

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

**DEPARTMENT:** AIRPORT  
**AGENDA DATE:** November 29, 2005  
**CONTACT PERSON/PHONE:** Patrick T. Abeln, A.A.E. – 780-4724  
**DISTRICT(S) AFFECTED:** 02

**SUBJECT:**

**AUTHORIZE** the City Manager to sign a six (6) **Lessor's Approval of Assignments** between the City of El Paso, Lessor, Sealy Butterfield, L.P., Lessee and Sealy SW Properties, L.P., Assignee for the properties located in Butterfield Trail Industrial Park as follows:

1. #27 Concord: Portions of Lot 1 and 2, Block 6, BTIP, Unit One, Replat "A", City of El Paso, El Paso County, Texas
2. #21 & #23 Leigh Fisher: Portion of Lot 9, Block 7, BTIP, Unit Two, City of El Paso, El Paso County, Texas
3. #40 Walter Jones: Portion of Lot 1, Block 14, BTIP, Unit Three, City of El Paso, El Paso County, Texas
4. #27 Leigh Fisher: Lot 10 and a portion of Lot 9, Block 7, BTIP, Unit Two, City of El Paso El Paso County, Texas
5. #20 Founders: Lot 11, Block 7, BTIP, Unit One, Replat "A", City of El Paso, El Paso County, Texas.
6. #19 Butterfield Trail: Lot 7, Block 7, BTIP, Unit Two, City of El Paso, El Paso County, Texas

**BACKGROUND / DISCUSSION:**

The sites were originally leased between 1985 and 1989 and new leases were executed September 1, 1991. All sites are improved with administrative offices, warehouse and/or manufacturing facilities and occupied by various subtenants.

In accordance with the terms and conditions of the lease agreements the rental rates were adjusted September 1, 2001. Future adjustments will be due at each subsequent 10-year anniversary, calculated based upon eight percent (8%) of fair market value. Rental adjustments are not to exceed twenty-three percent (23%). Upon expiration of the initial term in August of 2031, the leases are subject to two (2) 10-year options for renewal. The rental rates during each of the option periods will be adjusted to a full 8% per annum of the then fair market value without regard to the rental adjustment limitations.

At this time, one of the partners in Sealy Butterfield, L.P. desires to leave the project therefore the remaining partners have created a new entity (Sealy SW Properties, L.P.) and will transfer title to these buildings to that entity.

**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 six (6) Butterfield Trail Industrial Park Leases were presented to the Airport Advisory Board on November 17, 2005 and unanimously approved.

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_  
Sylvia Borunda Firth, Asst. City Attorney

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

## 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"), Sealy Butterfield, L.P. ("Assignor") and Sealy SW Property, L.P. ("Assignee") for the following described property:

All of Lot 10 and a portion of Lot 9, Block 7, Butterfield Trail Industrial Park Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as 27 Leigh Fisher, El Paso, Texas.

ADOPTED this the 29th day of November 2005.

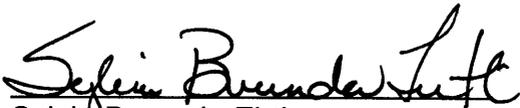
THE CITY OF EL PASO

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

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sylvia Borunda Firth  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

ORIGINATING DEPARTMENT: AIRPORT

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 September 1, 1991 ("Lease"), between the Lessor and Alamo Properties Joint Venture; assigned September 1, 1991 to Advent Realty Limited Partnership II ("Lessee"); and subsequently assigned March 5, 2002 to Sealy Butterfield, L.P. ("Assignor") covering the following described leased premises:

All of Lot 10 and a portion of Lot 9, Block 7, Butterfield Industrial Park Unit Two, City of El Paso, El Paso County, Texas, municipally known and numbered as #27 Leigh Fisher, El Paso, Texas.

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Sealy SW Property, L.P. ("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.

Assignor and Assignee have executed and delivered this instrument to Lessor with the understanding that the same will only be effective to assign Assignor's interest in the Lease to Assignee as of the date of closing and funding of such transaction, but not otherwise. Unless and until such closing occurs, both Assignor and Assignee each reserve the right to terminate this instrument by providing written notice to Lessor. If either party delivers such termination notice, this instrument will be of no further effect, Assignor and Lessor will retain all of their respective rights and liabilities under the Lease and Assignee will have no interest therein.

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:

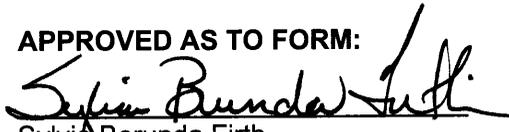
Sealy SW Properties, L.P.  
333 Texas Street  
Suite 1050  
Shreveport, Louisiana 71101  
Attn: Scott P. Sealy

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 29th day of November 2005.

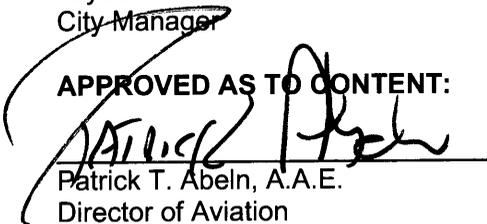
**LESSOR: CITY OF EL PASO:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Sylvia Borunda Firth  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

**ATTEST:**

Jeremy W. Drach  
Printed Name: Jeremy W. Drach

**ASSIGNOR: Sealy Butterfield, L.P.,  
A Georgia limited partnership**

By: Sealy G.P. Butterfield, L.P., a  
Georgia limited partnership,  
Its General Partner

By: Butterfield Investors, L.L.C., a  
Georgia limited liability company,  
Its General Partner

By: Mark P. Sealy  
Mark P. Sealy, Manager

**ATTEST:**

Lynette Kelly  
Printed Name: Lynette Kelly

**ASSIGNEE: Sealy SW Properties, L.P., a  
Georgia limited partnership**

By: Sealy SW Properties General Partner,  
L.L.C.,  
A Delaware limited liability  
company, its General Partner

By: Mark P. Sealy  
Printed Name: Mark P. Sealy  
Title: President

**ACKNOWLEDGEMENT**

THE STATE OF Louisiana  
Parish }  
COUNTY OF Caddo }

This instrument was acknowledged before me on this 15<sup>th</sup> day of November, 2005,  
by Mark P. Sealy, Manager, of Butterfield Investors, L.L.C., General Partner of Sealy G.P.  
Butterfield, L.P., General Partner of Sealy Butterfield, L.P. (Assignor)

My Commission Expires: PEGGY DAY GILL, NOTARY PUBLIC  
CADDO PARISH, LOUISIANA  
MY COMMISSION IS FOR LIFE Peggy Day Gill  
Notary Public, State of Louisiana  
NOTARY NO. 2425

**ACKNOWLEDGEMENT**

THE STATE OF Louisiana  
Parish }  
COUNTY OF DeSoto }

This instrument was acknowledged before me on this 15<sup>th</sup> day of November,  
2005, by Mark P. Sealy as President of Sealy SW Properties General Partner, L.L.C., the  
General Partner of Sealy SW Properties, L.P. (Assignee)

My Commission Expires: AMANDA W. PORTER  
NOTARY PUBLIC Amanda W. Porter  
at death Notary Public, State of Louisiana  
DESOTO PARISH, LOUISIANA  
MY COMMISSION IS FOR LIFE