

**CITY OF EL PASO, TEXAS**  
**DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** AIRPORT  
**AGENDA DATE:** August 7, 2007 8-7-07  
**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 Assignment between the City of El Paso (Lessor), Teachers Insurance and Annuity Association of America (Lessee) and El Paso Owner, LLC (Assignee) for the following property in the Butterfield Trail Industrial Park: #4 and #6 Butterfield Trail: All of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park, Unit One, Replat "A", City of El Paso, El Paso County, Texas.

**BACKGROUND / DISCUSSION:**

The City of El Paso entered into a Butterfield Trail Industrial Park Lease on April 1, 1986 with Kasco Ventures Butterfield 13 for a term of thirty-three (33) years with the initial term expiring August 31, 2019. The lease also contains a provision for one (1) 10-year option permitting the Lessee to extend the lease to July 2029. Teachers Insurance and Annuity Association of America (TIAA) subsequently acquired the lease pursuant to a Lessor's Approval of Assignment dated December 8, 1995.

In accordance with the lease, the rental rate was adjusted on April 1, 2006 to the current \$0.091/sq. ft. for the 218,820 sq. ft. parcel. This equates to \$1,659.38 monthly or \$19,912.56/annum. The next rental adjustment will be due April 1, 2016. The rent during the option period will be adjusted to a full six percent (6%) of the then fair market value.

The site is improved with warehouse and/or manufacturing facilities and occupied by various subtenants. The attached map identifies the location of the property in the Butterfield Trail Industrial Park.

TIAA requested and received a Lessor's Approval of Assignment in order to assign the lease to SFERS Real Estate Corp. SS (SFERS) on December 5, 2006. However, this assignment never occurred. TIAA is now requesting Lessor's Approval of Assignment of the ground lease to El Paso Owner, LLC, a Delaware limited liability company. This agenda item requests authorization to revoke the previous Lessor's Approval of Assignment to SFERS and grants authorization for TIAA to assign to El Paso Owner, LLC.

**PRIOR COUNCIL ACTION:** Lessor's Approval of Assignment dated December 6, 2005 granting Teachers Insurance and Annuity the authority to assign the Lease to SFERS Real Estate Corp. SS which was never completed.

**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:**

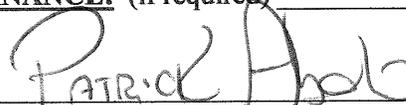
N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required)

  
Raymond L. Telles, Asst. City Attorney

**FINANCE:** (if required)



**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:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

CITY CLERK DEPT.  
07 JUL 27 PM 3:00

## RESOLUTION

**WHEREAS**, the City of El Paso (the "City") entered into the Butterfield Trail Industrial Park Lease with an effective date of April 1, 1986 with Kasco Ventures, Butterfield 13 ("Kasco") for the property known as #4 and #6 Butterfield Trail (the "Lease"), which was subsequently assigned by Kasco to Teachers Insurance and Annuity Association of America, a New York corporation, For the Benefit of its Separate Real Estate Account ("TIAA");

**WHEREAS**, TIAA requested and the City granted a Lessor's Approval of Assignment dated December 6, 2005, which granted TIAA the authority to assign the Lease to SFERS Real Estate Corp. SS ("SFERS"); and,

**WHEREAS**, the referenced assignment to SFERS was never completed by TIAA and TIAA now desires to assign the Lease to El Paso Owner, LLC and has requested a Lessor's Approval of Assignment from the City to effectuate such an assignment;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

THAT: (i) the Lessor's Approval of Assignment granted to Teachers Insurance and Annuity Association of America ("Assignor") and SFERS Real Estate Corp. SS ("Assignee") for the property known as #4 and #6 Butterfield Trail on December 6, 2005 is hereby revoked; and, (ii) the City Manager be authorized to sign a Lessor's Approval of Assignment of the Butterfield Trail Industrial Park Lease by and between the City of El Paso ("Lessor"), Teachers Insurance and Annuity Association of America, a New York corporation, For the Benefit of its Separate Real Estate Account ("Assignor") and El Paso Owner LLC ("Assignee") for the property known as #4 & #6 Butterfield Trail.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

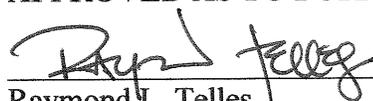
CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

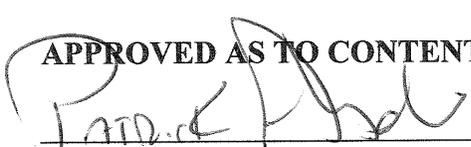
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
Municipal Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patrick T. Abeln, Director  
Department of Aviation

CITY CLERK DEPT.  
07 JUL 27 PM 2:59

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 with an effective date of April 1, 1986 (“Lease”) between Lessor and Kasco Ventures, Butterfield 13 (“Kasco”), and a Memorandum of Lease, recorded in Volume 1663, Page 1390, Real Property Records of El Paso County, Texas, which were subsequently assigned to Teachers Insurance and Annuity Association of America, a New York corporation, For the Benefit of its Separate Real Estate Account (“Lessee”), by way of Assignment and Special Warranty Deed from Kasco to Lessee, recorded in Volume 2990, Page 957, Real Property Records of El Paso County, Texas, covering the following described leased premises:

All of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park, Unit One, Replat “A”, an Addition to the City of El Paso, El Paso County, Texas according to the plat thereof, recorded in Volume 56, Page 71, Plat Records of El Paso, County, Texas, the same being more particularly described on **EXHIBIT A** attached hereto and made a part hereof, and municipally known and numbered as #4 and #6 Butterfield Trail.

CITY CLERK DEPT.  
07 JUL 27 PM 2:59

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to El Paso Owner LLC, a Delaware limited liability company (“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 agree 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.** Assignor shall be released and discharged from all rights, privileges and obligations under the Lease arising from and after the effective date of the assignment of the Lease 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 Lease had originally been executed between Lessor and Assignee.
4. **RATIFICATION OF AGREEMENT.** No provision of this consent alters or modifies any of the terms and conditions of the Lease. Except as expressly modified herein, all terms and conditions of the Lease shall remain in full force and effect.

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

El Paso Owner LLC  
5005 LBJ Freeway, Suite 1130  
Dallas, Texas 75244-6144  
Attention: Laurence E. Dooley

6. **AUTHORIZED REPRESENTATIVE.** The person signing this Lessor's Approval of Assignment on behalf of the Assignee represents and warrants that he or she has the authority legally to bind the Assignee 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**

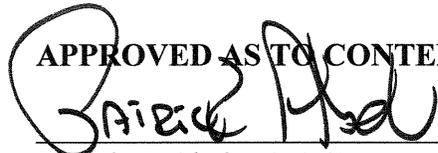
\_\_\_\_\_  
Joyce A. Wilson  
City Manager

CITY CLERK DEPT.  
JUL 27 PM 2:59

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Raymond L. Telles  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

**ACKNOWLEDGEMENT  
(LESSOR)**

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:  
\_\_\_\_\_

ASSIGNOR: TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, A NEW YORK CORPORATION, FOR THE BENEFIT OF ITS SEPARATE REAL ESTATE ACCOUNT

ATTEST:

Maria McHugh  
Printed Name: MARIA McHUGH

Sheryl Korn GS  
Printed Name: Sheryl Korn  
Title: Director

CITY CLERK DEPT.  
07 JUL 27 PM 2:59

ACKNOWLEDGEMENT  
(ASSIGNOR)

STATE OF NEW YORK §  
  §  
COUNTY OF NEW YORK §

This instrument was acknowledged before me on this 23<sup>rd</sup> day of July, 2007, by **Sheryl Korn as Director of Teachers Insurance and Annuity Association of America, a New York corporation, For the Benefit of its Separate Real Estate Account**, on behalf of said corporation (Assignor).

Ines Saldana-Olesen  
Notary Public, State of New York

My Commission Expires: \_\_\_\_\_

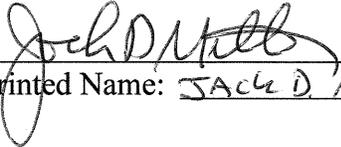
**INES SALDANA-OLESEN**  
Notary Public, State of New York  
No. 01SA6035878  
Qualified in New York County  
Commission Expires January 10, 2010

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

**ASSIGNEE: EL PASO OWNER LLC**, a Delaware limited liability company

By: Falcon Real Estate Investment Company, Ltd., a Delaware Corporation, Its Sole member

**ATTEST:**

  
Printed Name: JACK D. MILLER

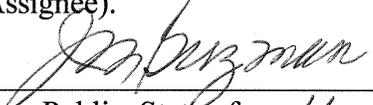
By:   
Printed Name: Laurence E. Dooley  
Title: Vice President

CITY CLERK DEPT.  
07 JUL 27 PM 2:59

**ACKNOWLEDGEMENT  
(ASSIGNEE)**

STATE OF ILLINOIS §  
  §  
COUNTY OF COOK §

This instrument was acknowledged before me on this 23 day of July, 2007, by **Laurence E. Dooley** as **Vice President of Falcon Real Estate Investment Company, Ltd., a Delaware corporation, Sole Member of El Paso Owner LLC, a Delaware limited liability company**, on behalf of said corporation and company (Assignee).

  
Notary Public, State of IL

My Commission Expires: 02-17-10



**EXHIBIT A**

**PROPERTY DESCRIPTION  
218,820 SQUARE FEET  
or 5.023 ACRES**

Being all of Lot 2 and a portion of Lot 2B, Block 1, Butterfield Trail Industrial Park Unit One, Replat "A", City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at the city monument at the centerline intersection of Butterfield Trail Boulevard and Zane Grey Street;

THENCE, South 00°59'34" East, along the centerline of Zane Grey Street, a distance of 105.00 feet to a point;

THENCE, South 89°00'26" West, a distance of 45.00 feet to a marked "X" in the westerly right-of-way line of Zane Grey Street, said point being the POINT OF BEGINNING for the herein described tract;

THENCE, South 00°59'34" East, along said right-of-way line, a distance of 420.00 feet to a found 5\8" rebar;

THENCE, South 89°00'26" West, a distance of 481.50 feet to a found 1\2" rebar;

THENCE, North 00°59'34" West, a distance of 455.00 feet to a found 1\2" rebar in the southerly right-of-way line of Butterfield Trail Boulevard;

THENCE, North 89°00'26" East, along said right-of-way line, a distance of 446.50 feet to a found 1\2" rebar at the beginning of a curve to the right;

THENCE, along the arc of said curve (Delta Angle = 90°00'00", Radius = 35.00 feet. Chord = South 45°59'34" East, 49.50 feet) a distance of 54.98 feet to the POINT OF BEGINNING and containing 218,820 square feet or 5.023 acres of land.

(END OF EXHIBIT)

CITY CLERK DEPT.  
07 JUL 27 PM 2:59



Butterfield Trail  
and  
Butterfield Trail

Case Gray