

**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 Leigh Fisher Capital Group, LLC ("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.

Current annual rent: 245,056sf @ \$0.20/sf = \$49,011.20/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.

No subtenants.

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 Leigh Fisher Capital Group, LLC, who will continue to lease the property to the current tenant, ConAgra who has occupied the property for over twenty years. Several years remain on ConAgra's leasing agreement and employ several dozen people.

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 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 Leigh Fisher Capital Group, LLC ("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.

ADOPTED this the ____ day of _____ 2015.

THE CITY OF EL PASO

Oscar Leeser
Mayor

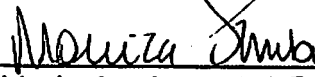
ATTEST:

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:

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.

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 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");

12-1003-214.001/367368_2 (1-12-15)/LAA Leigh Fisher Capital Group, LLC
11 Leigh Fisher

WHEREAS, Assignors desire to assign its interest in the Lease to Leigh Fisher Capital Group, 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 Leigh Fisher Capital Group, 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 has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly acknowledges 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, M. Cody Cowan ("Guarantor") 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 Assignees 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 Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNEE: Leigh Fisher Capital Group, LLC
713 WSW Loop 323, #145
Tyler, Texas 75701
Attn: M. Cody Cowan

7. **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.
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 Lombrafia, 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)

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)

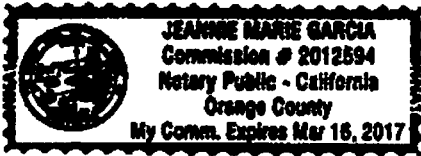
On January 15, 2015 before me, Jeanne Marie Garcia, Notary Public
Date Here Insert Name and Title of the Officer

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: _____

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)

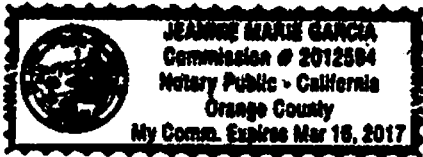
On January 15, 2015 before me, Jeannie Marie Garcia, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Jason Schirn
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

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: _____

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)

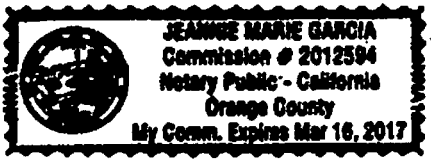
On January 15, 2015 before me, Jeannie Marie Garcia, Notary Public
Date Here Insert Name and Title of the Officer

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 Jeannie 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: _____

ASSIGNEE: Leigh Fisher Capital Group, LLC

By: Matthew Cody Canan
Printed Name: Matthew Cody Canan
Title: President / Manager

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas)

COUNTY OF Smith)

This instrument was acknowledged before me on this 14 day of January, 2015 by M. Cody Canan as President / Manager of Leigh Fisher Capital Group, LLC
(Assignee)

My Commission Expires:
02/02/2016

Carrie Leigh Mcleroy
Notary Public, State of TX

