

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

**DEPARTMENT:** Airport

**AGENDA DATE:** January 27, 2015

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

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

That the City Manager be authorized to sign a Lessor's Acknowledgment of Assignment by and between 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 ("Assignors") and Tower Assets Newco IX LLC ("Assignee") 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

Current annual rent: 119,907sf @ \$0.20/sf = \$23,981.45/yr. Next rental rate adjustment scheduled for 7/1/2018 based upon 8% of then fair market value established by appraisal with a 20% cap.

Term remaining: There are thirty-nine years and six months remaining on initial term, including two five-year options.

Tenant: T-Mobile

**BACKGROUND / DISCUSSION:**

The City of El Paso entered into a Butterfield Trail Industrial Park Lease with W2001 TBT Real Estate Limited Partnership effective July 1, 2004 for a term of forty (40) years with two (2) additional five (5) year Options. This Lease was assigned to Titan MAC Fund I, LP who defaulted under the terms of a Note and Deed of Trust and on July, 2013, PWR12-MAC Industrial Portfolio Southwest LLC ("PWR12-MAC") was the highest bidder at Foreclosure Sale and therefore succeeded to all of Titan MAC Fund I, LP's rights, interests, duties and obligations under the Lease as of July 3, 2012.

On February 11, 2013 PWR12-MAC assigned 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 ("Assignors").

Assignors now desire to assign Lease to Tower Assets Newco IX LLC, who will rely on the terms and conditions of the current subtenant Lease with T-Mobile. While no major improvements are necessary at this time, repair and maintenance will be done promptly upon the identification of such. This purchase is commercial real estate investment purposes only.

**PRIOR COUNCIL ACTION:**

6/15/2004, 4/18/2006, 9/25/2012, 2/11/2013

**AMOUNT AND SOURCE OF FUNDING:**

This is a revenue generating lease.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

(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"), 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, ("Assignors") and Tower Assets Newco IX LLC ("Assignee") 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 \_\_\_\_\_ 2015.

THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

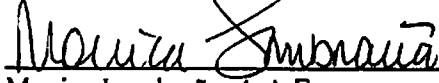
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Marvin Foust  
Assistant City Attorney

APPROVED AS TO CONTENT:

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

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**, effective February 11, 2013 PWR12-MAC Industrial Portfolio Southwest LLC assigned 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 ("Assignors");

12-1003-216.001/367376\_2 (1-14-15)/LAA/Tower Newco IX LLC  
25 Butterfield Trail

**WHEREAS**, Assignors desire to assign its interest in the Lease to Tower Assets Newco IX LLC.

**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 Tower Assets Newco IX 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 agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee 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.** Assignors are 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.** 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 without the occurrence of an Event of Default. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Assignee have occurred, Lessor will return the Security Deposit to Assignee.
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:

**ASSIGNEE:** Tower Assets Newco IX LLC  
4091 Viscount Ave.  
Memphis, TN 38118  
Attn: William Orgel, President

7. **AUTHORIZED REPRESENTATIVE.** The persons 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.
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 \_\_\_\_\_ 2015.

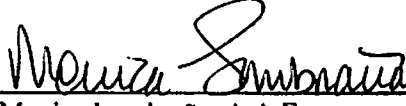
**LESSOR: CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Marvin Foust  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

**LESSOR'S ACKNOWLEDGEMENT**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015, 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)

12-1003-216.001/367376\_2 (1-14-15)/LAA/Tower Newco IX LLC  
25 Butterfield Trail



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 Orange )

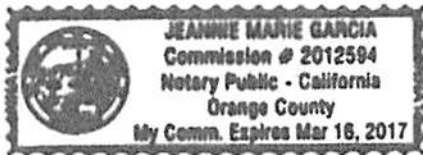
On January 15, 2015 before me, Jeanne Marie Garcia, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Robert J. 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 *Jeanne Marie Garcia*  
*Signature of Notary Public*

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**ASSIGNOR:** SoCal Texas, LLC, A Delaware limited Liability Company

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

By:   
Printed Name: Jason Schirn  
Title: Manager

**ASSIGNOR'S ACKNOWLEDGEMENT  
(SoCal TEXAS, LLC)**

THE STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2015, by Jason Schirn as Manager of SoCal Texas, LLC (Assignor)

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

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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 January 14, 2015 before me, Connie L. Cooper, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Jason Schirin  
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 [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

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

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



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State of California )  
County of Orange )

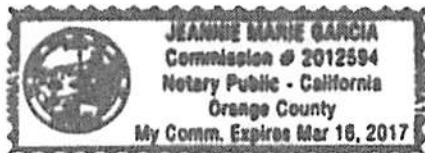
On January 15, 2015 before me, Jeanne Marie Garcia, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Robert J. 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 Jeanne Marie Garcia  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

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Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

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

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

ASSIGNEE: Tower Newco-IX LLC

By: [Signature]  
Printed Name: William Orgel  
Title: President

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Tennessee )  
COUNTY OF Shelby )

This instrument was acknowledged before me on this 14<sup>th</sup> day of January, 2015, by William Orgel as President of Tower Newco IX LLC. (Assignee)

My Commission Expires:  
7-28-2018

[Signature]  
Notary Public, State of Tennessee

