorize the City Manager or his designee to approve the assignment and assumption of a land lease between the City of Auburn and Karl G. Schiller and Gundrun H. Schiller (as individuals and as trustees of the Schiller Living Trust) to Mad Kat Properties, LLC, and authorize the execution of all related documents.

Background

On February 26, 1996, the City Council approved a 50-year land lease between the City of Auburn and J.P. & Associates, Inc. for Airport Industrial Park Lot 30. This lease was subsequently assigned on December 6, 1996 and again on July 26, 1999 to Quail Park Associates I, L.P. and Karl G. Schiller and Gundrun H. Schiller, respectively. The land lease comprises approximately 81,022 square feet of real property upon which resides a warehouse / office building.

Analysis

As a means to facilitate the assignment of the lease, Karl G. Schiller and Gundrun H. Schiller have requested the City's consent to assign the leasehold interests for the above referenced premises to Mad Kat Properties, LLC. Mad Kat Properties, LLC currently owns and operates Quality Metal Fabrication, a business located in the Auburn Airport Industrial Park. The assignment of lease also includes assumed responsibility of a shared Road Maintenance Agreement for one-third (1/3) of any and all costs required for the

maintenance and repairs of certain easements. In addition to the City's approval of the lease assignment, staff recommends the City consent to the execution of any related documents including the recording, by the Placer County Recorder's Office, of memoranda of lease for the affected parcels, if necessary.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution authorizing the City Manager or his designee to approve the assignment and assumption of the land lease between the City of Auburn and Karl G. Schiller and Gundrun H. Schiller (as individuals and as trustees of the Schiller Living Trust) to Mad Kat Properties, LLC, and authorize the execution of all related documents.
2. Do not adopt a resolution and direct staff accordingly.

Fiscal Impact

None. The monthly lease amount of $1,210.09 currently paid by the Schillers will be assumed by the assignees to the lease.

Attachments – Assignments of Lease with Consent

RESOLUTION NO. 13-

RESOLUTION APPROVING ASSIGNMENT OF AIRPORT LAND LEASE FROM KARL G. SCHILLER AND GUNDRUN H. SCHILLER TO MAD KAT PROPERTIES, LLC

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the City Manager or his designee to approve the assignment and assumption of the Land Lease between the City of Auburn and Karl G. Schiller and Gundrun H. Schiller (as individuals and as trustees of the Schiller Living Trust) to Mad Kat Properties, LLC, and authorize the execution of all related documents.

DATED: May 13, 2013

_____
Kevin Hanley, Mayor

ATTEST:

_____
Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 13th day of May 2013 by the following vote on roll call:

Ayes:
Noes:
Absent:

_____
Stephanie L. Snyder, City Clerk

ASSIGNMENT OF LEASE WITH CONSENT
(AUBURN MUNICIPAL AIRPORT)
LOT # 30, 12760 Earhart Avenue

This Assignment of Lease with Consent ("**Assignment**") dated as of _____ _____, 2013 (the "**Effective Date**") is made and entered into for good and valuable consideration by and between Karl G. Schiller and Gudrun H. Schiller, in their individual capacity and as trustees of the Karl H. Schiller and Gudrun G. Schiller Living Trust dated October 29, 1991 (collectively, "**Assignor**") and Mad Kat Properties, LLC, a California limited liability company ("**Assignee**"), with reference to the following facts:

RECITALS

A. City of Auburn, a Municipal Corporation, as Lessor, and J.P. & Associates, Inc., as Lessee, executed that certain Auburn Airport Industrial Park Land Lease ("**Lease**") on February 26, 1996, for the lease of premises commonly known as 12760 Earhart Avenue, Lot 30, Auburn, California, which Lease was assigned on December 6, 1996 to Quail AirPark Associates, I, L.P., a California limited partnership, and subsequently assigned by Quail AirPark Associates I on July 26, 1999, to Assignor (in their individual capacity). By the terms of the Lease the Leased Premises were leased to J.P. & Associates, Inc. as Lessee for a term of fifty (50) years, commencing on February 26, 1996, and ending on February 26, 2046.

B. Assignor, in their capacity as trustees of the Karl H. Schiller and Gudrun G. Schiller Living Trust dated October 29, 1991, entered into that certain Declaration of Road Maintenance Agreement approved by the City of Auburn on February 26, 2001 ("Declaration"), pursuant to which Assignor agreed to be responsible for one-third (1/3) of any and all costs required for the maintenance and repairs of certain easements as described in the Declaration.

C. Assignor now desires to assign the Lease and the Declaration to Assignee, and Assignee desires to accept the assignment thereof.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor, Assignee and City agree as follows:

1. Effectiveness. This Assignment shall be effective as of the Effective Date.

2. Assignment, Assumption and Consent - Lease. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Lessee" under the Lease with respect to the Leased Premises and the improvements constructed thereon. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations of the "Lessee" under Lease that relate to the Leased Premises and the improvements constructed thereon.

3. Assignment, Assumption and Consent - Declaration. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and

obligations as a party to the Declaration. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations assumed by Assignor, in their capacity as trustees of the Karl H. Schiller and Gudrun G. Schiller Living Trust dated October 29, 1991, under the Declaration.

4. Consent of City. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.

5. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" under the Lease, and as a party to the Declaration, occurring on and after the Effective Date.

6. Entire Agreement. This Assignment, together with the Lease, is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.

8. Third Party Beneficiaries. No third party shall have any rights under this Assignment.

9. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Lease.

ASSIGNOR:

_____
Karl B. Schiller

_____
Gudrun H. Schiller

_____
Karl B. Schiller, trustee

_____
Gudrun H. Schiller, trustee

ASSIGNEE:

MAD KAT PROPERTIES, LLC, a California limited liability company

By: _____
Name: Tom Neithercutt
Its: Manager

obligations as a party to the Declaration. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor and the City, to perform all of the obligations assumed by Assignor, in their capacity as trustees of the Karl H. Schiller and Gudrun G. Schiller Living Trust dated October 29, 1991, under the Declaration.

4. Consent of City. The City hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.

5. Release of Assignor. The City hereby releases and discharges Assignor from any obligations of "Lessee" under the Lease, and as a party to the Declaration, occurring on and after the Effective Date.

6. Entire Agreement. This Assignment, together with the Lease, is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Assignment. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.

8. Third Party Beneficiaries. No third party shall have any rights under this Assignment.

9. Subject to Lease. This Assignment is subject to all the terms, conditions and provisions of the Lease.

ASSIGNOR:

Karl B. Schiller

Gudrun H. Schiller

Karl B. Schiller, trustee

Gudrun H. Schiller, trustee

ASSIGNEE:

MAD KAT PROPERTIES, LLC, a California limited liability company

By: _____
Name: Tom Neithercutt
Its: Manager

CITY:

THE CITY OF AUBURN,
a municipal corporation

By: _____
Robert Richardson
City Manager

Attest:

_____
Stephanie L. Snyder
City Clerk

Approved as to form:

_____
Michael G. Colantuono
City Attorney

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