

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

DEPARTMENT: Airport
AGENDA DATE: February 23, 2016
CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780-4793
DISTRICT(S) AFFECTED: 2

SUBJECT:

That the City Manager be authorized to sign a Lessor's Approval of Assignment of a Restated Butterfield Trail Industrial Park Lease ("Lease") by and among the City of El Paso ("Lessor"), SL EP Industrial, LP ("Assignor") and MPW Holdings, LLC ("Assignee") for the following described property: All of Lot 3 and a portion of Lot 4, Block 12, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 22 Spur Drive, El Paso, Texas.

Current annual rent:

120,149sf @ \$0.140/sf = \$16,820.88/yr. Next rental rate adjustment scheduled for 9/1/17 will be based on 8% of then fair market value established by appraisal with a 20% cap.

Term remaining: There are seventeen (17) years remaining on initial term, with three additional ten-year options.

Subtenant: none

BACKGROUND / DISCUSSION:

On October 1, 1993 - The City of El Paso entered into a Restated Butterfield Trail Industrial Park Lease with **The Lincoln National Life Insurance Company** effective for a term of forty (40) years with three (3) additional ten (10) year Options.

On October 29, 2013 - This Lease was assigned from The Lincoln National Life Insurance Company to **SL EP Industrial, LP**.

SL EP Industrial, LP now desires to assign Lease to **MPW Holdings, LLC ("MPW")** with all terms and conditions remaining the same. Established in 1959 in California, MPW manufactures expanded metal with its primary product consisting of metal for air conditioning filters. MPW has multiple customers in the El Paso/Juarez area which is the motivation for acquiring the facility in Butterfield Trail Industrial Park and servicing these customers locally with approximately 35 initial employees. Start-up investment will include painting, new flooring through, and electrical modifications. As a long term plan, MWB would like to reactivate the adjacent rail spur at a later date.

PRIOR COUNCIL ACTION:

10/1/93; 10/29/13

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 Approval of Assignment by and between the City of El Paso ("Lessor"); SL EP Industrial, LP ("Assignor"); and MPW Holdings, LLC ("Assignee") regarding the following described property:

All of Lot 3 and a portion of Lot 4, Block 12, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 22 Spur Drive, El Paso, Texas.

Dated this ____ day of _____ 2016.

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:



fet

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

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR’S APPROVAL OF ASSIGNMENT

The City of El Paso (“Lessor”) entered into a Restated Butterfield Trail Industrial Park Lease (“Lease”) effective October 1, 1993 between the Lessor and **The Lincoln National Life Insurance Company**; which Lease was subsequently transferred and assigned to **SL EP Industrial, LP** (“Assignor”), for the following described property:

All of Lot 3 and a portion of Lot 4, Block 12, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 22 Spur Drive, El Paso, Texas (“Property”).

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to **MPW Holdings, LLC**, a Texas limited liability company (“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 agrees to be bound by the indemnification provisions contained in the Lease.

3. **GUARANTOR. WALLNER EXPAC, INC.** (“Guarantor”) hereby guarantees payment of rent and other charges or fees due to the Lessor and shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Lease. 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 Assignee 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, with no event of default by Assignee of any provision of the Lease or any condition which, with the giving of notice by Lessor, would result in an event of default. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Assignee has occurred, Lessor will return the Security Deposit to Assignee.

4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent 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:

ASSIGNOR: SL EP Industrial, LP
300 Crescent Court, Suite 1113
Dallas, Texas 75201

ASSIGNEE: MPW Holdings, LLC
Attn: Mr. Nick Sarcona
9160 Hyssop Drive
Rancho Cucamonga, CA 91730

GUARANTOR: Wallner Expac, Inc.
Attn: Mr. Nick Sarcona
9160 Hyssop Drive
Rancho Cucamonga, CA 91730

6. **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 authority legally to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** This Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The parties have executed this Lessor's Approval of Assignment hereto effective this _____ day of _____, 2016.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ADOPTED this ____ day of _____, 2016.

LESSOR: CITY OF EL PASO

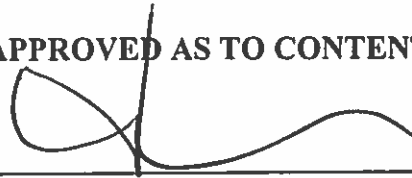
Tomas Gonzalez
City Manager

APPROVED AS TO FORM:



Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:



ML: _____
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 _____, 2016,
by Tomas Gonzalez as City Manager of the City of El Paso, Texas. (Lessor)

My Commission Expires:


Notary Public, State of Texas

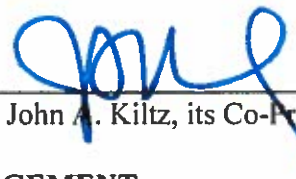
[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNOR:

SL EP INDUSTRIAL, LP, a Texas limited partnership

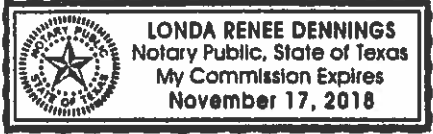
By: SOP Manager III, LLC, a Texas limited liability company, its General Partner

By: 
Kenneth E. Aboussie, Jr., its Co-President


By: 
John A. Kiltz, its Co-President

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

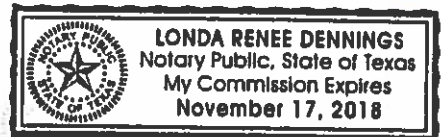


This instrument was acknowledged before me on this 11 day of FEBRUARY, 2016, by Kenneth E. Aboussie, Jr., Co-President of SOP Manager III, LLC, a Texas limited liability company, General Partner of SL EP Industrial, LP, a Texas limited partnership (Assignor), on behalf of said limited partnership.


Notary Public, State of TEXAS

My Commission Expires: 11.17.18

THE STATE OF TEXAS
COUNTY OF TRAVIS



This instrument was acknowledged before me on this 11 day of FEBRUARY, 2016, by John A. Kiltz, Co-President of SOP Manager III, LLC, a Texas limited liability company, General Partner of SL EP Industrial, LP, a Texas limited partnership (Assignor), on behalf of said limited partnership.


Notary Public, State of TEXAS

My Commission Expires: 11.17.18

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNEE: MPW Holdings, LLC

By: *Paul Walker*

Printed Name: PAUL WALKER

Title: MEMBER

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 2016, by _____ of MPW Holdings, LLC (Assignee)

My Commission Expires: _____

Notary Public, State of _____

copy attached
[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 to the truthfulness, accuracy, or validity of the document.

State of California

County of San Bernardino

On Feb. 11, 2016 before me, Ali M Dunki-Jacobs, Notary Public,
(Here insert name and title of the officer)

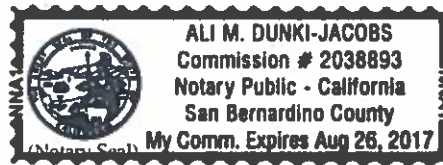
personally appeared Paul Leo Wallner

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.

Ali M. Dunki-Jacobs
 Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is (are)) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT
Lessor Approval of Assignment
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 6 Document Date Feb 11, 2016

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

GUARANTOR: WALLNER EXPAC, INC.

By: *Paul Wallner*

Printed Name: PAUL WALLNER

Title: C.O.O.

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2016, by _____ as _____ of Wallner Expac, Inc. (Guarantor).

see attached

My Commission Expires: _____

Notary Public, State of _____



CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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State of California

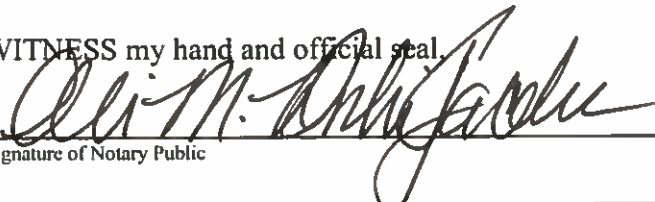
County of San Bernardino

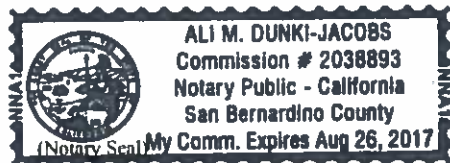
On Feb 11, 2016 before me, Ali M Dunki-Jacobs, Notary Public,
(Here insert name and title of the officer)

personally appeared Paul Leo Wallner,

who proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ (s) 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.

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 Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
Lessor Approval of Assignment
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 6 Document Date 2/11/16

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

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