

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

DEPARTMENT: Aviation
AGENDA DATE: December 11, 2007
CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E. – 780-4724
DISTRICT(S) AFFECTED: 02

SUBJECT:

Resolution authorizing the City Manager to sign a Lessor's Ratification and Approval of Assignments whereby the City of El Paso: (i) ratifies the assignment of the Butterfield Trail Industrial Park Lease Agreement by Canyon State Oil Company, Inc. to the Thomas F. Arndt Trust Agreement, Originally Dated June 1, 2005; and (ii) authorizes the assignment of the referenced Butterfield Industrial Park Lease Agreement to Donald G. Vise.

BACKGROUND / DISCUSSION:

Effective July 1, 1985, the City of El Paso entered into a Butterfield Trail Industrial Park Lease with Jay F. Stewart and Mike R. Stewart dba Stewart Enterprises for the property located at #26 Butterfield Trail, consisting of approximately 55,737 sq. ft. The Lease was assigned to Jay F. Stewart on April 27, 2004 and subsequently assigned on June 14, 2005 to Canyon State Oil Company, Inc. Canyon State Oil attempted an assignment to the Thomas F. Arndt Trust Agreement, but did not receive approval of the City for the assignment.

The initial term is for forty (40) years expiring June 30, 2025 and contains one (1) 10-year renewal option. The current lease rate is \$0.1670/sf which equates to \$9,308.04/annum (\$775.67/mo.). In accordance with the Lease, the rent is to be adjusted every ten (10) year anniversary to an amount equal to eight percent (8%) of the fair market value of the land with a 20% cap. The next rent adjustment will be due July 1, 2015.

Please refer to the attached map for the location of the property in the Butterfield Trail Industrial Park.

ANALYSIS:

Canyon State Oil Company, Inc. sold the improvements to the Thomas F. Arndt Trust Agreement who is selling the improvements to Donald G. Vise, an individual. The parties are requesting the City's ratification of the prior assignment to the Arndt Trust and approval of the current proposed assignment to Mr. Vise.

PRIOR COUNCIL ACTION:

Lessor's Approval of Assignment to Canyon State Oil Company on June 14, 2005.

AMOUNT AND SOURCE OF FUNDING:

This is a revenue generating contact

BOARD / COMMISSION ACTION:

Approved by the Airport Board on November 15, 2007

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) Raymond L. Telles **FINANCE:** (if required) _____
Raymond L. Telles, Asst. City Attorney

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation Patrick T. Abeln
(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: _____

CITY CLERK DEPT.
07 DEC -3 AM 11:05

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 Ratification and Approval of Assignments whereby the City of El Paso: (i) ratifies the assignment of the Butterfield Trail Industrial Park Lease Agreement by Canyon State Oil Company, Inc. to the Thomas F. Arndt Trust Agreement, Originally Dated June 1, 2005; and (ii) authorizes the assignment of the referenced Butterfield Industrial Park Lease Agreement to Donald G. Vise for the following described property:

A portion of Lot 1, Block 10, Butterfield Trail Industrial Park Unit 2, City of El Paso, El Paso County, Texas, which is municipally known and numbered as #26 Butterfield Trail, El Paso, Texas.

ADOPTED this the ____ day of _____ 2007.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

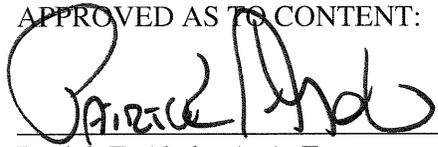
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



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

CITY CLERK DEPT.
07 DEC -3 AM 11:05

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

**LESSOR'S RATIFICATION AND
APPROVAL OF ASSIGNMENTS**

The City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease Agreement with an effective date of July 1, 1985 ("Lease") by and between Lessor and Jay F. Stewart and Mike R. Stewart, dba Stewart Enterprises, a Texas General Partnership, which was assigned to Jay F. Stewart pursuant to that Lessor's Approval of Assignment dated April 27, 2004, which was then subsequently assigned to Canyon State Oil Company, Inc. pursuant to that Lessor's Approval of Assignment with an effective date of June 1, 2005; the Lease covers the following described leased premises:

A portion of Lot 1, Block 10, Butterfield Trail Industrial Park Unit 2, City of El Paso, El Paso County, Texas, being more particularly described in **EXHIBIT A**, attached hereto and made a part hereof, and municipally known and numbered as #26 Butterfield Trail, El Paso, Texas ("Premises").

1. **RATIFICATION OF PRIOR ASSIGNMENT.** Lessor hereby ratifies the assignment of the Lease by Canyon State Oil Company, Inc. to the Thomas F. Arndt Trust Agreement Originally Dated June 1, 2005 ("Assignor") through the Assignment and Assumption of Leasehold Interest Agreement dated September 18, 2006.
2. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the further assignment of the Lease from Assignor to Donald G. Vise ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the 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.
3. **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.
4. **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.

5. **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.

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

ASSIGNEE: Donald G. Vise
3552 E. Corona
Phoenix, AZ 85040

ASSIGNOR: Thomas F. Arndt, Trustee of the
Thomas F. Arndt Trust Agreement
Originally Dated June 1, 2005
P.O. Box 3644
Carefree, Arizona 85377

7. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Ratification and Approval of Assignments represent and warrant that they have the legal authority to bind the Assignee, Assignor, or such other party as identified respectively, to the provisions of this instrument.

8. **NON-WAIVER.** The Lessor's Ratification and Approval of Assignments hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.

9. **EFFECTIVE DATE.** The parties have approved this Lessor's Ratification and Approval of Assignments hereto on this ____ day of _____ 2007.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

ASSIGNOR:

Thomas F. Arndt, Trustee of the Thomas F. Arndt Trust Agreement, Originally Dated June 1, 2005

Thomas F. Arndt

Printed Name: THOMAS F. ARNDT
Title: TRUSTEE

ASSIGNOR'S ACKNOWLEDGMENT

THE STATE OF Arizona
COUNTY OF Maricopa

This instrument was acknowledged before me on this 29th day of November, 2007, by **Thomas F. Arndt as Trustee of the Thomas F. Arndt Trust Agreement, Originally dated June 1, 2005 (Assignor).**



Tara Olson
Notary Public, State of Arizona

My Commission Expires:
9/14/11

07 DEC -3 AM 11:05
CITY CLERK DEPT.

PROPERTY DESCRIPTION
1.280 Acres
or
55,737 Square Feet

Being a portion of Lot 1, Block 10, Butterfield Trail Industrial Park, Unit 2, 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 Circle (90.00 feet wide);

THENCE, along the centerline of said Butterfield Trail Boulevard, South 87°54'08" East, a distance of 80.00 feet to a point;

THENCE, South 02°05'52" West, a distance of 45.00 feet to a point in the south right-of-way line of said Butterfield Trail Boulevard and POINT OF BEGINNING for the herein described tract;

THENCE, along said south right-of-way line, South 87°54'08" East, a distance of 165.00 feet to a point for corner;

THENCE, leaving said right-of-way line, South 02°05'52" West, a distance of 280.00 feet to a point for corner;

THENCE, North 87°54'08" West, a distance of 200.00 feet to a point for corner in the easterly right-of-way line of said Butterfield Circle;

THENCE, along the easterly right-of-way line of said Butterfield Circle, the following two courses:

North 02°05'52" East, a distance of 245.00 feet to the beginning of a curve to the right;

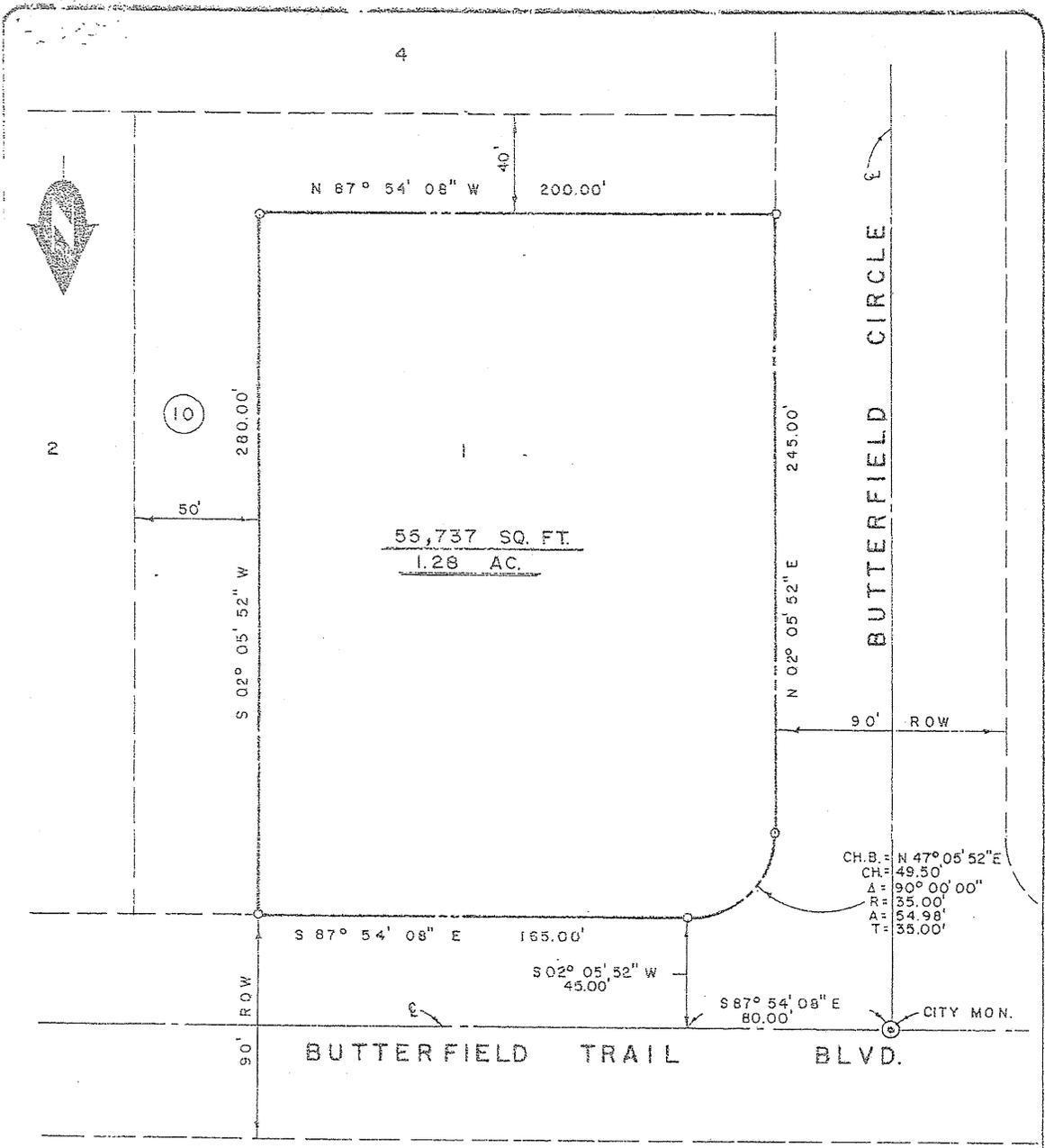
along the arc of said curve (Delta Angle = 90°00'00", Radius = 35.00 feet, Chord = North 47°05'52" East, 49.50 feet) a distance of 54.98 feet to the POINT OF BEGINNING and containing 1.280 acres or 55,737 Square feet of land.

Prepared By:
FAUGHT & ASSOCIATES INC.
El Paso, Texas
May 3, 1985
Job No. 5010-45



07 DEC -3 AM 11:06

CITY CLERK DEPT.



CITY CLERK DEPT.
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EXHIBIT
A

Faught & Associates Inc.
1551 Montana Ave.
El Paso, Texas 79902
(915) 542-4800
Consulting Engineers

PORTION OF LOT 1, BLOCK 10
BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT TWO
CITY OF EL PASO EL PASO COUNTY, TEXAS

Drawn by M.C.	Date 5-3-85	SCALE: 1" = 50'	Job No. W.O. No. 5010-45
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26 Butterfield Trail