



CCAA BOARD MEMO

Agenda Item: H-2

BOARD MEMO 2023-26

Meeting Date: September 20, 2023

Agenda Title: FOR DISCUSSION AND POSSIBLE ACTION: APPROVE KCXP INVESTMENTS, LLC LEASE ASSIGNMENT TO CARSON TAHOE EXECUTIVE, LLC.

Staff Summary: KCXP Investments, LLC would like to complete a lease assignment of APN 005-021-06 to Carson Tahoe Executive, LLC.

Agenda Action: Formal Action/Motion

Time Requested: 10 Minutes

Proposed Action

I move to approve the KCXP Investments, LLC lease assignment to Carson Tahoe Executive, LLC and the assignment of the agreement to postpone or avoid lease termination.

CCAA'S Strategic Goal

Support economic activity in the region.

Executive Summary

When the Airport Authority moved the fuel island in 2008, it moved the hangar storage portion of that lease to an open area along Taxiway C. Per an agreement between the fuel tenant and Tom Gonzales, the Authority approved an assignment of that lease to KCXP Investments, LLC. The lease required that the construction of hangars be completed within 2 years. The real estate market had a steep downturn shortly after and Mr. Gonzales appeared before the Authority to request some leniency on the 2-year requirement, so the Authority told him he could have a few more years to construct. Over the years, requests have been made to Mr. Gonzales to follow through with hangar construction. In December of 2021, the

Airport Manager sent a letter notifying Mr. Gonzales that action would be taken to terminate the lease unless he moved ahead with hangar construction as required by the lease. In January of 2022, Mr. Robert Reid, a hangar manager for KCXP Investments, LLC, contacted the Airport Manager and told him they were working on a development plan with other parties. The airport authority decided to grant additional time for construction with conditions that include quarterly updates and a non-refundable deposit.

Previous Action

September 4, 2008 (Item 3-1) – The Carson City Board of Supervisors approved the original lease and an assignment to KCXP Investments, LLC.

November 16, 2022 (Item H-1) – The Carson City Airport Authority approved a notice of default for KCXP Investments, LLC for failure to develop the land in accordance with the lease

February 15, 2023 (Item H-1) – The Carson City Airport Authority approved an agreement with KCXP Investments to avoid default.

Financial Information

Is there a fiscal impact?

No Yes

If yes, account name/number & amount:

General Fund/ Federal Share:

Is it currently budgeted?

Alternatives

Do not approve the assignment.

Approve the assignment with proposed changes.

Board Action Taken:

Motion: _____ 1) _____
2) _____

Aye/Nay

(Vote Recorded By)

APN: _____

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Carson Tahoe Executive, LLC
3700 Barron Way, Suite 2
Reno, NV 89511

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE AND LANDLORD'S CONSENT

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE AND LANDLORD'S CONSENT ("**Assignment**") is executed as of _____, and effective as of the Effective Date (as defined below), by and among KCXP INVESTMENTS, LLC, a Delaware limited liability company ("**Assignor**"), CARSON TAHOE EXECUTIVE, LLC, a Nevada limited liability company ("**Assignee**") and CARSON CITY AIRPORT AUTHORITY ("**Landlord**").

- A. Mountain West Aviation, LLC ("**Mountain West**") and Landlord entered into that certain Carson City Airport Lease Agreement effective as of August 20, 2008 (as amended, the "**Ground Lease**") attached hereto as Exhibit A, pursuant to which Landlord agreed to lease to Mountain West and Mountain West agreed to lease from Landlord those certain real property and appurtenant rights identified therein (the "**Leased Premises**").
- B. Assignor assumed the Ground Lease from Mountain West pursuant to an Assignment and Assumption of Ground Lease and Landlord's Consent dated August 23, 2008, to which Landlord consented to such assignment and assumption of the Ground Lease.
- C. Pursuant to Section 9 of the Ground Lease, Landlord's prior written consent is required for any assignment of Assignor's interest the Ground Lease.
- D. Pursuant to that certain Purchase Agreement of Airport Lease (as amended, the "**Purchase Agreement**"), dated as of August 2, 2023 by and among Assignor and Assignee at the Closing (as defined in the Purchase Agreement), Assignor shall assign and transfer to Assignee all of Assignor's right, title and interest, in and to the Leased Premises and the Ground Lease. The Closing Date as used herein shall have its meaning as set forth in the Purchase Agreement.
- E. Landlord further agrees that it will honor with the Assignee the terms of the Agreement to Postpone or Avoid Lease Termination signed by Assignor dated February 15, 2023 and thus waive of default of the Leased Premises pursuant to the terms of that Agreement. Landlord consents to the assignment of the Ground Lease and Leased Premises to Assignee. Landlord

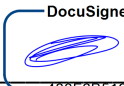
agrees that Assignee is assuming the Ground Lease and taking possession of the Leased Premises without any default and all obligations or duties of the Assignee under the Ground Lease shall commence anew as of the Effective Date of this Assignment, with the exception that the term is unchanged (i.e. 50 years beginning Sept 4, 2008) and is subject to the terms of the Agreement to Postpone or Avoid Lease Termination (i.e. quarterly good faith progress reports/ Feb 1, 2024 and 2025 tasks/ force majeure exceptions allowed).

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's right, title and interest, as tenant in to and under the Ground Lease, to be effective from and after the Closing.
2. Assumption. Assignee hereby assumes all of Assignor's obligations in, to and under the Ground Lease first accruing after the Closing, to be effective upon the Closing.
3. Indemnification. Assignee hereby agrees to indemnify, defend and hold Assignor harmless with respect to any loss or liability, including attorney's fees, resulting from any breach by Assignee of its obligations as tenant under the Ground Lease occurring after the date of Closing. Assignor hereby agrees to indemnify, defend and hold Assignee harmless with respect to any loss or liability, including attorney's fees, resulting from any breach by Assignor of its obligations as tenant under the Ground Lease occurring prior to and up to and including the date of the Closing.
4. Miscellaneous. This Assignment may be executed in counterparts, each of which each of which shall be deemed an original and all of which, taken together, shall be one instrument. This Assignment shall be binding upon the parties and their respective successors and assigns. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Nevada. If any action or proceeding is commenced by either party with respect to this Assignment, the prevailing party in such action or proceeding shall be entitled to recover its costs and expenses incurred in such action or proceeding, including attorney's fees and costs. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.
5. Effective Date of Assignment. This Assignment shall be effective as of the date the Carson City Airport Authority executes this Assignment and records this Assignment at the Carson City Records Office ("**Effective Date**"). In the event the Closing does not occur for any reason whatsoever, this Assignment shall be null and void and no longer effective.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Assignment is made and entered into as of the date first set forth above.

ASSIGNOR:	ASSIGNEE:
KCXP INVESTMENTS, LLC, a Delaware limited liability company	CARSON TAHOE EXECUTIVE, LLC, a Nevada limited liability company
DocuSigned by:  By: _____ Name: Bradley J. Busbin Title: Manager	By: _____ Name: _____ Title: _____
By: _____ Name: Tom Gonzales	
CONSENTED TO AND AGREED BY: CHAIRMAN OF THE CARSON CITY AIRPORT AUTHORITY By: _____ Name: _____ Title: _____ AIRPORT MANAGER: By: _____ Name: _____ Title: _____	

STATE OF NEVADA

COUNTY OF WASHOE

This instrument was acknowledged before me on _____, 2023, by
_____ as Manager of KCXP Investments, LLC.

Notary Public
My Commission Expires: _____

STATE OF NEVADA

COUNTY OF WASHOE

This instrument was acknowledged before me on _____, 2023, by
_____ as Manager of Carson Tahoe Executive, LLC.

Notary Public
My Commission Expires: _____

CARSON CITY

Approved by the Board of Supervisors this _____ day of _____, 2023.

By: _____
Mayor Lori Bagwell

ATTEST:

By: _____
William Scott Hoen, Clerk Recorder

Approved to as to form.

By: _____
Steven E. Tackes, Esq.
Airport Authority Counsel

Approved to as to form.

By: _____
DISTRICT ATTORNEY

PURCHASE AGREEMENT OF AIRPORT LEASE

THIS PURCHASE AGREEMENT OF AIRPORT LEASE ("Agreement") is made and entered into this 2nd day of August, 2023, by and between KCXP INVESTMENTS, LLC, a Delaware limited liability company ("Assignor"), and CARSON TAHOE EXECUTIVE, LLC, a Nevada limited liability company ("Assignee").

WHEREAS, Assignor, as Tenant, and Carson City Airport Authority ("Landlord") entered into an Assignment titled Assignment and Assumption of Ground Lease and Landlord's Consent dated August 23, 2008 and recorded September 5, 2008 as Document No. 382385, pursuant to a Lease Agreement entitled Carson City Airport Lease Agreement dated August 20, 2008 originally between Mountain West Aviation, LLC and Landlord (the "Lease"); and pursuant to which Landlord agreed to lease that certain real property located at the Carson City Airport identified as 1.5 acres (two 0.75 parcels) as more fully described in the Lease and attached hereto as Exhibit A ("Premises"); and

WHEREAS, Landlord has not yet approved the assignment, but Assignor and Assignee have agreed to work cooperatively to obtain the consent of Landlord to this Assignment; and

WHEREAS, this Agreement is conditioned on the approval of Landlord of the assignment and Assignor and Assignee anticipate the approval of Landlord to the assignment and Assignee's approval and acceptance of any due diligence conducted by Assignee; and,

WHEREAS, Assignor desires to assign all its right, title and interest in the Lease to Assignee and Assignee desires to assume Assignor's obligations under the Lease.

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


1. Assignment. Assignor hereby assigns to Assignee all of its right, title and interest in and to the Lease including any and all prepaids and other rights or entitlements of Assignor under the Lease, subject to all of the terms, covenants, conditions and provisions of the Lease.
2. Assumption. From and after the Closing Date (defined below) hereof, Assignee hereby assumes, covenants and agrees to keep and perform each and every obligation of Assignor under the Lease. Assignee agrees to be bound by each and every provision of the Leases as if it had executed the same.
3. Closing. The closing of this Agreement is conditioned upon the consent and approval of Landlord of the assignment of the Lease from Assignor to Assignee and Assignee's approval and completion of all due diligence conducted by Assignee. The Closing Date of this Agreement shall take place within 30 days after the satisfaction of all the conditions set forth herein. Assignee shall deliver the Purchase Price to Assignor on or before the Closing Date.
4. Conditions to Closing. The closing of this Agreement is conditioned upon the consent and approval of Landlord of the assignment of the Lease from Assignor and Assignee and Assignee's acceptance of all due diligence undertaken by Assignee. The Assignee shall also have received an

appropriate title insurance policy for the leased premises, satisfactory in form and substance to Assignee, evidencing that leased premises is subject to no liens, charges, encumbrances or survey exceptions prior to the Closing Date.

5. Due Diligence Period. Assignee shall have 30 days from the execution of this Agreement to perform all due diligence on the Premises ("Due Diligence Period"). Assignee and its permittees have the right to enter upon the Premises to conduct and perform any inspections, studies, feasibility studies, any and all record searches of the Premises required or deemed necessary or appropriate by Assignee for its use of the Premises. Assignor agrees to provide reasonable access to the Premises to Assignee and its agents or permittees as well as deliver to Assignee, without delay, all requested documents, including copies of any title insurance policies for the Premises and any other documents evidencing that the Premises is subject to no liens, charges, encumbrances or survey exceptions. Prior to the end of the Due Diligence Period, Assignee may terminate this Agreement for any reason or no reason by providing written notice (email accepted) to Assignor of Assignee's intent to terminate.
6. Price of Assignment. The price for this assignment and purchase of the Lease shall be [REDACTED] (the "Purchase Price"). Payment of the Purchase Price is conditioned on, and shall be made within 30 days of, the Closing of this Agreement and satisfaction of all conditions herein.
7. Assignor's Representations and Warranties. Assignor represents and warrants to Assignee that:
 - a. the Lease is in full force and effect, unmodified except as provided in this Agreement; Assignor's interest in the Lease is free and clear of any liens, encumbrances or adverse interests of third parties;
 - b. Assignor possesses the requisite legal authority to assign its interest in the Lease as provided herein; subject to obtaining the approval of Landlord.
 - c. There are no sums due and owing by Assignor under the Lease as of the effective date hereof, and there exists no condition of default thereunder not otherwise released or waived by Landlord upon its consent to the assignment.
 - d. Assignor has not conducted any business or operations on the leased premises and represents and warrants that there are no violations or conditions on the leased premises that are not in compliance with all Environmental Laws and Permits as set forth in the Lease.
 - e. Assignor has paid all taxes, assessments, costs, fines, fees or other obligations attributed to the leased premises incurred or imposed prior to the Closing Date.
8. Indemnification. Assignor agrees to indemnify, defend and hold harmless Assignee from any and all claims, demands, taxes, fees and debts due under the Lease prior to the Closing Date and Assignee agrees to indemnify, defend and hold harmless Assignor from any and all claims, demands and debts which may become due under the Lease on or after the Closing Date.

9. **Expenses.** The parties hereto will bear their separate expenses in connection with this Agreement and its performance.
10. **Entire Agreement.** This Agreement embodies the entire understanding of the parties hereto and there are no other agreements or understandings written or oral in effect between the parties relating to the subject matter hereof unless expressly referred to by reference herein. This Agreement may be amended or modified only by an instrument of equal formality signed by the parties or their duly authorized agents.
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and each of the parties hereto submits to the non-exclusive jurisdiction of the courts of the State of Nevada in connection with any disputes arising out of this Agreement.
12. **Successors and Assigns.** This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
13. **Attorneys' Fees.** In the event of a dispute arising under this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees.
14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

ASSIGNOR:	ASSIGNEE:
KCXP INVESTMENTS, LLC, a Delaware limited liability company	CARSON TAHOE EXECUTIVE, LLC, a Nevada limited liability company
DocuSigned by:  By: _____ <small>480F6B6100A3443...</small> Name: Bradley J. Busbin Title: Manager	By: _____ Name: _____ Title: _____
By: _____ Name: Tom Gonzales	

APN: _____

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Carson Tahoe Executive, LLC
3700 Barron Way, Suite 2
Reno, NV 89511

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT TO POSTPONE OR AVOID LEASE TERMINATION

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT TO POSTPONE OR AVOID LEASE TERMINATION ("**Assignment to Avoid Lease Termination**") is executed as of _____, 2023, and effective as of the Effective Date (as defined below), by and among KCXP INVESTMENTS, LLC, a Delaware limited liability company ("**Assignor**"), CARSON TAHOE EXECUTIVE, LLC, a Nevada limited liability company ("**Assignee**") and CARSON CITY AIRPORT AUTHORITY ("**Landlord**").

- A. Assignor and Landlord entered into that certain Agreement to Postpone or Avoid Lease Termination dated February 15, 2023 ("**Postponement Agreement**"), wherein Assignor undertook certain obligations and commitments to perform under a certain lease agreement held under document No. 382385, recorded September 5, 2008 (the "**Lease**").
- B. Assignor having previously assigned the Lease to Assignee pursuant to that certain Purchase Agreement of Airport Lease (the "**Purchase Agreement**") and conditioned on approval from the Landlord by way of an Assignment and Assumption of Ground Lease and Landlord's Consent dated June 2, 2023 ("**Lease Assignment Agreement**")
- C. Upon consent from Landlord of the Lease Assignment Agreement and this Assignment to Avoid Lease Termination, Assignor shall assign and transfer to Assignee all of Assignor's rights, title, interests, obligations and commitments set forth tin the Postponement Agreement.
- D. Whereby, upon execution of this Assignment to Avoid Lease Termination and the Lease Assignment Agreement, Assignor shall be bound to the terms and obligations set forth in the Postponement Agreement and shall have the same commitments, obligations and rights as the Assignor in that Postponement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's rights, title, interest, obligations and commitments as set forth in the Postponement Agreement, to be effective from and after the Closing of the Purchase Agreement.

2. Assumption. Assignee hereby assumes all of Assignor's obligations and commitment in, to and under the Postponement Agreement after the Closing of the Purchase Agreement.

3. Representation and Warranty. Assignor represents and warrants that it has paid a non-refundable deposit of \$25,000 to Landlord as set forth in the Postponement Agreement, which amount shall be applied to offset lease rent obligations upon the completion of construction on the premises. Landlord hereby represents and warrants that it has received the \$25,000 non-refundable payment from Assignor and shall apply such amount to the lease rent obligations upon completion of construction on the premises as set forth in the Postponement Agreement, which shall be for the benefit of Assignee as the assumed tenant.

4. Miscellaneous. This Assignment to Avoid Lease Termination may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall be one instrument. This Assignment to Avoid Lease Termination shall be binding upon the parties and their respective successors and assigns. This Assignment to Avoid Lease Termination shall be governed by and interpreted in accordance with the laws of the State of Nevada. If any action or proceeding is commenced by either party with respect to this Assignment, the prevailing party in such action or proceeding shall be entitled to recover its costs and expenses incurred in such action or proceeding, including attorney's fees and costs. This Assignment to Avoid Lease Termination may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.

5. Effective Date of Assignment. This Assignment shall be effective as of the date the Carson City Airport Authority executes this Assignment and records this Assignment at the Carson City Records Office ("**Effective Date**"). In the event the Closing of the Purchase Agreement does not occur for any reason whatsoever, this Assignment shall be null and void and no longer effective.

IN WITNESS WHEREOF, this Assignment is made and entered into as of the date first set forth above.

ASSIGNOR:

ASSIGNEE:

KCXP INVESTMENTS, LLC,
a Delaware limited liability company

CARSON TAHOE EXECUTIVE, LLC
a Nevada limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CONSENTED TO AND AGREED BY:

CARSON CITY AIRPORT AUTHORITY

By: _____

Name: _____

Title: _____

STATE OF NEVADA

COUNTY OF WASHOE

This instrument was acknowledged before me on _____, 2023, by
_____ as Manager of KCXP Investments, LLC.

Notary Public
My Commission Expires: _____

STATE OF NEVADA

COUNTY OF WASHOE

This instrument was acknowledged before me on _____, 2023, by
_____ as Manager of Carson Tahoe Executive, LLC.

Notary Public
My Commission Expires: _____

CARSON CITY

Approved by the Board of Supervisors this _____ day of _____, 2023.

By: _____

ATTEST:

CITY'S LEGAL COUNSEL
Approved to as to form.

*****, Clerk Recorder

DISTRICT ATTORNEY

AIRPORT AUTHORITY COUNSEL
Approved to as to form.

Steven E. Tackes, Esq.