

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

DEPARTMENT: Airport

AGENDA DATE: December 10, 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 Lessor's Approval of Assignment of the Butterfield Trail Industrial Park Lease by and among the City of El Paso ("Lessor"), The Kennedy 1978 Trust ("Assignor") and SL EP Industrial, LP ("Assignee") for the following described property:

A portion of Lot 7, Block 13, Butterfield Trail Industrial Park, Unit Three, an addition to the City of El Paso, El Paso County Texas, and municipally known as 35 Celerity Wagon St., El Paso, Texas.

Current annual rent: 230,328sf @ \$0.2274/sf = \$52,376.64/yr. Next rental rate adjustment scheduled for 1/1/2017 based upon 8% of then fair market value established by appraisal with a 20% cap.

Term remaining: Forty-three (43) years including all Options.

Subtenant: Lion Ribbon Co.; Berwick

BACKGROUND / DISCUSSION:

The City of El Paso entered into a Butterfield Trail Industrial Park ("BTIP") Lease with Louis I. Kennedy effective January 1, 1997 for a term of forty (40) years with two (2) additional ten (10) year Options.

On April 1, 1998, the Lease as assigned from Louis I. Kennedy to The Kennedy 1978 Trust ("Assignor") who is now assigning the Lease to EP SL Industrial, LP ("Assignee").

EP SL Industrial, LP, 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. Assignee acknowledges Lender's request to send copies of all Lessee notices to Lender.

PRIOR COUNCIL ACTION:

- 1/1/97 - Butterfield Trail Industrial Lease
- 4/1/98 - First Amendment to Butterfield Trail Industrial Lease
- 4/1/98 - Lessor's Approval of Assignment of Lease
- 8/3/04 - Second Amendment to 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 Lessor's Approval of Assignment of the Butterfield Trail Industrial Park Lease by and among the City of El Paso ("Lessor"), The Kennedy 1978 Trust ("Assignor") and SL EP Industrial, LP ("Assignee") for the following described property:

A portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 35 Celerity Wagon St., El Paso, Texas.

ADOPTED this the ____ day of _____ 2013.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

WHEREAS, the City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease ("Lease") effective January 1, 1997 between the Lessor and Louis I. Kennedy for the following described property:

A portion of Lot 7, Block 13, Butterfield Trail Industrial Park Unit Three, City of El Paso, El Paso County, Texas, commonly known as 35 Celerity Wagon St.;

WHEREAS, the Lease was amended by a First Amendment to Lease with an Effective Date of April 1, 1998, for the purpose of changing lessee's rights with regard to subleasing;

WHEREAS, the Lease was assigned to The Kennedy 1978 Trust ("Assignor") pursuant to that Lessor's Approval of Assignment with an Effective Date of April 1, 1998; and

WHEREAS, the Lease was amended by a Second Amendment to Lease with an Effective Date of August 3, 2004, for the purpose of correcting a clerical error.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledges, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to SL EP Industrial, LP ("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 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.** 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. Provided, however, Assignee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director of Aviation ("Security Deposit") in an amount equal to three (3) months of Rental to guarantee the faithful performance of Lessee of its obligations under this Lease and the payment of all 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 Lessor's approval of Assignment. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Assignee has occurred, Lessor will return the Security Deposit to Assignee.

4. **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.
5. **ADDRESS FOR NOTICE.** Notices to Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: The Kennedy 1978 Trust
Louis I. Kennedy
9229 Sunset Blvd., Room #210
West Hollywood, California 90069

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

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Assignor represent and warrant that they have the authority legally to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** This 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 Effective Date of this Lessor's Approval of Assignment will be December 26, 2013.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ASSIGNOR: The Kennedy 1978 Trust

Louis Kennedy

Printed Name: Louis Kennedy

Title: Owner

See Notarization Attached

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2013,
by _____ as _____ of The Kennedy 1978 Trust (Assignor).

Notary Public, State of _____

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles } SS.

On 11/27/2013 before me, Frida Lohse, Notary Public,
DATE Name, Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Louis Kennedy-----
NAME(S) OF SIGNER(S)

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]
Signature Of Notary Public

Place Notary Seal Above

OPTIONAL

Though the data is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: Lessor's Approval of Assignment-----

Document Date: 11/27/2013 Number of Pages: 5

Signer(s) Other Than Named Above: None-----

CAPACITY(IES) CLAIMED BY SIGNER

Signer's Name: Louis Kennedy

- Individual
- Corporate Officer – Title(s): _____
- Partnership - Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



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

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

By: [Signature]
Kenneth E. Aboussie, Jr., Co-President

By: _____
John A. Kiltz, Co-President

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)
)
COUNTY OF Dallas)

This instrument was acknowledged before me on this 20 day of November, 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: 10/1/17

[Signature]
Notary Public, State of Texas



ASSIGNEE'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 _____

ASSIGNEE: 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

ASSIGNEE'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: _____

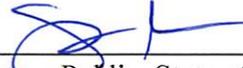
Notary Public, State of _____

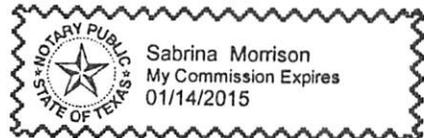
ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)
)
COUNTY OF Travis)

This instrument was acknowledged before me on this 26th day of November, 2013, by John A. Kiltz as Co-President of SOP Manager III, LLC, General Partner of SL EP Industrial, LP. (Assignee)

My Commission Expires: 11/15


Notary Public, State of Texas



**PROPERTY DESCRIPTION
230,328 SQUARE FEET
OR 5.288 ACRES**

Being a portion of Lot 7, Block 13, Butterfield Trail Industrial Park, Unit Three, City of El Paso, El Paso County, Texas and being more particularly described by meets and bounds as follows:

COMMENCING FOR REFERENCE at the City Monument at the centerline intersection of Spur Drive (90 feet wide) and Celerity Wagon Street (90 feet wide);

THENCE, along the centerline of said Celerity Wagon Street, North $02^{\circ} 05' 52''$ East, a distance of 635.00 feet to a point;

THENCE, leaving said centerline, North $87^{\circ} 54' 08''$ West, a distance of 45.00 feet to a point in the West right of way line of said Celerity Wagon Street and **POINT OF BEGINNING** for the herein described tract;

THENCE, leaving said right of way line, North $87^{\circ} 54' 08''$ West, a distance of 470.00 feet to a point;

THENCE, North $02^{\circ} 05' 52''$ East, a distance of 490.62 feet to a point in the South right of way line of Walter Jones Boulevard (120 feet wide);

THENCE, along said South right of way line, South $87^{\circ} 54' 08''$ East, a distance of 435.00 feet to a point at the beginning of a curve to the right in the West right of line of said Celerity Wagon Street;

THENCE, along said West right of way line the following two courses:

Along the arc of said curve (Delta angle = $90^{\circ} 00' 00''$, Radius = 35.00 feet, Chord = South $42^{\circ} 54' 08''$ East, 49.50 feet) a distance of 54.98 feet to a point;

South $02^{\circ} 05' 52''$ West, a distance of 455.62 feet to the **POINT OF BEGINNING** and containing 230,328 square feet or 5.288 acres of land.

NOT A GROUND SURVEY

PREPARED BY:
Faught & Associates Inc.
El Paso, Texas
December 5, 1996
Job No. S5010-91A

