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

DEPARTMENT: **AIRPORT**

AGENDA DATE: **February 11, 2013**

CONTACT PERSON NAME AND PHONE NUMBER: **Monica Lombraña, A.A.E./780-4724**

DISTRICT(S) AFFECTED: **All Districts**

SUBJECT:
That the City Manager be authorized to sign a Lessor's Acknowledgement of Assignment of the Butterfield Trail Industrial Park Lease by and between the City of El Paso ("Lessor"), PWR12-MAC Industrial Portfolio Southwest LLC ("Assignor") and the following companies:PXP Texas, LLC, a Delaware limited liability company, an undivided 50% interest; SoCal Texas, LLC, a Delaware limited liability company, an undivided 5.25% interest; and PEP Texas, LLC, a Delaware limited liability company, an undivided 44.75% interest ("Assignees") for the following described property:

> Lot 1, Block 11, Butterfield Trail Industrial Park, Unit Two, Foreign Trade Zone No.68, City of El Paso, El Paso County, Texas, municipally known and numbered as 25 Butterfield Trail Blvd., El Paso, Texas.

The rental rate is 119,907SF @ $0.161/sf for a total of $19,305.03/yr. Original lease effective July 1, 2004 expires on June 30, 2044 and there is an option to extend the agreement for two (2) additional terms of five (5) years each.

BACKGROUND / DISCUSSION:
All assignees meet all assignment requirements in accordance with the Lease agreement.

PRIOR COUNCIL ACTION:

June 15, 2004	Butterfield Trail Industrial Park Lease with W2001 TBT Real Estate LP
April 18, 2006	Lessor's Approval of Assignment to Titan MAC I, LP
September 25, 2012	Lessor's Approval of Assignment to PWR12-MAC Industrial Portfolio Southwest LLC

AMOUNT AND SOURCE OF FUNDING:
N/A - Revenue generating lease.

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD: Monica Lombraña
(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 Lessor's Acknowledgment of Assignment by and among the City of El Paso ("Lessor"), PWR12-MAC Industrial Portfolio Southwest LLC ("Assignor"), and PXP Texas, LLC, a Delaware limited liability company, an undivided 50% interest; SoCal Texas, LLC, a Delaware limited liability company, an undivided 5.25% interest, and PEP Texas, LLC, a Delaware limited liability company, an undivided 44.75% interest, ("Assignees") for the following described property:

> Lot 1, Block 11, Butterfield Trail Industrial Park Unit Two, Foreign Trade Zone No. 68, City of El Paso, El Paso County, Texas, municipally known and numbered as 25 Butterfield Trail Blvd., El Paso, Texas

ADOPTED this the ____ day of _____ 2013.

THE CITY OF EL PASO

_____
John F. Cook
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

12-1003-216.001/149795/Reso
25 Butterfield Trail

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LESSOR'S ACKNOWLEDGMENT OF ASSIGNMENT

WHEREAS, the City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease ("Lease") dated June 15, 2004, with an effective date of July 1, 2004, by and between Lessor and W2001 TBT Real Estate Limited Partnership, a Delaware limited partnership, covering the following described leased premises:

> Lot 1, Block 11, Butterfield Trail Industrial Park Unit Two, Foreign Trade Zone No. 68, City of El Paso, El Paso County, Texas, municipally known and numbered as 25 Butterfield Trail Blvd., El Paso, Texas

WHEREAS, on April 18, 2006, Lessor approved a Lessor's Approval of Assignment between the Lessor, W2001 TBT Real Estate Limited Partnership and Titan MAC Fund I, LP whereby Lessor approved and consented to the assignment of the Lease to Titan MAC Fund I, LP, a Texas limited partnership;

WHEREAS, on April 28, 2006, Titan MAC Fund I, LP executed a Deed of Trust, Security Agreement and Assignment of Rents recorded in the Real Property Records of El Paso County, Texas, as Instrument No. 20060039524 (the "Security instrument") for the benefit of Principal Commercial Funding, LLC ("Original Lender"), the predecessor-in-interest by one or more assignments to PWR12-MAC Industrial Portfolio Southwest LLC, a Delaware limited liability company, and encumbered the Lease;

WHEREAS, Titan MAC Fund I, LP defaulted under the terms of the Note (as defined in the Trustee's Assignment) and Deed of Trust;

WHEREAS, on July 3, 2012, PWR12-MAC Industrial Portfolio Southwest LLC, a Delaware limited liability company, was the highest bidder at Foreclosure Sale (as defined in the Trustee's Assignment) as evidenced by a Substitute Trustee's Deed and Bill of Sale recorded in the Real Property Records of El Paso County, Texas, as Instrument No. 20120050908 (the "Trustee's Deed"),

WHEREAS, in accordance with the terms of the Lease, PWR12-MAC Industrial Portfolio Southwest LLC ("Assignor") has succeeded to all of Titan MAC Fund I, LP's rights, interests, duties and obligations under the Lease as of July 3, 2012 pursuant to the Substitute Trustee's Deed and Bill of Sale; and

WHEREAS, Assignor desires to assign its interest in the Lease to PXP Texas, LLC, a Delaware limited liability company, an undivided 50% interest; SoCal Texas, LLC, a Delaware limited liability company, an undivided 5.25% interest, and PEP Texas, LLC, a Delaware limited liability company, an undivided 44.75% interest.

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. **ACKNOWLEDGMENT OF ASSIGNMENT.** Lessor hereby acknowledges the assignment of the Lease to PXP Texas, LLC, SoCal Texas, LLC, and PEP Texas, LLC ("Assignees") on the condition that Assignees assume 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.** Assignees have provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly acknowledge that they are bound by the indemnification provisions contained in the Lease.

3. **RELEASE.** Assignor is released and discharged by Lessor from all rights, privileges and obligations under the Lease first arising and accruing from and after the effective date of the assignment of the Lease.

4. **GUARANTEE.** Assignees 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 Assignees. Provided, however, Assignees 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. Assignees 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 Assignees have occurred, Lessor will return the Security Deposit to Assignees.

5. **RATIFICATION OF AGREEMENT.** Except as expressly modified herein, no provision of this acknowledgment 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 Assignees shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNEES: PXP Texas, LLC
c/o Hager Pacific Properties
16027 Ventura Blvd., Ste. 550
Encino, CA 91436

SoCal Texas, LLC
c/o Hager Pacific Properties
16027 Ventura Blvd., Ste. 550
Encino, CA 91436

PEP Texas, LLC
c/o Hager Pacific Properties
16027 Ventura Blvd., Ste. 550
Encino, CA 91436

7. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Acknowledgment of Assignment on behalf of the Assignees represents and warrants that he has the authority legally to bind the Assignees to the provisions of this Lessor's Acknowledgment of Assignment.

8. **NON-WAIVER.** The Lessor's Acknowledgment of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments that require Lessor's consent pursuant to the terms and conditions of the Lease.

9. **EFFECTIVE DATE.** The parties have executed this Lessor's Acknowledgement of Assignment hereto this _____ day of _____ 2013.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2013, by **Joyce A. Wilson** 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)

ASSIGNOR:

PWR12 – MAC INDUSTRIAL PORTFOLIO SOUTHWEST LLC, a Delaware limited liability company

By: U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, successor by merger to LaSalle Bank National Association for the registered holders of Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-PWR12

Its: Sole Member

By: C-III Asset Management LLC (f/k/a ARCap Servicing, Inc.), a Delaware limited liability company, in its capacity as special servicer pursuant to that certain Pooling and Servicing Agreement dated June 1, 2006

By: _____

Printed Name: Lisa Brazie

Title: Servicing Officer

ASSIGNOR'S ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 16th day of January, 2013, by Lisa Brazie as Servicing Officer of C-III Asset Management LLC, Special Servicer of U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, successor by merger to LaSalle Bank National Association for the registered holders of Bear Stearns Commercial Mortgage Securities Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-PWR12, Sole Member of **PWR12-MAC Industrial Portfolio Southwest LLC by U.S. Bank National Association, as Trustee, by C-III Asset Management LLC** (Assignee), on behalf of such entity.

_____
Notary Public, State of Texas

My Commission Expires:
4/26/14

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

TORRENCE AMOUR LAGOY
Notary Public, State of Texas
My Commission Expires
April 26, 2014

ASSIGNEE: PXP Texas, LLC, A Delaware limited Liability Company

By: Pacific International Partners, LLC, a California limited liability company, its manager

By: Robert Neal, Manager

By: _____
Printed Name: Robert Neal
Title: Manager

ASSIGNEE'S ACKNOWLEDGEMENT
(PXP TEXAS, LLC)

THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2013 by ____ _____ as _____ of PXP Texas, LLC (Assignee).

_____
Notary Public, State of _____

My Commission Expires:
_____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange }

On January 18, 2013 (Date) before me, Diana Lee Betonte Olson, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Robert Neal (Name(s) of Signer(s))

,

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 Diana Lee Betonte Olson (Signature of Notary Public)

DIANA LEE BETONTE OLSON
Commission # 1968150
Notary Public - California
Orange County
My Comm. Expires Feb 28, 2016

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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ASSIGNEE: SoCal Texas, LLC, A Delaware limited Liability Company

By: Socal Industrial Partners LLC, a California limited liability company, its manager

By: Jason Schirn, Manager

By: Jason Schirn
Printed Name: JASON SCHIRN
Title: MANAGER

ASSIGNEE'S ACKNOWLEDGEMENT
(SoCal TEXAS, LLC)

THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2013, by ____ _____ as _____ of SoCal Texas, LLC (Assignee)

_____
My Commission Expires: Notary Public, State of _____
_____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On January 17, 2013 (Date) before me, Connie L. Cooper (Here Insert Name and Title of the Officer),

personally appeared Jason Schrier (Name(s) of Signer(s)),

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 _____ (Signature of Notary Public)

CONNIE L. COOPER
Commission # 1880858
Notary Public - California
Los Angeles County
My Comm. Expires Mar 22, 2014

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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ASSIGNEE: PEP Texas, LLC, A Delaware limited Liability Company

By: Pacific Equity Partners, LLC, a California limited liability company, its manager

By: Robert Neal, Manager

By: _____
Printed Name: Robert Neal
Title: Manager

ASSIGNEE'S ACKNOWLEDGEMENT
(PEP TEXAS, LLC)

THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2013, by ____ _____ as _____ of PEP Texas, LLC (Assignee)

_____
My Commission Expires: Notary Public, State of _____
_____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange }

On January 18, 2013 (Date) before me, Diana Lee Betonte Olson, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Robert Neal (Name(s) of Signer(s))

,

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 Diana Lee Betonte Olson (Signature of Notary Public)

DIANA LEE BETONTE OLSON
Commission # 1968150
Notary Public - California
Orange County
My Comm. Expires Feb 28, 2016

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Document Date: _____ Number of Pages: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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