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

DEPARTMENT: **AIRPORT**

AGENDA DATE: **September 25, 2012**

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

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

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

This is a Resolution to authorize the City Manager to sign a Lessor's Acknowledgement of Assignment of the Butterfield Trail Industrial Park Lease by and between the City of El Paso and PWR12-MAC Industrial Portfolio Southwest LLC 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.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On June 15, 2004, the City of El Paso entered into a lease effective July 1, 2004 for a term of forty (40) years with two (2) additional Options of five (5) years each. The present annual rent is $19,305.00 with 32 years plus 10 year total Options remain on the term. The property is located in Butterfield Trail Industrial Park and contains approximately 119,907 square feet of land. On April 18, 2006, Titan MAC Fund I LP, the successor in interest to W2001 TBT Real Estate Limited Partnership, granted a Deed of Trust, Security Agreement and Assignment of Rents to PWR12-MAC Industrial Portfolio Southwest LLC, a Delaware limited liability company. Subsequently, Titan MAC Fund I, LLC defaulted under the terms of a Note. On July 3, 2012, PWR12-MAC Industrial Southwest LLC was the highest bidder at Foreclosure Sale and in accordance with the Lease, PWR12-MAC Industrial Portfolio Southwest LLC has succeeded to all of Titan MAC Fund I, LP's rights, interests, duties and obligations under the Lease as of July 3, 2012. This agenda item will allow the City, as Lessor, to acknowledge the assignment of the Lease to PWR12-MAC as pursuant to the Trustee's Assignment.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? June 15, 2004, and April 28, 2006.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION: **N/A**

Enter appropriate comments or 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 of the Butterfield Trail Industrial Park Lease by and between the City of El Paso and PWR12-MAC Industrial Portfolio Southwest LLC 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, and municipally known and numbered as 25 Butterfield Trail Blvd., El Paso, Texas.

Dated this ____ day of _____ 2012.

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

12-1003-216/126917/Reso
LAA to PWR12-MAC Ind./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"), and

WHEREAS, in accordance with the terms of the Lease, PWR12-MAC Industrial Portfolio Southwest LLC 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.

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 PWR12-MAC Industrial Portfolio Southwest LLC ("Assignee") pursuant to the Substitute Trustee's Deed and Bill of Sale. Assignee hereby acknowledges its obligation to pay any and all sums owing or becoming due to Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee pursuant to the Substitute Trustee's Deed and Bill of Sale, and Assignee further acknowledges its acceptance of, and agreement to abide by, all the terms, covenants, and conditions of the Lease first arising and accruing from and after the effective date of the assignment of the Lease to Assignee pursuant to the Substitute Trustee's Deed and Bill of Sale.

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 acknowledges that it is bound by the indemnification provisions contained in the Lease.

3. **RELEASE.** Titan MAC Fund I, LP 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, 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. **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.

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

ASSIGNEE: PWR12-MAC Industrial Portfolio Southwest LLC C-III
Asset Management LLC
5221 N. O'Connor Boulevard, Suite 600
Irving, Texas 75039
Re: Loan# 600875413

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

7. **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.

8. **EFFECTIVE DATE.** The parties have executed this Lessor's Acknowledgement of Assignment hereto this _____ day of _____ 2012.

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 _____, 2012, 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)

ASSIGNEE:

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: RUDY VASQUEZ
Title: Servicing Officer

ASSIGNEE'S ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 27th day of AUGUST, 2012, by RUDY VASQUEZ 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.

Christina Carter
Notary Public, State of Texas

My Commission Expires:
1/19/2016

CHRISTINA DEEANN CARTER
Notary Public, State of Texas
My Commission Expires
January 19, 2016