

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

CITY CLERK DEPT.

2013 NOV -7 PM 3:57

DEPARTMENT: Airport

AGENDA DATE: November 12, 2013

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

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a Ground Lessor's Estoppel Certificate and Amendment to the Restated Butterfield Trail Industrial Park Lease by and among the City of El Paso ("Lessor") and SL EP Industrial, LP ("Lessee") for the following described properties:

A portion of Lot 1, a portion of Lot 2, a portion of Lot 3, and a portion of Lot 4, Block 10, Butterfield Trail Industrial Park, Unit Two, an addition to the City of El Paso, El Paso County Texas, municipally known as 42 Butterfield Circle, El Paso, Texas.

Current annual rent: 80,286sf @ \$0.1275/sf = of \$10,235.16/yr. Next rental rate adjustment scheduled for 9/1/2017 based upon 8% of then fair market value established by appraisal with a 23% cap.

Term remaining: Forty-nine (49) years and eleven (11) months including all Options.

Subtenant: Columbus Industries/distribution

BACKGROUND / DISCUSSION:

The City of El Paso entered into a Restated Butterfield Trail Industrial Park ("BTIP") Lease with The Lincoln National Life Insurance Co. effective October 1, 1993 for a term of forty (40) years with three (3) additional ten (10) year Options. Lease was subsequently assigned on Oct. 29, 2013 to SL EP Industrial, LP

Improvement survey prepared by Kistenmacher Engineering Company dated July 3, 2013 and last revised Oct. 21, 2013 revealed certain setback findings for which the Lessor now waives 20.0 feet over the 30 foot side setback line to the west and 19.1 feet across the side setback line to the east of the Premises for the term of the Lease.

Additionally, Lessor hereby acknowledges Lender and its successors and assigns as a "mortgagee" for all purposes under the Lease and agrees that Lender and its successors and assigns shall be entitled to the benefit of all leasehold, mortgage protection provisions contained in the Lease. Lessor acknowledges Lender's request to send copies of all Lessee notices to Lender.

PRIOR COUNCIL ACTION:

10/1/1993 - Restated Butterfield Trail Industrial Lease

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

RESOLUTION

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

That the City Manager be authorized to sign a Ground Lessor's Estoppel Certificate and Amendment to the Restated Butterfield Trail Industrial Park Lease by and among the City of El Paso ("Lessor") and SL EP Industrial, LP ("Lessee") for the following described property:

A portion of Lot 1, a portion of Lot 2, a portion of Lot 3, and a portion of Lot 4, Block 10, Butterfield Trail Industrial Park Unit Two, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 42 Butterfield Circle, El Paso, Texas.

Dated this ____ day of _____ 2013.

CITY OF EL PASO

Oscar Leaser
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

**ESTOPPEL CERTIFICATE AND AMENDMENT TO RESTATED BUTTERFIELD
TRAIL INDUSTRIAL PARK LEASE**

Date: _____, 2013

To: Independent Bank "Lender"
2101 Cedar Springs Rd., Ste. 725
Dallas, Texas 75201
Attn: Chad Crozier

SL EP Industrial, LP "Lessee"
9600 N. MoPac EXPY, Ste. 250
Austin, Texas 78759
Attn: John A. Kiltz

From: City of El Paso "Lessor"
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091

RE: Restated Butterfield Trail Industrial Park Lease with an Effective Date of October 1, 1993 by and between Lessor and The Lincoln National Life Insurance Company, as subsequently assigned to SL EP Industrial, LP pursuant to that Lessor's Approval of Assignment with an Effective Date of October 29, 2013; "Lease"

The property described as a portion of Lot 1, a portion of Lot 2, a portion of Lot 3, and a portion of Lot 4, Block 10, Butterfield Trail Industrial Park Unit Two, an addition to the City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof; and municipally known and numbered as 42 Butterfield Circle, El Paso, Texas. "Property"

1. Lessor is and remains the lessor under the Lease covering the Property.
2. The Lease contains the full and complete agreement of the parties with respect to the subject matters thereof. No other understandings (oral or written) exist with respect thereto. The Lease is in full force and effect.
3. All rents and other charges due to Lessor pursuant to the Lease for the Property have been paid in full through October 31, 2013. Annual rent in the amount of \$10,235.16 is

due and payable under the terms of the Lease, subject to any escalations provided for in the Lease.

4. The Effective Date of the Lease is October 1, 1993 and includes a primary term of forty (40) years with three (3) options to renew for ten (10) additional years each.
5. For the improvements and construction existing on the Premises as of the date of this Agreement and as shown on the improvement survey dated July 3, 2013, last revised October 21, 2013, and prepared by Kistenmacher Engineering Company, which is attached hereto as Exhibit "B" and made a part hereof, Lessor waives both side setback requirements of the Property for the term of the Lease.
6. To the best of Lessor's knowledge, as of the date hereof there is no known default under the Lease in the payment of rent or otherwise. To the best of Lessor's knowledge, there exists no condition, event, fact, or occurrence which, by service of notice or passage of time, or both, of uncured, would constitute a default on the part of Lessee under the Lease except as noted in paragraph 3 above.
7. Lessor hereby recognizes Lender and its successors and assigns as a "mortgagee" for all purposes under the Lease and agrees that Lender and its successors and assigns shall be entitled to the benefit of all leasehold mortgagee protection provisions contained in the Lease, including, without limitation, the provisions of Article IX of the Lease. Lessor acknowledges that Lender has requested, and hereby agrees to send, copies of all notices hereafter given by Lessor to Lessee, and Lessor will send such notices to:

Independent Bank
2101 Cedar Springs Rd., Ste. 725
Dallas, Texas 75201
Attn: Chad Crozier

or to such other address as Lender may hereafter specify by written notice to Lessor.

8. Notwithstanding anything to the contrary contained elsewhere in the Lease, the Lease is assignable to the Lender without the consent of Lessor, and in the event the Lease is so assigned, the Lease is further assignable by Lender without the prior consent of Lessor, on a one time basis only, as long as Lessor receives written notice of the assignment from the Lender or the assignee.
9. Notwithstanding anything to the contrary contained elsewhere in the Lease, Lender may assign its interest in the Loan without the consent of Lessor, and any successor holder of the Loan may further assign the Loan without the consent of Lessor. Provided, however, that the parties acknowledge and agree that Lessor has no obligation to provide notice to any successor or assignee of Lender unless Lessor has received written notice of the existence and address of such successor or assignee pursuant to the terms of Section 9.01 of the Lease, which requires such successor or assignee deliver to Lessor a written notice specifying "(A) the amount of the obligation secured by the Mortgage, (B) the date of the

maturity or maturities thereof, and (C) the name and mailing address of such Mortgagee.” After receipt of such notice, Lessor shall serve such successor or assignee, by certified mail at the latest address furnished by such successor or assignee, a copy of every notice served by Lessor upon Lessee under the terms and provisions of the Lease so long as the Loan is in effect.

10. As long as Lender holds any mortgages or deeds of trust on the Leasehold Estate:

(a) Section 9.02 of the Lease is amended to include a new paragraph which shall state:

Lessor will not cancel this Lease in the absence of default. In addition, as a condition precedent to any amendment or a voluntary surrender of the Lease or an agreement to terminate or shorten the Lease (“Amendment”), Lessee must obtain Lender’s prior written consent to such Amendment and deliver same to Lessor. As between Lessor and Lessee, Lessee shall have the responsibility to negotiate with Lender to obtain Lender’s prior written consent to any Amendment of the Lease. Lessor will not process for signature any Amendment of the Lease without first receiving from Lessee a copy of Lender’s signed approval of such Amendment. Without limiting the foregoing, Lessor and Lessee agree and acknowledge that no notice of an Amendment given under the Lease is effective against Lender, its successors or assigns, unless a copy of such notice has been delivered to Lender.

(b) In addition to the rights of lenders set forth in the Lease, if the Lease is terminated for any reason (including, without limitation, rejection of the Lease in bankruptcy) prior to the expiration of the term thereof, as the same may be renewed or extended, Lender may request from Lessor the reinstatement of the Lease by curing all events of default susceptible of being cured and providing to Lessor written notice of Lender’s intent to assume all of Lessee’s obligations arising from the Lease within forty-five (45) days after the receipt by Lender of written notice from Lessor of such termination; at which time Lessor will enter into a reinstatement of the Lease with Lender.

11. Lessor has not granted any mortgages, liens or deeds of trust covering the Property, which are superior to the Lease. The Lease is subordinated to the deed of this Property to the Lessor from the U.S. Government.

12. Lessor has not consented to and has no knowledge or notice of any hypothecation, pledge or mortgage of Lessee’s interest under the Lease with respect to the Property, which has not been released or discharged.

13. Lessor will give notice of any default under the Lease to Lessee at the address set forth above.

APPROVED this ____ day of _____, 2013.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____ 2013,
by Joyce A. Wilson, as City Manager for the **City of El Paso**.

Notary Public, State of Texas

My Commission Expires

(Signatures continue on the following page)

LESSEE: SL EP Industrial, LP, a Texas limited partnership

By: SOP Manager III, LLC, a Texas limited liability company, its General Partner

By: Kenneth E. Aboussie, Jr., Co-President

By: _____
John A. Kiltz, Co-President

LESSEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)

COUNTY OF Dallas)

This instrument was acknowledged before me on this 31 day of October, 2013, by Kenneth E. Aboussie, Jr. as Co-President of SOP Manager III, LLC, General Partner of SL EP Industrial, LP. (Assignee)

My Commission Expires: 5/25/2015

Jennifer L. Kirkendoll
Notary Public, State of Texas



LESSEE'S ACKNOWLEDGEMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2013, by John A. Kiltz as Co-President of SOP Manager III, LLC, General Partner of SL EP Industrial, LP. (Assignee)

My Commission Expires: _____

Notary Public, State of _____

LESSEE: SL EP Industrial, LP, a Texas limited partnership

By: SOP Manager III, LLC, a Texas limited liability company, its General Partner

By: _____
Kenneth E. Aboussie, Jr., Co-President

By: *[Signature]*
John A. Kiltz, Co-President

LESSEE'S ACKNOWLEDGEMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2013, by Kenneth E. Aboussie, Jr. as Co-President of SOP Manager III, LLC, General Partner of SL EP Industrial, LP. (Assignee)

My Commission Expires: _____ Notary Public, State of _____

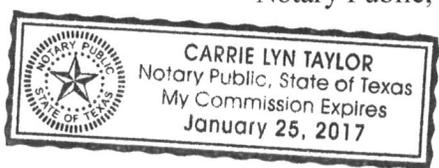
LESSEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)

COUNTY OF Texas)

This instrument was acknowledged before me on this 31 day of October, 2013, by John A. Kiltz as Co-President of SOP Manager III, LLC, General Partner of SL EP Industrial, LP. (Assignee)

My Commission Expires: 1/25/17 *[Signature]*
Notary Public, State of Texas



PROPERTY DESCRIPTION
80,286 SQUARE FEET OR
1.843 ACRES

#42 Butterfield Circle

Being a portion of Lots 1, 2, 3, & 4, Block 10, Butterfield Trail Industrial Park Unit Two, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a City Monument at the centerline intersection of Butterfield Trail Boulevard (90.00 feet wide) and Butterfield Trail Circle (90.00 feet wide);

THENCE, along the centerline of said Butterfield Trail Circle, South 53°07'11" West, a distance of 414.28 feet to a point;

THENCE, leaving said centerline, North 36°52'49" West, a distance of 45.00 feet to a point in the north right-of-way line of said Butterfield Trail Circle and POINT OF BEGINNING for the herein described Tract;

THENCE, along said north right-of-way line, South 53°07'11" West, a distance of 221.85 feet to a point for corner;

THENCE, leaving said right-of-way line, North 36°52'49" West, a distance of 284.62 feet to a point for corner;

THENCE, North 87°54'08" West, a distance of 215.27 feet to a point for corner in the east right-of-way line of said Butterfield Trail Circle;

THENCE, along said east right-of-way line, North 02°05'52" East, a distance of 15.00 feet to a point for corner;

THENCE, leaving said right-of-way line, South 87°54'08" East, a distance of 200.00 feet to a point for corner;

THENCE, North 02°05'52" East, a distance of 120.00 feet to a point for corner;

THENCE, South 87°54'08" East, a distance of 186.57 feet to a point for corner;

THENCE, North 47°05'52" East, a distance of 42.43 feet to a point for corner;

THENCE, South 02°05'52" West, a distance of 61.08 feet to a point for corner;

THENCE, South 36°52'49" East, a distance of 238.78 feet to the POINT OF BEGINNING and containing 80,286 square feet or 1.843 acres of land.

NOT A GROUND SURVEY

PREPARED BY:
Faught & Associates Inc.
El Paso, Texas
January 12, 1990
Job No.: 5510-08

EXHIBIT

A

Page 1

NO.	BEARING	DISTANCE
T1	N36°52'49"W	45.00
T2	N02°05'52"E	15.00
T3	N47°05'52"E	42.43
T4	S02°05'52"W	61.08



SCALE: 1"=100'

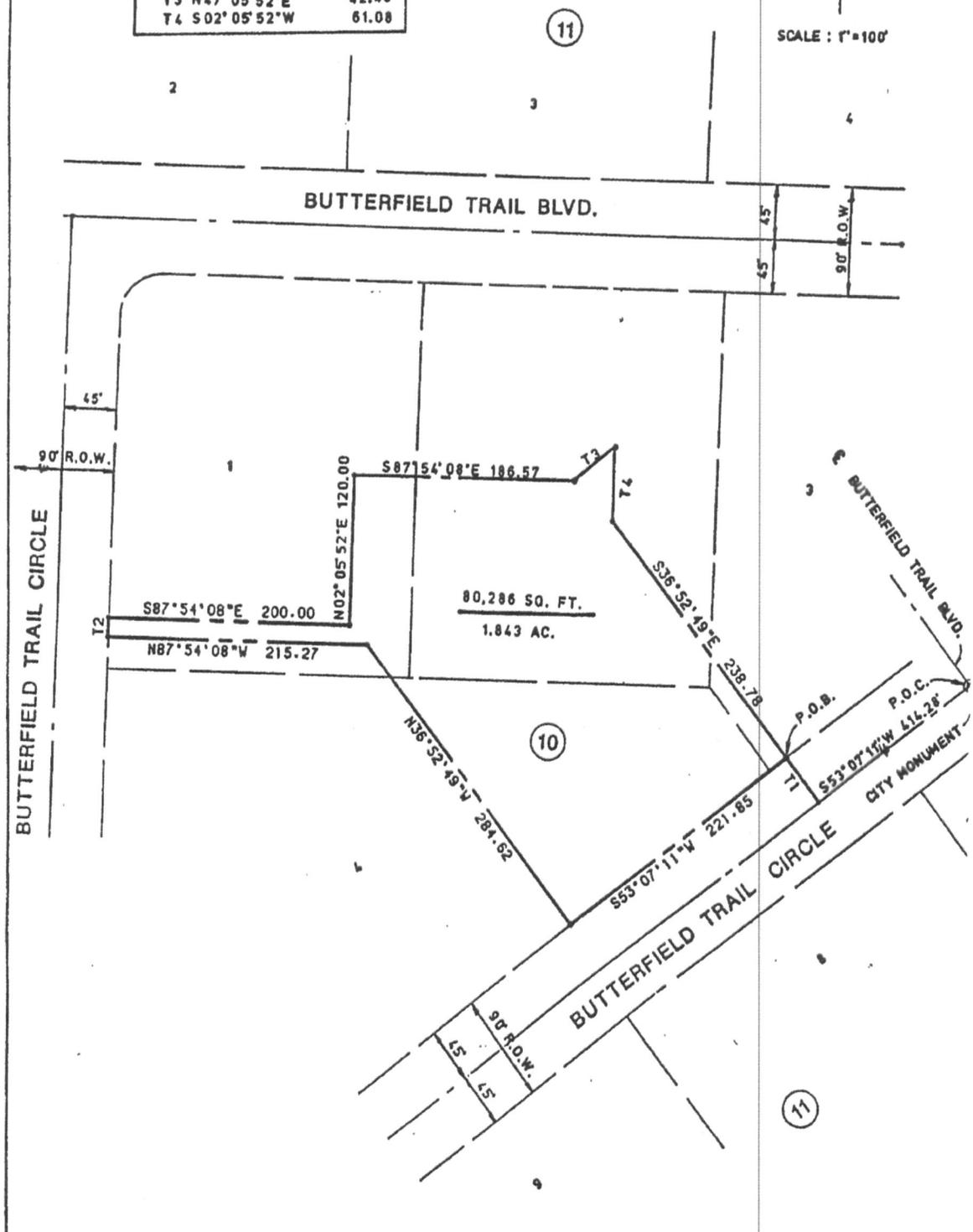


EXHIBIT
A Page 2

Faught & Associates Inc.
 Consulting Engineers

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

PORTION OF LOTS 1,2,3 AND 4, BLOCK 10,
 BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT TWO
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Drawn By: JC/LM	Date: 1-12-90	Scale: 1"=100'	Job No. 5510-08
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