

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

DEPARTMENT: Aviation

AGENDA DATE: January 10, 2017

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E., 212-7301

DISTRICT(S) AFFECTED: 2

CITY STRATEGIC GOAL #1:

Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

A resolution that the City Manager be authorized to sign a Lessor's Approval of Assignment of the Butterfield Trail Industrial Lease by and among the City of El Paso ("Lessor") and SL EP Industrial, L.P., ("Assignor") and RNDC Texas, LLC ("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

Current Terms: 40 year lease, with two (2) ten year options to extend, 20 years left on lease, rent will be adjusted on each fifth (5th) anniversary based on percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U)
Lease area- 230,328 square feet
Current rate \$0.2274/ sq. ft., \$52,376.64 annually

BACKGROUND / DISCUSSION:

January 14, 1997- Butterfield Trail Industrial Park Lease effective January 1, 1997 to December 31, 2036, with 2 , ten year options

April 1 & 15, 1997- Lessee's Approval of electrical easements

May 5, 1998- First Amendment to Butterfield Trail Industrial Park Lease

May 5, 1998- Lessor's Approval of Assignment from Louis I. Kennedy to The Kennedy 1978 Trust

June 19, 2001- Lessor's Approval of Assignment from The Kennedy 1978 Trust to FINSA El Paso, Inc.

December 11, 2001- Resolution revoking Lessor's Approval of Assignment granted on June 19, 2001

August 3, 2004- Second Amendment to Lease to correct clerical error

December 10, 2013- Lessor's Approval of Assignment and amendment from The Kennedy 1978 Trusts to SL EP Industrial, L.P.

PRIOR COUNCIL ACTION:

1/14/1997, 4/1 & 15/1997, 5/5/1998, 6/19/2001, 12/11/2001, 8/3/2004, 12/10/2013

AMOUNT AND SOURCE OF FUNDING:

N/A- 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)

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"), SL EP Industrial, LP ("Assignor") and RNDC Texas, LLC ("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 _____ 201__.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, 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 with Louis I. Kennedy ("Lessee") 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, municipally known and numbered as 35 Celerity Wagon St., El Paso, Texas;

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 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; and

WHEREAS, the Lease was assigned to SL EP Industrial, LP ("Assignor") pursuant to that Lessor's Approval of Assignment effective as of December 10, 2013.

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 RNDC Texas, LLC, a Texas limited liability company ("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: SL EP Industrial, LP
9600 N. MoPac EXPY, Ste. 250
Austin, Texas 78759

ASSIGNEE: RNDC Texas, LLC
6511 Tri County Parkway
Schertz, Texas 78154
Attn: Edward L. Block, Manager

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 ____, 2016.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ADOPTED this _____ day of _____, 2016.

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Marvin Foust

Marvin Foust
Senior Assistant City Attorney

Assistant City Attorney
Karla Nieman

APPROVED AS TO CONTENT:

Monica Lombrana

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

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

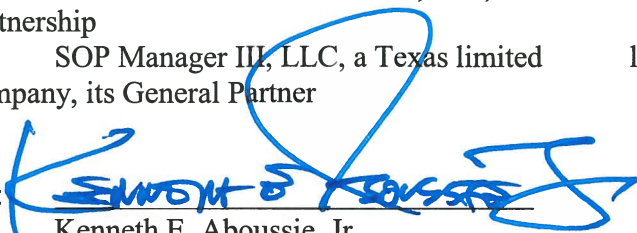
This instrument was acknowledged before me on this _____ day of _____, 2016, by
Tomás González, City Manager of the City of El Paso, Texas. (Lessor)

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

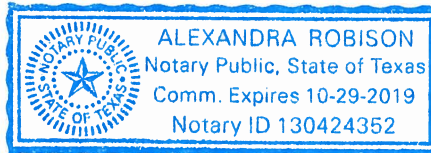
ASSIGNOR: SL EP Industrial, LP, a Texas limited partnership
By: SOP Manager III, LLC, a Texas limited liability company, its General Partner

By: 
Kenneth E. Aboussie, Jr.
Title: Co-President

By: 
John A. Kiltz
Title: Co-President

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)
COUNTY OF Dallas)



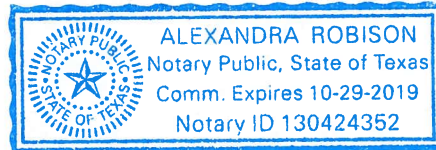
This instrument was acknowledged before me on this 20th day of December, 2016, by Kenneth E. Aboussie, Jr. as Co-President of SOP Manager III, LLC, a Texas limited liability company, the general partner of SL EP Industrial, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership. (Assignee)

My Commission Expires:
10/29/19


Notary Public, State of Texas

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)
COUNTY OF Dallas)



This instrument was acknowledged before me on this 20th day of December, 2016, by John A. Kiltz as Co-President SOP Manager III, LLC, a Texas limited liability company, the general partner of SL EP Industrial, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership. (Assignee)

My Commission Expires:
10/29/19


Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNEE: RNDC TEXAS, LLC, a Texas limited liability company

By: Edward L. Block
Edward L. Block, Manager

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)
COUNTY OF Bexar)

This instrument was acknowledged before me on this 22 day of December, 2016, by Edward L. Block, Manager of RNDC Texas, LLC, a Texas limited liability company, on behalf of said limited liability company. (Assignee)

My Commission Expires:
8/8/18

Yvette McMahon
Notary Public, State of Texas

