

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Airport

AGENDA DATE: August 27, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

Resolution to authorize the City Manager to sign a First Amendment to Butterfield Trail Industrial Park Lease and Lessor's Approval of Assignment by and among the City of El Paso ("Lessor"), TR Butterfield Trail Corp. ("Assignor") and 1901 Bragaw LLC and Quintas Properties LLC ("Assignee") for the premises described as follows:
1,586,523 square feet of land, more or less, being a portion of Lot 1, all of Lot 2 and all of Lot 3, Block 14, Butterfield Trail Industrial Park, Unit Three, El Paso, El Paso County Texas, and municipally known as 48 Walter Jones/32 Celerity Wagon, El Paso, Texas.

Existing Annual Rent:

1,586,512 sf. @ \$0.2240 = \$355,378.68/yr

*Ground rental

Abatement payment + 30,748.20/yr
\$386,126.88/yr

Adjusted Annual Rent: (+11 sf per new survey)

1,586,523 sf. @ \$0.224 = \$355,381.15/yr

*Ground rental

Abatement payment + 30,748.20/yr
\$386,129.35/yr

Next rental adjustment scheduled for 11/1/14 by appraisal.

*Ground rental abatement payment is for rent abated nine months at inception of Lease term and subject to repayment over the remaining term. Payment remains constant until expiration of initial term of Lease (2/1/34) per Section 5.03 – D. of the Lease.

BACKGROUND / DISCUSSION:

The City of El Paso entered into a Butterfield Trail Industrial Park Lease with Opus South Corporation effective February 1, 1994 for a term of forty (40) years with two (2) additional ten (10) year Options. Total of forty-one (41) years and five (5) months remain on the lease term including the two Options.

On 4/1/95, the Lease was assigned from Opus South Corporation to Teachers' Retirement System of the State of Illinois; and on 2/1/96 the Lease was subsequently assigned to TR Butterfield Trail Corp.

Assignor now desires to assign to 1901 Bragaw LLC and Quintas Properties LLC (collectively "Assignee") all of its interest in the Lease with all the terms and conditions remaining the same with the exception of the description of Premises having been corrected – square footage was adjusted by an additional 11 sf, per a new survey. Assignee is a company based in Alaska participating in various real estate investments and related activities throughout the US and is now interested in acquiring properties for investment in El Paso.

PRIOR COUNCIL ACTION:

4/1/95 Assignment; 2/1/96 Assignment.

AMOUNT AND SOURCE OF FUNDING:

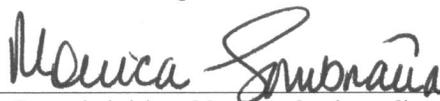
This is a revenue generating lease.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

falls, the adjustment will be based on the price index for the closest preceding month for which the price index is available.

D. In consideration of the ground rental payment abatement during the first nine months of this Lease, Lessee shall pay to Lessor additional ground rental payments in the amount of \$2,562.34 per month, beginning February 1, 2004, each and every month throughout the remainder of the initial term of this Lease.

5.04 Time of Payment. The annual rental shall be paid in twelve (12) equal monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term of this Lease.

5.05 Unpaid Rent, Fees and Charges. Any installment of rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest at the rate of fifteen percent (15%) per annum from the date when the same was due according to the terms of this Lease until paid by Lessee.

5.06 Place of Payment. All rental payments provided herein shall be paid to Lessor at the following address: Accounting Department, El Paso International Airport, 6701 Convair, El Paso, Texas 79925.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

6.01 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Leased Premises insured for the mutual benefit of Lessor and Lessee

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a First Amendment to Butterfield Industrial Park Lease and Lessor's Approval of Assignment by and among the City of El Paso ("Lessor"); TR-Butterfield Trail Corp. ("Assignor"), and 1901 Bragaw LLC and Quintus Properties LLC ("Assignee") for the premises described as follows:

1,586,532 square feet of land, more or less, being a portion of Lot 1, all of Lot 2 and all of Lot 3, Block 14, Butterfield Trail Industrial Park, Unit Three, El Paso, El Paso County, Texas and municipally known as 48 Walter Jones/32 Celerity Wagon, El Paso, Texas.

Dated this ____ day of _____ 2013.

CITY OF EL PASO

Oscar Leoser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS § **FIRST AMENDMENT TO BUTTERFIELD TRAIL**
 § **INDUSTRIAL PARK LEASE AND**
COUNTY OF EL PASO § **LESSOR’S APPROVAL OF ASSIGNMENT**

WHEREAS, the City of El Paso (“Lessor”) entered into a Butterfield Trail Industrial Park Lease, effective February 1, 1994 (“Lease”), between Lessor and Opus South Corporation; for the property legally described as:

A portion of Lot 1, all of Lot 2 and all of Lot 3, Block 14, Butterfield Trail Industrial Park, Unit Three, as further described on Exhibit “A”, attached hereto, consisting of 1,586,512 square feet of land, El Paso, El Paso County, Texas (“Premises”).

WHEREAS, effective March 1, 1995, the Lease was assigned to The Teachers’ Retirement System of the State of Illinois;

WHEREAS, effective February 1, 1996, the Lease was subsequently assigned to TRButterfield Trail Corp. (“Assignor”);

WHEREAS, Assignor now desires to assign its interest in the Lease; and

WHEREAS, during the review of Assignor’s request, the parties agreed to correct a discrepancy in the legal description of the Premises.

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.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to 1901 Bragaw LLC and Quintus Properties LLC (collectively “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 Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees 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 and Teachers' Retirement System of the State of Illinois, a predecessor lessee, are released and discharged by Lessor from all rights, privileges and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the 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 Lease had originally been executed between Lessor and Assignee.

4. **SECURITY DEPOSIT.** Prior to the effective date of this Lessor's Approval of Assignment, Assignee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director ("Security Deposit") in an amount equal to three (3) months of Ground Rental to guarantee the faithful performance of Assignee of its obligations under this Lease and the payment of all Ground Rental due hereunder. Assignee shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Effective Date of this Assignment during which Assignee commits no Event of Default under Section 10.02 of this Lease. Such Security Deposit shall be in such form as shall be acceptable to Lessor in its reasonable discretion. Lessor's rights under this Section shall be in addition to all other rights and remedies provided to Lessor under this Agreement.

5. **DESCRIPTION OF PREMISES TO BE DEMISED.** The Parties agree that Article I, Section 1.01 of the lease is hereby amended to correct the description of the Premises to read:

A portion of Lot 1, all of Lot 2 and all of Lot 3, Block 14, Butterfield Trail Industrial Park, Unit Three, El Paso, El Paso County, Texas consisting of 1,586,523 square feet.

The said property is further described on Exhibit "A", which is dated July 23, 2013 and attached hereto for all purposes.

6. **RENTAL.** The Parties agree that because of the description of the Premises has been corrected, the annual Ground Rental as of the date of the Effective Date of this Agreement is \$355,381.15 (1,586,523sf @ \$0.224/sf = \$355,381.15). In addition, Lessee pays a ground rental payment of \$2,562.34 per month pursuant to Article V, Paragraph 5.03D for the remainder of the initial term of this lease.

7. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.

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

ASSIGNOR: TRButterfield Trail Corp.
c/o Invesco Real Estate
Three Galleria Tower
13155 Noel Road, Suite 500
Dallas, Texas 75240
Attn: Jon Dooley

ASSIGNEE: 1901 Bragaw LLC
Quintus Properties LLC
2609 A. Street
Anchorage, Alaska 99503
Attn: Stuart Bond

9. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee, Assignor, and Guarantor represent and warrant that they have the legal authority to bind the Assignee, Assignor or Guarantor, respectively, to the provisions of this Lessor's Approval of Assignment.
10. **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.
11. **EFFECTIVE DATE.** The Effective Date of this First Amendment to the Butterfield Trail Industrial Park Lease and Lessor's Approval of Assignment will be August 28, 2013.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ASSIGNOR:
TRBUTTERFIELD TRAIL CORP.

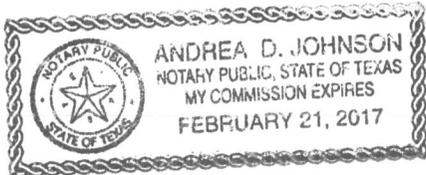
SH
By: [Signature]
Printed Name: RON RAGSDALE
Title: VICE PRESIDENT

ACKNOWLEDGMENT
ASSIGNOR

STATE OF TEXAS)

COUNTY OF Dallas)

This instrument was acknowledged before me on this 16 day of August, 2013
by Ron Ragsdale as Vice President of TRButterfield Trail Corp.
(Assignor).

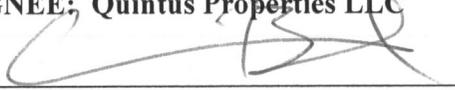


Andrea D. Johnson
Notary Public, State of Texas

My Commission Expires:
February 21, 2017

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

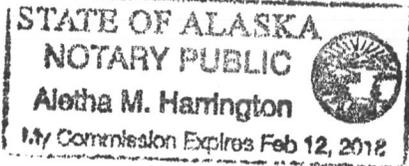
ASSIGNEE: Quintus Properties LLC

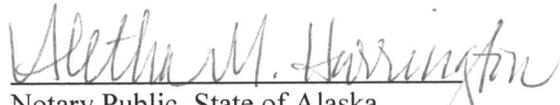
By: 
Printed Name: Christopher Bond
Title: Managing Member

**ACKNOWLEDGMENT
ASSIGNEE**

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

This instrument was acknowledged before me on this 14 day of August, 2013
by Christopher Bond as Managing Member of Quintus Properties LLC (Assignee).




Notary Public, State of Alaska

My Commission Expires:
02/12/2016

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

All of Lots 2 and 3 and a portion of Lot 1, Block 14, Butterfield Trail Industrial Park Unit 3, a subdivision of record in Book 60, Page 60, Plat Records of The City of El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows (note that State Plane bearings are used herein, record distances are referenced in parentheses):

Commencing for reference at a City Monument found at the centerline intersection of Walter Jones Boulevard (120 ft. R.O.W.) and Celerity Wagon Street (90 ft. R.O.W.) from which a City Monument found at the centerline intersection of Walter Jones Boulevard and Spur Drive bears South 87° 54' 08" East, 1817.46 feet (1817.38 feet Rec.); Thence along the centerline of said Walter Jones Blvd., South 87° 54' 08" East, 620.96 feet; Thence, leaving said centerline, South 02° 05' 52" West, 60.00 feet to a found 1/2 inch rebar, which bears North 07° 54' 48" West 0.16 feet, on the southerly right-of-way line of Walter Jones Blvd. for the "POINT OF BEGINNING";

Thence, along said southerly right-of-way line of Walter Jones Blvd., South 87° 54' 08" East, 1,116.43 feet to a found 5/8 inch rebar with cap stamped TX 4869;

Thence, transitioning from said southerly right-of-way to the westerly right-of-way of Spur Dr., 54.98 feet with a curve to the right having a radius of 35.00 feet, a central angle of 90° 00' 00", and a chord that bears South 42° 54' 08" East 49.50 feet to a found 5/8 inch rebar with cap stamped TX 4869;

Thence, along the westerly right-of-way line of Spur Dr., South 02° 05' 52" West, 1,010.62 feet to a found chiseled "X", which bears South 38° 40' 58" East 0.24 feet;

Thence, transitioning from said westerly right-of-way of Spur Dr., 54.98 feet with a curve to the right having a radius of 35.00 feet, a central angle of 90° 00' 00", and a chord that bears South 47° 05' 52" West 49.50 feet to a found 5/8 inch rebar with cap stamped TX 4869, which bears South 25° 50' 29" West 0.13 feet;

Thence, along said northerly right-of-way line, North 87° 54' 08" West, 1,657.39 feet to a found 5/8 inch rebar with cap stamped TX 2665;

Thence, transitioning from said northerly right-of-way of Celerity Wagon St., 54.98 feet with a curve to the right having a radius of 35.00 feet, a central angle of 90° 00' 00", and a chord that bears North 42° 54' 08" West 49.50 feet to a found 5/8 inch rebar;

Thence, along said easterly right-of-way, North 02° 05' 52" East, 560.62 feet to a found 5/8 inch rebar with cap stamped TX 2665, which bears South 48° 51' 00" West 0.12 feet;

Thence, leaving said easterly right-of-way along the northerly property line of said portion of Lot 1, South 87° 54' 08" East, 575.96 feet to a found chiseled "x" on top of rock wall, which bears South 28° 26' 31" West 0.18 feet;

Thence, along westerly property line of said Lot 2, North 02° 05' 52" East, 485.00 feet, to the POINT OF BEGINNING and containing 1,586,523 square feet or 36.4216 acres, more or less.