

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

AGENDA DATE: October 11, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Samuel Rodriguez, P.E. Aviation Director
(915) 212-7301

DISTRICT(S) AFFECTED: 3

STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: N/A

SUBJECT:

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor"), Leigh Fisher Capital Group, LLC ("Assignor"), and Almond Opportunity, LLC, a Nebraska limited liability company ("Assignee") for the following described property:

A portion of Lot 5, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A", and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", City of El Paso, El Paso County, Texas, municipally known and numbered as 11 Leigh Fisher Blvd., El Paso, Texas.

Approximately 245,055.916 SQ FT with a term beginning on July 1, 2004 ("Effective Date"), and ending on June 30, 2044 for an annual rental fee of \$58,813.44 or \$4,901.12 per month.

BACKGROUND / DISCUSSION:

The Department of Aviation requests the approval of this Lessor's Approval of Assignment to allow the transfer of rights and obligations possessed by Leigh Fisher Capital Group, LLC to Almond Opportunity, LLC. The Lessee is transferring its interest in the leasehold to a different business entity owned by him for financing and administrative reasons.

All terms and conditions of the lease remain the same.

PRIOR COUNCIL ACTION:

- July 1, 2004 – Butterfield Trail Industrial Park Lease between City Of El Paso and W2001 TBT Real Estate Limited Partnership.
- April 18, 2006 - Lessor's Approval of Assignment to Titan MAC Fund I, LP.
- September 25, 2012 – Lessor's Approval of Assignment to PWR12-MAC Industrial Portfolio Southwest LLC.
- February 11, 2013 – Lessor's Approval of Assignment to PXP Texas; SoCal Texas, LLC a Delaware limited liability company.
- January 27, 2015 – Lessor's Approval of Assignment to Leigh Fisher Capital Group, LLC.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

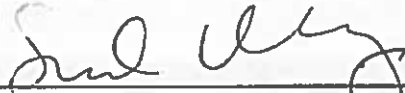
PRIMARY DEPARTMENT: Aviation

SECONDARY DEPARTMENT: N/A

Revised 04/09/2021

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

DEPARTMENT HEAD:



Samuel Rodriguez, P.E., Aviation Director

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"), Leigh Fisher Capital Group, LLC ("Assignor"), and Almond Opportunity, LLC, a Nebraska limited liability company ("Assignee") for the following described property:

A portion of Lot 5, Block 8, Butterfield Trail Industrial Park Unit One, Replat "A", and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", City of El Paso, El Paso County, Texas, municipally known and numbered as 11 Leigh Fisher Blvd., El Paso, Texas.

Approved this the ____ day of _____ 2022.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Leslie E. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS

§

LESSOR'S APPROVAL OF ASSIGNMENT

COUNTY OF EL PASO

§

WHEREAS, the City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease with an Effective Date of July 1, 2004 (the "Lease"), between the Lessor and Leigh Fisher Capital Group, LLC, a Texas limited liability company ("Assignor"), for the following described property:

A portion of Lot 5, Block 8, Butterfield Trail Industrial Park Unit One, Replat "A", and all of Lot 6, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "B", commonly known as 11 Leigh Fisher Blvd., El Paso, Texas, containing approximately 5.625 Acres, 245,055.916 Square Feet, more or less, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof ("Property");

WHEREAS, Assignor has requested the Lessor's approval and consent to an assignment of the Lease to Almond Opportunity, LLC, a Nebraska limited liability company.

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

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Almond Opportunity, LLC. ("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.
Assignee does hereby assume and agrees to be 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 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. **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.** A Security Deposit in the amount of \$14,703.36, which is the equivalent to three (3) months of rent, is required as a condition to this Approval.
5. **RATIFICATION OF LEASE.** Except as expressly set forth herein, no provision of this Approval alters or modifies any of the terms and conditions of the Lease, and 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:

ASSIGNOR: Leigh Fisher Capital Group, LLC
712 W. Southwest Loop 323, #145
Tyler, Texas 75703-9452

ASSIGNEE: Almond Opportunity, LLC
129 N. 10th Street, Suite 313
Lincoln, NE 68508
Attn: Monte Froehlich
7. **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 legal authority to bind the Assignee and Assignor, respectively, 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 the date this document is approved by the El Paso City Council.
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)

ASSIGNEE:
Almond Opportunity, LLC
a Nebraska limited liability company

By: [Signature]
Print Name: Monte Froehlich
Title: Managing Member

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Nebraska)
COUNTY OF Lancaster)

This instrument was acknowledged before me on this 28 day of September, 2022
by Monte Froehlich, Managing Member
of Almond Opportunity, LLC, a Nebraska limited liability company (Assignee), on behalf of
said company.



[Signature]
Notary Public, State of Nebraska

My Commission Expires:
April 22, 2023

Exhibit "A"

PROPERTY DESCRIPTION

11 LEIGH FISHER

Description of a parcel of land being a portion of Lot 5, Block 8, Butterfield Trail Industrial Park Unit One Replat "A", and all of Lot 6, Block 8, Butterfield Trail Industrial Park Unit One Replat "B", City of El Paso, El Paso County, Texas, said Butterfield Trail Industrial Park Unit One Replat "A" recorded in book 56, page 71, and said Butterfield Trail Industrial Park Unit One Replat "B" recorded in book 57, page 24, El Paso County Plat Records, and also being that same parcel recorded in Clerk's File #20150012272, and described as follows;

Commencing at a city monument found at the intersection of the centerline of Leigh Fisher Boulevard (120' wide) with Zane Grey Street (90' wide), said monument lying South 00°59'34" East a distance of 2151.20' from a city monument (bearing basis); Thence, with said centerline of Leigh Fisher Boulevard South 89°50'41" East a distance of 371.34 to the point of curvature; Thence, leaving said centerline of Leigh Fisher Boulevard, North 00°09'19" East a distance of 60.00' to a 5/8" rebar with cap found for a point of curvature on the north ROW line of said Leigh Fisher Boulevard, and being the "Point Of Beginning";

Thence, with said north ROW of Leigh Fisher Boulevard, North 89°50'41" West a distance of 293.22' to a 5/8" rebar with cap found at a point of curvature;

Thence, 54.28' along the arc of a curve to the right, with a radius of 35.00', central angle of 88°51'07" and a chord bearing North 45°25'08" West a distance of 49.00' to a 5/8" rebar with cap found at the termination point of this curve and lying on the east ROW of said Zane Grey Street;

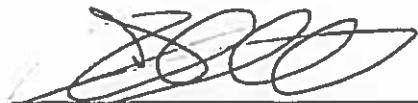
Thence, with said east ROW of Zane Grey Street, North 00°59'34" West passing a distance of 337.78' the common westerly corner of said Lots 5 and 6, and continuing an additional 115.28' for a total of 453.06' to a chiseled "V" found at the northwest corner of this parcel;

Thence, leaving said east ROW of Zane Grey Street, North 89°00'26" East a distance of 500.00' to a 5/8" rebar found on the easterly lot line of said Lot 5 and also lying on the westerly ROW of a 30' Railroad ROW (recorded in Book 1409, page 1904), and being the northeast corner of this parcel;

Thence, with said easterly lot line of said Lot 5 and said westerly ROW of said 30' Railroad ROW, South 00°59'34" East passing at a distance of 115.28' the southeast corner of said Lot 5, and continuing with the east lot line of said Lot 6, an additional 366.72' for a total of 482.00' to a 5/8" rebar found at the southeast corner of said Lot 6, also lying on said north ROW of Leigh Fisher Boulevard;

Thence, with said north ROW of Leigh Fisher Boulevard 173.18' along the arc of a curve to the right having a radius of 972.16' a central angle of 10°12'24" and a chord bearing South 85°03'07" West a distance of 172.95' to the "Point Of Beginning" and containing 245,056 sq. ft. or 5.6257 acres.

Based on a field survey performed under my supervision and dated 08/24/2022.



John A Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.
13998 Bradley Road
El Paso, TX. 79938
915-241-1841
TBPELS FIRM #10001200

