

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

DEPARTMENT: AIRPORT

AGENDA DATE: January 12, 2016

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780-4793

DISTRICT(S) AFFECTED: 2

SUBJECT:

That the City Manager be authorized to sign the Lessor's Approval of Assignment of the Amended and Restated Butterfield Trail Industrial Park Lease by and among the City of El Paso ("Lessor"), Butterfield Trail Trust I ("Assignor") and ELP Butterfield 9, LLC ("Assignee") for the following described property:

A portion of Lots 5 and 6, Block 2, Butterfield Trail Industrial Park Unit One, Replat "A", City of El Paso, EL Paso County, Texas, containing approximately 244,287 square feet of land and municipally known as 9 Butterfield Trail, El Paso, Texas.

Current Annual rent: 244,287 sf @ \$0.24/sf = \$58,628.88/annum with scheduled 5 year rental adjustments based on percentage increase in the CPI over base year rent with a 20% cap.

Term remaining: 40 year term with one (1) – ten (10) year option.

Subtenants: US Customs and Border Protection
Superior Pool Products, LLC

BACKGROUND / DISCUSSION:

Covington Group, Inc., and its predecessor Covington Capital, have a long and storied history in the El Paso, Texas commercial real estate market dating back to the late 1980s. Over the years it has owned millions of square feet of buildings and thousands of acres and today, the original principals of the company still maintain ownership in buildings and land in El Paso. Covington is very familiar with the market dynamics in El Paso and their intent is to acquire and improve industrial real estate particularly in the Butterfield Trail Industrial Park by maximizing value in the properties and holding them for investment. Covington's intent with the project is to retrofit and/or upgrade each building in the portfolio in different ways depending on the needs of each property.

PRIOR COUNCIL ACTION:

2/10/11, 7/21/11, 7/31/12, 6/16/15

AMOUNT AND SOURCE OF FUNDING:

N/A - Revenue generating.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:


for: Monica Lombraña, A.A.E., Aviation Director

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 by and between the City of El Paso ("Lessor"), Butterfield Trail Trust I ("Assignor") and ELP Butterfield 9, LLC ("Assignee") for the following described property:

A portion of Lot 2, Block 2, Butterfield Industrial Park Unit One, El Paso County, Texas, municipally known and numbered as 9 Butterfield Trail Boulevard, El Paso, Texas.

ADOPTED this the ____ day of _____, 2016.


THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST

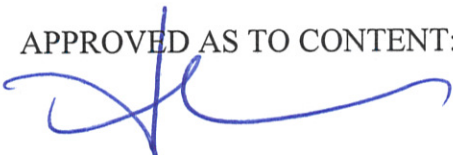
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:



for: Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

The City of El Paso ("Lessor") entered into an Amended and Restated Butterfield Trail Industrial Park Lease effective July 1, 2015 ("Lease"), between the Lessor and Butterfield Trail Trust I ("Assignor") covering the following described leased premises:

A portion of Lot 2, Block 2, Butterfield Industrial Park Unit One, El Paso County, Texas, municipally known and numbered as 9 Butterfield Trail Boulevard, El Paso, Texas.

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to ELP Butterfield 9, LLC ("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.
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. **RELEASE.** Assignor is hereby released and discharged by Lessor from all rights, privileges, responsibilities and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the Lease and Lessor and Assignee each hereby acknowledges that, as of the effective date of the assignment, Assignee enjoys all such rights and privileges and is responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee.
4. **SECURITY DEPOSIT.** No Security Deposit is required as a condition to this Approval.
5. **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.
6. **ADDRESS FOR NOTICE.** Notices to Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ELP Butterfield 9, LLC
c/o Covington Group, Inc.
Attn: Brandon Gallup
Acquisitions & Asset Management
Western Region
740 East Campbell Road, Suite 515
Richardson, Texas 75081

7. **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.
8. **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.
9. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be _____, 2016.
10. **COUNTERPARTS.** This Lessor's Approval of Assignment may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all of which shall constitute one and the same instrument as if all parties had signed the same signature page.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

APPROVED THIS ____ day of _____, 2016.

LESSOR: CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Marvin Foust

Assistant City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña, A.A.E.

for: 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 as **City Manager** of the **City of El Paso, Texas** (Lessor).

My Commission Expires:

Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ATTEST:

Printed Name: _____

ASSIGNOR:

BUTTERFIELD TRAIL TRUST I

By: _____

Printed Name: _____

Title: _____

Michael J. Every
Michael J. Every
Authorized Signatory

ATTEST:

Printed Name: _____

ASSIGNEE:

ELP BUTTERFIELD 9, LLC

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20____,
by _____ of Butterfield Trust I
(Assignor), on behalf of said trust.

Notary Public State of _____

My Commission Expires: _____

See attached

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

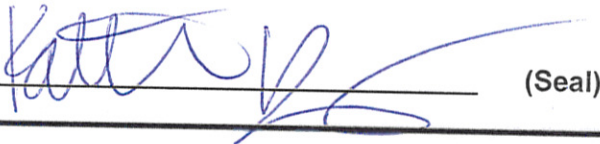
On December 4, 2015 before me, Katherine Judith Knight, Notary Public
(insert name and title of the officer)

personally appeared Michael J. Everly
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.

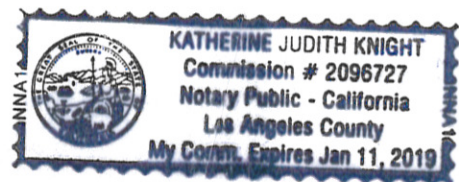
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ATTEST:

ASSIGNOR:

BUTTERFIELD TRAIL TRUST I

Printed Name: _____

By: _____

Printed Name: _____

Title: _____

ATTEST:

ASSIGNEE:

ELP BUTTERFIELD 9, LLC

Printed Name: _____

By: Mark Milakovich

Printed Name: Mark Milakovich

Title: Authorized Representative

ACKNOWLEDGEMENT

THE STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20____,
by _____ of Butterfield Trust I
(Assignor), on behalf of said trust.

Notary Public State of _____

My Commission Expires: _____

ACKNOWLEDGEMENT

THE STATE OF Texas
COUNTY OF Dallas

This instrument was acknowledged before me on this 16 day of December, 2015,
by Mark Milakovich, Authorized Representative of ELP Butterfield
9, LLC (Assignee), on behalf of said limited liability company.

Kevin Labor
Notary Public State of Texas

My Commission Expires: March 23, 2019

