

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

DEPARTMENT: AIRPORT

AGENDA DATE: November 27, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E./780-4724

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

That the City Manager be authorized to sign a Second Amendment to the Butterfield Trail Industrial Park Lease by and between the City of El Paso ("Lessor") and Butterfield Trail Trust I ("Lessee") to amend the description of the Premises to read as follows:

All of Lots 12, 13 and a portion of Lot 14, Block 8, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 323,058.6 square feet or 7.4164 acres of land, more or less, and municipally known and numbered as 19 Leigh Fisher Boulevard, El Paso, Texas.

BACKGROUND / DISCUSSION:

Lessor has developed an improvement plan for Butterfield Trail Industrial Park ("BTIP") which will upgrade public rights-of-way, reconstruct major thoroughfares, landscape medians, construct walkways and create roundabouts within BTIP.

Lessor and Lessee agree to amend the description of the Premises to delete an identified parcel measuring approximately 193.6 square feet, which fronts on a dedicated public street; as the identified parcel does not interfere with Lessee's continued occupancy. Effective July 1, 2012 the remaining adjusted square footage will be 323,058.6 square feet with a subsequent annual rent of \$54,306.12.

PRIOR COUNCIL ACTION:

12/24/85 Original Butterfield Trail Lease with Kasco Ventures, Butterfield 12
5/16/97 Lessor's Approval of Assignment to Kasco Industrial Capital, Inc.
7/21/11 First Amendment to Lease
7/31/12 Lessor's Acknowledgement of Trustee's Assignment

AMOUNT AND SOURCE OF FUNDING:

N/A Lease is revenue generating.

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 Second Amendment to the Butterfield Trail Industrial Park Lease by and between the City of El Paso (“Lessor”) and Butterfield Trail Trust I (“Lessee”) to amend the description of the Premises to read as follows:

All of Lots 12, 13 and a portion of Lot 14, Block 8, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 323,058.6 square feet or 7.4164 acres of land, more or less, and municipally known and numbered as 19 Leigh Fisher Boulevard, El Paso, Texas.

Dated this ____ day of _____ 2012.

CITY OF EL PASO

John F. Cook
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)
)
COUNTY OF EL PASO)

**SECOND AMENDMENT TO BUTTERFIELD
INDUSTRIAL PARK LEASE**

This Second Amendment to Butterfield Trail Industrial Park Lease (“Second Amendment”) by and between the City of El Paso (“Lessor”) and Butterfield Trail Trust I (“Lessee”) is made effective as of July 1, 2012.

WHEREAS, the City of El Paso (“Lessor”) entered into a Butterfield Trail Industrial Park Lease (“Original Lease”), with an effective date of December 1, 1985, by and between Lessor and Kasco Ventures Butterfield 12 covering the following described leased premises:

Lots 12, 13, and 14, Block 8, Butterfield Trail Industrial Park Unit Two, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 19 Leigh Fisher Blvd., El Paso, Texas, (the “Property”),

WHEREAS, on May 30, 2007, Kasco Industrial Capital, Inc., as the successor in interest to Kasco Ventures Butterfield 12, granted a Deed of Trust, Assignment of Leases, Rents and Contracts, Security Agreement and Fixture Filing (the “Deed of Trust”) to Allstate Life Insurance Company, an Illinois corporation, and encumbered the Lease (as hereinafter defined);

WHEREAS, on July 21, 2011, Lessor and Kasco Industrial Capital, Inc. entered into a First Amendment to the Butterfield Trail Industrial Park Lease (the “First Amendment”) (the Original Lease and the First Amendment are hereinafter collectively referred to as, the “Lease”);

WHEREAS, Kasco Industrial Capital, Inc. defaulted under the terms of the Note (as defined in the Trustee’s Assignment) and Deed of Trust which had been assigned by Allstate Life Insurance Company to Road Bay Investments, LLC, a Delaware limited liability company, and further assigned to Lessee;

WHEREAS, on Sept. 6, 2011, Lessee, was the highest bidder at Foreclosure Sale (as defined in the Trustee’s Assignment) as evidenced by a Substitute Trustee’s Assignment of Ground Lease recorded in the Real Property Records of El Paso County, Texas, as Instrument No. 20110061946 (the “Trustee’s Assignment”);

WHEREAS, in accordance with the terms of the Lease, Lessee has succeeded to all of Kasco Industrial Capital, Inc’s rights, interests, duties and obligations under the Lease as of the effective date of the assignment of the Lease to Lessee pursuant to the Trustee’s Assignment;

WHEREAS, on July 31, 2012, a Lessor’s Acknowledgment of the Trustee’s Assignment was approved by Lessor;

11-1003-074.009/113566_3/2nd Amend (127401)
Butterfield Trail Trust I-19 Leigh Fisher
Butterfield Trail Improvement Project

WHEREAS, Lessor has developed an improvement plan for the Butterfield Trail Industrial Park which will upgrade the public rights-of-way within the Butterfield Trail Industrial Park, and the improvements include the reconstruction of major thoroughfares, landscaping of medians, the construction of walkways and the creation of roundabouts within the Butterfield Trail Industrial Park;

WHEREAS, Lessor and Lessee agree that identified upgrades are beneficial and positive because the traffic flow within the Butterfield Trail Industrial Park will be improved and the appearance of the Butterfield Trail Industrial Park will be improved with new landscaping, and these improvements specifically enhance the Lessee's continued occupancy of the Property; and

WHEREAS, the Lessor and Lessee agree to amend the description of the Property to delete an identified parcel which fronts on a dedicated public street because the identified parcel does not interfere with Lessee's continued occupancy for the uses and purposes for which the Property is leased and the identified parcel can be used in the improvement of the Butterfield Trail Industrial Park.

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. Capitalized terms used herein, but not defined, shall have the same meaning ascribed to such terms in the Lease.
2. Article I, Section 1.01, Description of Premises Demised, of the Original Lease is hereby amended to read as follows:

“Subject to and on the terms, conditions, covenants and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

All of Lots 12, 13 and a portion of Lot 14, Block 8, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 323,058.6 square feet or 7.4164 acres of land, more or less, and being more particularly described by metes and bounds in **EXHIBIT “A”** attached hereto and municipally known and numbered as 19 Leigh Fisher Boulevard, El Paso, Texas (the “Premises” or “Leased Premises”).

3. **EXHIBIT "A"** to the Original Lease is hereby deleted in its entirety and the legal description attached to this Second Amendment as **EXHIBIT "A"** is substituted in lieu thereof.

4. As of the Effective Date of this Second Amendment, Lessor and Lessee agree the annual rental shall be **FIFTY FOUR THOUSAND THREE HUNDRED SIX DOLLARS AND 12/100 DOLLARS (\$54,306.12)**.

5. Regardless of the date executed, the Effective Date of this Second Amendment shall be July 1, 2012.

6. Lessor is the Declarant under that certain Declarations of Restrictions and Covenants for Butterfield Trail Industrial Park dated February 5, 1985 and attached to the Original Lease as Exhibit B (the "Declaration"). Lessor, as Declarant under the Declaration, hereby acknowledges and agrees that the reduction in the square footage of the Property pursuant to this Second Amendment shall not result in, or be deemed to result in, a violation by the building located on the Property (the "Building") of any of the requirements, restrictions or covenants included in the Declaration, including, without limitation, any requirements, restrictions or covenants related to setbacks lines or landscaping areas required under the Declaration. Additionally, the parties acknowledge and agree that because the Property fronts on more than one street, the Building is not in compliance with the front setback required under the Declaration for the lot line of the Property fronting on Leigh Fisher Boulevard. To the extent the Building on the Property is in violation of any setbacks or landscaping requirements, restrictions or covenants under the Declaration, Lessor, as Declarant under the Declaration, hereby approves and grants a variance for the Building and its location on the Property with respect to any setbacks or landscaping requirements, restrictions or covenants under the Declaration, including, without limitation, the front setback requirement for the lot line of the Property which fronts on Leigh Fisher Boulevard. Declarant further agrees that in the event of a casualty event which requires the reconstruction of the Building, the Building may be reconstructed in its current size, configuration and location on the Property without any violation of the requirements, restrictions and covenants of the Declaration, including, without limitation, any setback or landscaping requirements, restrictions or covenants.

7. Except as expressly modified herein, all other terms and conditions of the December 1, 1985 Butterfield Trail Industrial Park Lease, as amended by the First Amendment thereto dated July 21, 2011 shall remain in full force and effect and shall remain as written.

[SIGNATURE PAGES FOLLOW.]

LESSEE: BUTTERFIELD TRAIL TRUST I

By: CBRE Global Investors, LLC,
a Delaware limited liability company,
as agent for Lessee

By: *Michael J. Everly*
Printed Name: Michael J. Everly
Title: Authorized Signatory

ACKNOWLEDGMENT

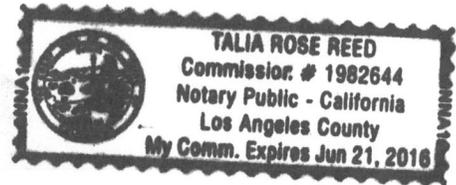
THE STATE OF CALIFORNIA)
COUNTY OF Los Angeles)

On Sept 17, 2012 before me, Talia Reed, a Notary Public, personally appeared Michael J. Everly, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Talia Reed* (Seal)





19 Leigh Fisher Blvd

-193,65F

EXHIBIT "A"

LEGAL DESCRIPTION

[See attached.]



ROMAN BUSTILLOS, P.E.
President
RANDY P. BROCK, P.E.
Executive Vice President
SERGIO J. ADAME, P.E.
Vice President - Engineering
ISAAC CAMACHO, R.P.L.S.
Survey Manager
TBPE Reg No. F-737
TBPLS Reg No. 101314-00

METES AND BOUNDS DESCRIPTION
"REVISED LEASE AREA-19 LEIGH FISHER BOULEVARD"

A 7.4164 acre lease area being all of Lots 12, 13 and a portion of Lot 14, Block 8, Butterfield Trail Industrial Park Unit 2, as recorded in Volume 57, Page 43, Plat Records, El Paso County, Texas, and being more particularly described by metes and bounds as follows.

COMMENCING for reference at an existing City Monument found at the centerline line intersection of Butterfield Trail Boulevard (R.O.W Varies) and Leigh Fisher Boulevard (90.00 feet wide); *WHENCE*, an existing City Monument found at the center line intersection of said Leigh Fisher Boulevard and Spur Drive (90.00 feet wide), bears North 02°12'07" East (North 02°12'07" East~ record), a distance of 940.36 feet; *THENCE*, leaving the centerline of Butterfield Trail Boulevard and following the centerline of Leigh Fisher Boulevard, South 02°12'07" West, a distance of 116.21 feet; *THENCE*, leaving the centerline of Leigh Fisher Boulevard, North 87°47'53" West, a distance of 45.00 feet to the west right-of-way line of Leigh Fisher Boulevard for the **POINT OF BEGINNING** of the lease area herein described;

THENCE, following the west right-of way line of Leigh Fisher Boulevard, South 02°12'07" West, a distance of 756.59 feet to the southeast corner of the lease area herein described, to the southeast corner of Lot 12, Block 8, Butterfield Trail Industrial Park Unit Two;

THENCE, leaving the west right-of way line of Leigh Fisher Boulevard and following the south boundary line of said Lot 12, North 87°47'53" West, a distance of 385.00 feet to and angle point of the lease area herein described, identical to the northwest corner of Lot 11, Block 8, Butterfield Trail Industrial Park Unit Two;

THENCE, leaving the south boundary line of said Lot 12 and following the west boundary line of said Lot 11, South 02°12'07" West, a distance of 142.50 feet to an angle point of the lease area herein described;

THENCE, leaving the west boundary line of said Lot 11, North 87°47'53" West, a distance of 20.00 feet to southwest corner of lease area herein described, identical to the southwest corner of said Lot 12;

THENCE, following the west boundary line of said Lot 12, North 02°12'07" East, a distance of 617.50 feet to the northwest corner of Lot 13, identical to the south boundary line of Lot 14, Block 8, Butterfield Trail Industrial Park Unit Two;

THENCE, leaving the northwest corner of said Lot 13 and following the south boundary line of said Lot 14, North 87°47'53" West, a distance of 15.00 feet to the southwest corner of said Lot 14;

THENCE, leaving the southwest corner and following the west boundary line of said Lot 14, North 02°12'07" East, a distance of 253.80 feet to the south right-of-way line of Butterfield Trail Boulevard and the beginning of a non-tangent curve to the right;

THENCE, following the south right-of-way line of Butterfield Trail Boulevard and following the arc of a curve to the right having a radius of 1036.81 feet, a central angle of 21°09'37", an arc length of 382.91 feet and whose long chord bears North 81°01'40" East, a distance of 380.74 feet to the beginning of a tangent curve to the right;

THENCE, leaving the south right-of-way line of said Butterfield Trail Boulevard and following the arc of a curve to the right having a radius of 46.00 feet, a central angle of 90°35'39", an arc length of 72.73 feet and whose long chord bears South 43°05'42" East, a distance of 65.39 feet to the **POINT OF BEGINNING**.

Said Lease Area contains 7.4164 acres (323,058.6 square feet) more or less and being subject to easements, restrictions or covenants of record.

Basis of Bearing is the Texas State Plane Coordinate System, Central Zone 4203, N.A.D. 83.

 3-29-12
Aaron Alvarado, TX R.P.L.S. No. 6223
March 27, 2012
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