

CITY OF EL PASO, TEXAS

DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: AIRPORT
AGENDA DATE: March 20, 2007
CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E. - 780-4724
DISTRICT(S) AFFECTED: 02

SUBJECT:

AUTHORIZE the City Manager to sign a Lessor's Approval of Assignments between the City of El Paso, Lessor, BK Fisher Limited Partnership, (Assignor) and STAG II El Paso, L.P., a Delaware limited partnership (Assignee) for the property located at #12 Leigh Fisher, #24 Leigh Fisher and #47 Butterfield Circle containing approximately 13.8 acres (599,085 sq. ft.) and described as follows:

All of Lots 1 and 2 Block 9 and all of Lots 10 and 11, Block 11, Butterfield Trail Industrial Park, Unit Two, City of El Paso, El Paso County, Texas

BACKGROUND / DISCUSSION:

The initial term of this lease was effective August 1, 1994 and is for a term of forty (40) years expiring on July 31, 2034. In accordance with the terms and conditions of the lease agreement the rental rate is to be adjusted at each five (5) year lease anniversary. The current rate per square foot for Parcel 1 is \$0.2282/sq. ft. and Parcel 2 is \$0.2110/sq. ft. for an annual rental of \$132,522.30 (\$11,043.53/mo). Rental adjustments are due every five (5) years to equal the greater of eight percent (8%) of the fair market value or one-half (1/2) the CPI increase, not to exceed twenty percent (20%). The next rental adjustment is scheduled for August 1, 2009. Upon expiration of the initial term the lease is subject to two 10-year option periods.

The property is improved with administrative offices and warehouse facilities and currently sub leased to American Yazaki/Elcom Wire Facility.

BK Fisher Limited Partnership is selling the improvements and requesting Lessor's Approval of Assignment to STAG II El Paso, L.P., a Delaware limited partnership formed to act as Lessee for the lease. Bk Fisher has requested it be released from its obligations under the lease.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer? N/A

BOARD / COMMISSION ACTION:

The request for Lessor's Approval of Assignments of the Butterfield Trail Industrial Park Lease will be presented to the Airport Advisory Board on March 15, 2007 for its recommendation.

REQUIRED AUTHORIZATION

LEGAL: (if required)

[Signature]
Sylvia Dorunda Firth, Asst. City Attorney

FINANCE: (if required)

[Signature]

OTHER:

Patrick T. Abeln, A. A. E., Director of Aviation
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER:

07 MAR 12 AM 9:42
CITY CLERK DEPT.
DATE:

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 by and between the City of El Paso ("Lessor"), BK Fisher, Limited Partnership ("Assignor") and STAG II El Paso, L.P. ("Assignee") for the following described property:

All of Lots 1 and 2, Block 9, and all of Lots 10 and 11, Block 11, Butterfield Trail Industrial Park Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as #12 Leigh Fisher, #24 Leigh Fisher and #47 Butterfield Circle, El Paso, Texas.

ADOPTED this the _____ day of _____ 2007.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A. A. E.
Director of Aviation

CITY CLERK DEPT.
07 MAR 12 AM 9:42

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR’S APPROVAL OF ASSIGNMENT

The City of El Paso (“Lessor”) entered into a Butterfield Trail Industrial Park Lease effective August 1, 1994 between the Lessor and BK Fisher Limited Partnership (“Assignor”), which was subsequently amended by that Lease Amendment dated February 11, 1997. The original lease and subsequent amendment are hereinafter collectively referred to as the “Agreement”, and collectively cover the following described leased premises:

All of Lots 1 and 2, Block 9, and all of Lots 10 and 11, Block 11, Butterfield Trail Industrial Park Unit Two, City of El Paso, El Paso County, Texas, being more particularly described in Exhibit A, attached hereto and made a part hereof, and municipally known and numbered as #12 Leigh Fisher, #24 Leigh Fisher and #47 Butterfield Circle, El Paso, Texas (“Premises”).

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Agreement from Assignor to STAG II El Paso, L.P., a Delaware limited partnership (“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 Agreement from and after the effective date of the assignment of the Agreement to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Agreement.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Agreement and expressly agrees to be bound by the indemnification provisions contained in the Agreement.
3. **GUARANTOR.** Assignor shall be released and discharged from all rights, privileges and obligations under the Agreement arising from and after the effective date of the assignment of the Agreement and 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 Agreement had originally been executed between Lessor and Assignee. This approval and release is contingent upon the actual conveyance of title for all buildings and leasehold improvements from Assignor to Assignee pursuant to such contemplated assignment.
4. **RATIFICATION OF AGREEMENT.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the

27:8 AM '97
CITY CLERK DEPT.

Agreement; all other terms and conditions of the Agreement shall remain in full force and effect.

5. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignor shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNEE: STAG II El Paso, L.P.
c/o STAG Capital Partners, LLC
99 Chauncy Street, 10th Floor
Boston, MA 02111
Attn: Benjamin S. Butcher

ASSIGNOR: BK Fisher Limited Partnership
c/o Colliers, Bennett & Kahnweiler, Inc.
9700 West Bryn Mawr
Rosemont, ILL 60018-5275

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 legal authority to bind the Assignee or Assignor, 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 parties have executed this Lessor's Approval of Assignment hereto this _____ day of _____ 2007.

LESSOR: CITY OF EL PASO

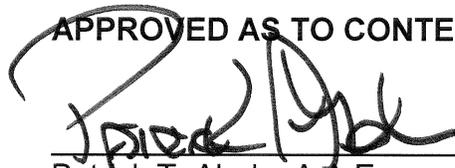
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A.A.E.
Director of Aviation

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSOR'S ACKNOWLEDGEMENT

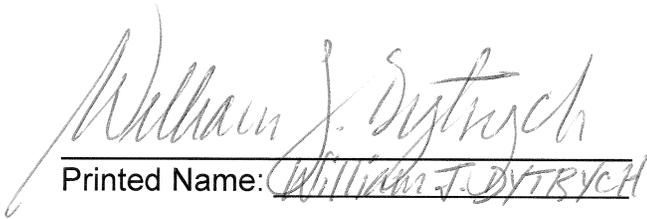
THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ___ day of _____, 2007, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas**. (Lessor)

Notary Public, State of Texas

My Commission Expires:

ATTEST:


Printed Name: William J. DYTTRICH

ASSIGNOR: **BK Fisher, L.P.**

By: BK Fisher Building Corporation, a Texas corporation, its sole General partner


Printed Name: David B. Kahnweiler
Title: Secretary

ATTEST:

Printed Name: _____

ASSIGNEE: **STAG II El Paso, L.P.**

By: Stag Investments GP LLC, its sole General partner

Printed Name: _____
Title: _____

(ACKNOWLEDGMENTS CONTINUE ON THE FOLLOWING PAGE)

07 MAR 12 AM 9:42
CITY CLERK DEPT.

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ___ day of _____, 2007,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas**. (Lessor)

Notary Public, State of Texas

My Commission Expires:

ATTEST:

ASSIGNOR: BK Fisher, L.P.

By: BK Fisher Building Corporation, a Texas corporation, its sole General partner

Printed Name: _____

Printed Name: _____
Title: _____

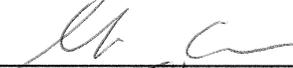
ATTEST:

ASSIGNEE: STAG II EI Paso, L.P.

By: Stag Investments GP LLC, its sole General partner



Printed Name: Brian Morris



Printed Name: Stephen C Mecke
Title: Authorized Officer

(ACKNOWLEDGMENTS CONTINUE ON THE FOLLOWING PAGE)

07 MAR 12 AM 9:42
CITY CLERK DEPT.

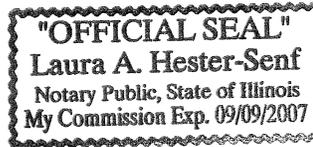
ASSIGNOR'S ACKNOWLEDGMENT

THE STATE OF ILLINOIS)
)
COUNTY OF COOK)

This instrument was acknowledged before me on this 8th day of March, 2007,
by David Kobrowski as Secretary of **BK Fisher, L.P.** (Assignor)

Laura A. Hester-Senf
Notary Public, State of Illinois

My Commission Expires:
9/09/2007



ASSIGNEE'S ACKNOWLEDGMENT

THE COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK)

This instrument was acknowledged before me on this ___ day of _____, 2007,
by _____ as _____ of **STAG II El Paso, L.P.**
(Assignee)

My Commission Expires:

Notary Public, State of _____

07 MAR 12 AM 9:43
CITY CLERK DEPT.

ASSIGNOR'S ACKNOWLEDGMENT

THE STATE OF ILLINOIS)
)
COUNTY OF COOK)

This instrument was acknowledged before me on this ___ day of _____, 2007,
by _____ as _____ of **BK Fisher, L.P.** (Assignor)

Notary Public, State of _____

My Commission Expires:

ASSIGNEE'S ACKNOWLEDGMENT

THE COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK)

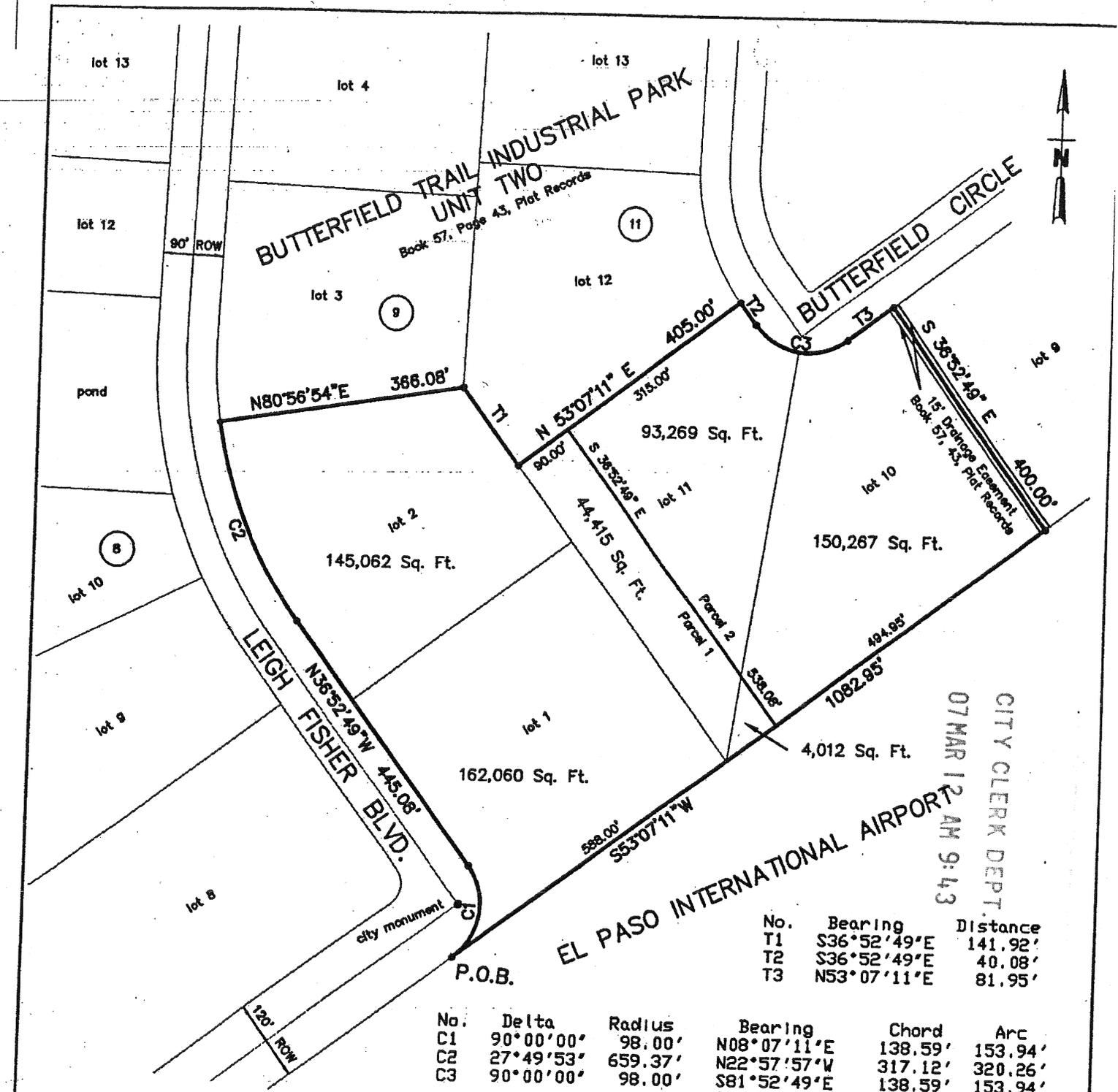
This instrument was acknowledged before me on this 8th day of March, 2007,
by Stephen C. Mecke as authorized officer of **STAG II El Paso, L.P.**
(Assignee)

Denise A. Bayle
Notary Public, State of Massachusetts

My Commission Expires:

10/3/08

07 MAR 12 AM 9:43
CITY CLERK DEPT.



NOT A GROUND SURVEY

PARCEL 1 = 355,549 Sq. Ft. or 8.162 Acres
PARCEL 2 = 243,536 Sq. Ft. or 5.591 Acres
TOTAL = 599,085 Sq. Ft. or 13.753 Acres

Exhibit A

Faught & Associates Inc.
CONSULTING ENGINEERS

433 Executive Center Blvd.
El Paso, Texas 79902
(915) 542-4900

EXHIBIT
LOTS 1 AND 2, BLOCK 9, AND LOTS 10 AND 11, BLOCK
11, BUTTERFIELD TRAIL INDUSTRIAL PARK, UNIT TWO,
CITY OF EL PASO, EL PASO COUNTY, TEXAS

Drawn By: JC

Date: 02-12-97

Scale: 1"=200'

Job No: 5010-90N