

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 Ground Lessor's Estoppel Certificate and Amendment of the 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 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, (now "Lessee") 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. Lessee 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:

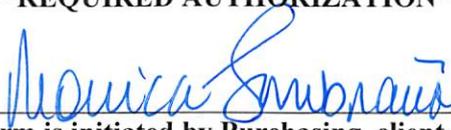
This is a revenue generating lease.

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 Ground Lessor's Estoppel Certificate and Amendment to the 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 7, Block 13, Butterfield Trail Industrial Park, Unit Three, El Paso, El Paso County, which is also municipally known and numbered as 35 Celerity Wagon St., El Paso, Texas.

Dated this ____ 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 Lombraña, A.A.E.
Director of Aviation

**ESTOPPEL CERTIFICATE AND AMENDMENT
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: Butterfield Trail Industrial Park Lease Agreement with an Effective Date of January 1, 1997 by and between Lessor and Louis I. Kennedy; subject to that First Amendment to Lease with an Effective Date of April 1, 1998; as subsequently assigned to The Kennedy 1978 Trust pursuant to that Lessor's Approval of Assignment with an Effective Date of April 1, 1998; subject to that Second Amendment to Lease with an Effective Date of August 11, 2004; and subsequently assigned to SL EP Industrial, LP by that Lessor's Approval of Assignment effective December 26, 2013. "Lease"

The property described as a portion of Lot 7, Block 13, Butterfield Trail Industrial Park, Unit Three, El Paso, El Paso County, Texas as more fully described on Exhibit "A", which is attached hereto and incorporated herein for all purposes, which is also municipally known and numbered as 35 Celerity Wagon St., 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 November 30, 2013. Annual rent in the amount of \$52,376.64 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 January 1, 1997 and includes a primary term of forty (40) years. Lessee also has two (2) options to renew for ten (10) additional years each.
5. 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.
6. 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.

7. 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.
8. 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.

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

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

- (a) 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.
10. 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.
11. 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
Deputy City Attorney

APPROVED AS TO CONTENT:



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)

**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;

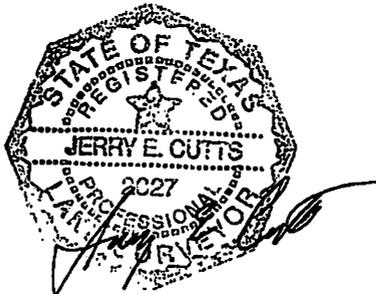
THENCE, along said West right of way line the following two courses:

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.

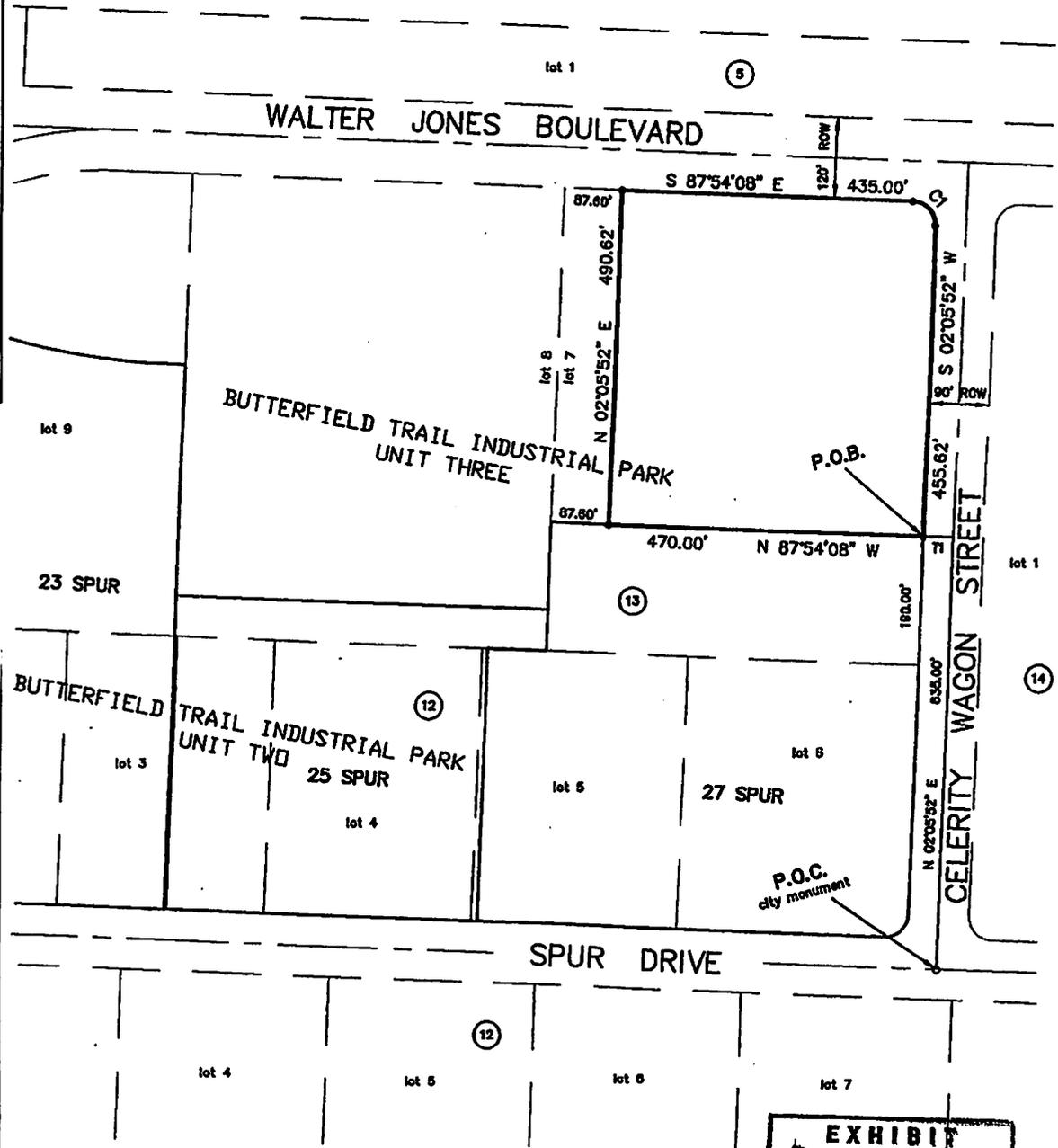
NOT A GROUND SURVEY

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



LINE	DIRECTION	DISTANCE
T1	N 87°54'08" W	45.00'

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	35.00'	54.98'	35.00'	49.50'	S 42°54'08" E	90°00'00"



NOT A GROUND SURVEY



Faught & Associates Inc.
CONSULTING ENGINEERS

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

230,328 Sq. Ft.
5.288 Acres

EXHIBIT
PORTION OF LOT 7, BLOCK 13,
BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT THREE,
CITY OF EL PASO, EL PASO COUNTY, TEXAS

Drawn By: JC	Date: 12-05-96	Scale: 1"=200'	Job No: S5010-91A
--------------	----------------	----------------	-------------------