

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

DEPARTMENT: Airport

AGENDA DATE: April 21, 2015

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 Acknowledgment of Assignment by and between the City of El Paso ("Lessor"), Tower Assets Newco IX LLC ("Assignor") and TV6-W, 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

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 four months remaining on initial term, including two five-year options.

Subtenant: 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.

On January 27, 2015 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 assigned its interest in the Lease to Tower Assets Newco IX LLC ("Assignors").

Assignors now desire to assign Lease to TV6-W, 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, 1/27/15

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

CITY OF EL PASO, TEXAS

AGENDA ITEM

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

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

Subtenant: T-Mobile

BACKGROUND / DISCUSSION:

On July 1, 2004 - The City of El Paso entered into a Butterfield Trail Industrial Park Lease with W2001 TBT Real Estate Limited Partnership effective for a term of forty (40) years with two (2) additional five (5) year Options. On

April 18, 2006 - This Lease was assigned from W2001 TBT Real Estate Ltd. Partnership to Titan MAC Fund I, LP. ("Titan Mac"). On April 28, 2006 - Titan Mac executed a Note and Deed of Trust Security Agreement for the benefit of Principal Commercial Funding. Titan Mac later defaulted under the terms of a Note and Deed of Trust.

In July, 2006, 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.

On January 27, 2015 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 assigned its interest in the Lease to Tower Assets Newco IX LLC ("Assignors").

Assignors now desire to assign Lease to TV6-W, LLC, all terms and conditions will remain the same and T-Mobile remain as a subtenant. 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, 1/27/15

AMOUNT AND SOURCE OF FUNDING:

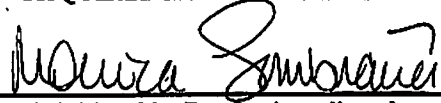
This is a revenue generating lease.

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"), Tower Assets Newco IX LLC ("Assignor"), and TV6-W, 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

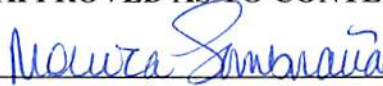
ATTEST:

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 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;

12-1003-216.001/394410/LAA/TV6-W, LLC
25 Butterfield Trail

WHEREAS, on January 27, 2015 the Lease was assigned to Tower Assets Newco IX LLC (“Assignor”) by that Lessor’s Acknowledgment of Assignment; and

WHEREAS, Assignor desires to assign its interest in the Lease to TV6-W, 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 TV6-W, 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 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.** 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:

12-1003-216.001/394410/LAA/TV6-W, LLC
25 Butterfield Trail

ASSIGNOR: Tower Newco IX LLC

By: _____
Printed Name: William Orgel
Title: President

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Tennessee)
COUNTY OF Shelby)

This instrument was acknowledged before me on this 8 day of April, 2015, by William Orgel as President of Tower Newco IX LLC. (Assignee)

My Commission Expires:
7-28-2018



Notary Public, State of Tennessee

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



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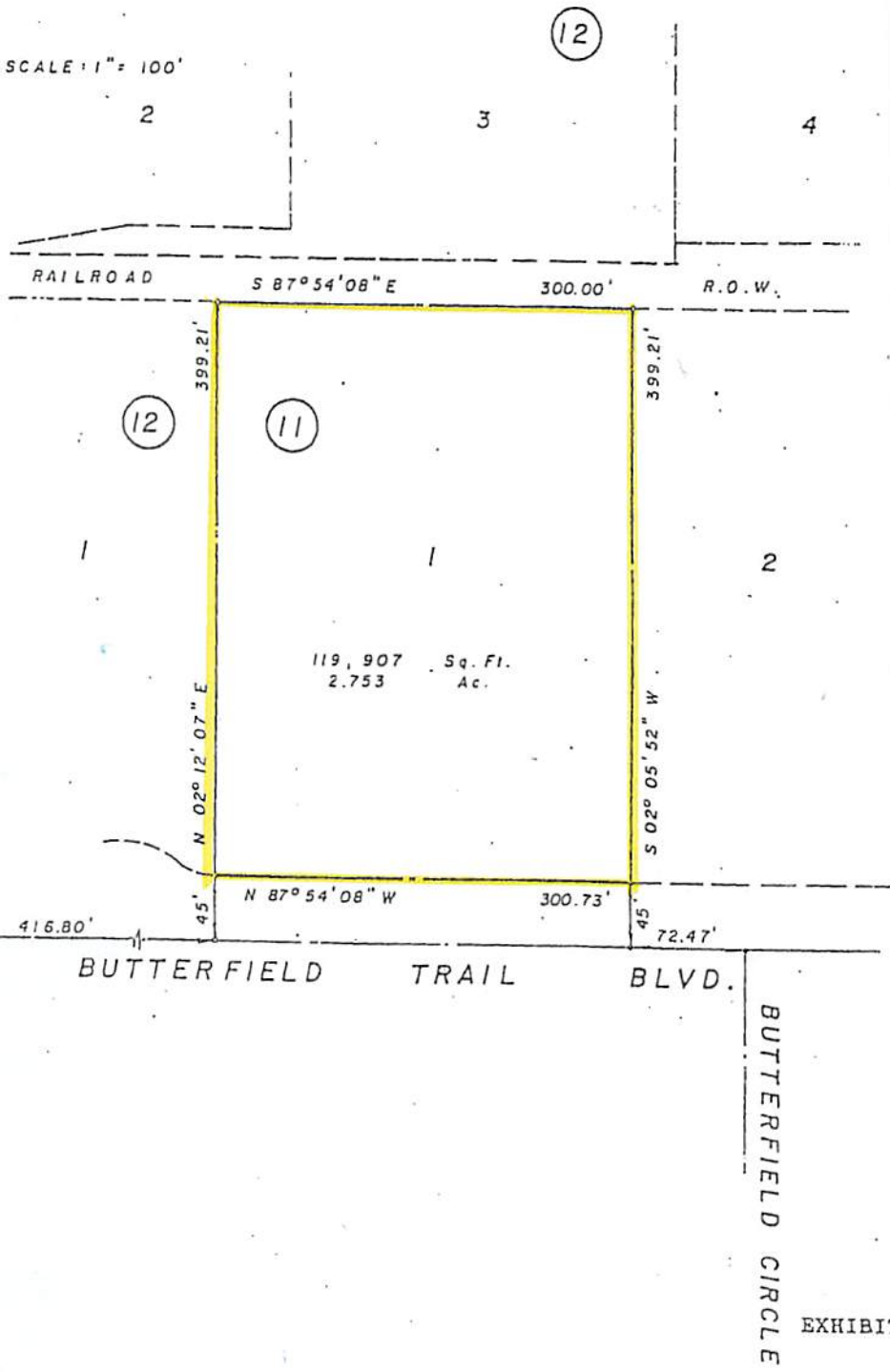
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SCALE: 1" = 100'



119,907 Sq. Ft.
2.753 Ac.

LEIGH FISHER BLVD.

BUTTERFIELD TRAIL BLVD.

BUTTERFIELD CIRCLE

EXHIBIT "A"



| | | |
|--|-----------------|---|
| Turner Collie & Braden Inc. | | 1651 Montana Ave. El Paso, Texas 79902 (915) 642-4900 |
| Consulting Engineers | | |
| PLAT OF | | |
| LOT 1 - BLOCK 11 | | |
| BUTTERFIELD TRAIL INDUSTRIAL PARK - UNIT TWO | | |
| CITY OF EL PASO, EL PASO COUNTY, TEXAS | | |
| Drawn by F.H. | Date 9-29-82 | Job No. 6501-126 |