

When recorded return
Robert Erven Brown, p.a.
4801 E. Greenway Rd., Ste. 200
Scottsdale, AZ 85254-1685

**CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS BY COTTONWOOD AIRPARK L.C.
IN LOTS 105 AND 106 OF
COTTONWOOD AIRPARK**

This "Consent" is legally binding between the parties described below as of September 16, 1997 (the "Effective Date").

BACKGROUND

The Ground Lease

- A. The City of Cottonwood, formerly known as the Town of Cottonwood, an Arizona municipality, is the "Landlord" under a Ground Lease Agreement dated May 5, 1983 to encourage economic development of the Cottonwood Airport industrial property to further economic development within the City of Cottonwood.
- B. Cottonwood Airpark L.C. is the successor in interest to Cottonwood Airpark I, L.C. as successor in interest to Cottonwood Airpark, Inc., which was originally named as "Tenant" under the Ground Lease Agreement.
- C. The Ground Lease Agreement was amended by the First Amendment dated November 30, 1983, the Second Amendment dated March 12, 1985, the Third Amendment dated August 21, 1985, the Fourth Amendment dated February 7, 1989, and the proposed Fifth Amendment dated January 1, 1993 which was never signed, the Sixth Amendment dated July 5, 1994 and the Seventh Amendment. The Ground Lease Agreement and all Amendments are collectively referred to as the "**Ground Lease.**"
- D. A memorandum of the Ground Lease dated May 23, 1983 was recorded January 4, 1984 in Book 1597, pages 576-581 and thereafter corrected by an instrument recorded July 1, 1985 in Book 1734, pages 11-15 of the records of the Yavapai County Recorder (the "Memorandum of Ground Lease").

The GSI Ground Lease

- E. Pursuant to certain option rights granted to it by Cottonwood Airpark, Inc., "FMWS" Development Company subleased Lots 105 and 106 from Cottonwood Airpark, Inc. FMWS as Landlord executed a (sub)(sub) ground lease dated January 5, 1985 for Lots 105 and 106 of the Cottonwood Airpark Tract One with General Semiconductor Industries, Inc. ("GSI"), a Delaware corporation as the (sub) (sub) tenant; this lease was amended by a letter between the parties dated March 8, 1985 which constituted the first (and only) amendment" to it. This (sub) (sub) ground lease, as amended, is referred to as the "**GSI Ground Lease.**" A memorandum of the GSI Ground Lease is recorded at instrument 26740 on August 9, 1985 in the Official Records of the Yavapai County Recorder in Book 1744, page 944. Lots 105 and

- 106 are defined in the subdivision plat of Cottonwood Airpark as recorded in Book 25 of Maps, page 19, Yavapai County Recorder.
- F. Square D Company ("Square D"), a Delaware corporation (formerly known as HAB Industries, Inc., a Delaware corporation), is the successor in interest to GSI as the "Tenant" in the GSI Ground Lease.
 - G. Cottonwood Airpark L.C. is the successor in interest to FMWS as the "Landlord" in the GSI Ground Lease.
 - H. Pursuant to rights granted to it under the GSI Ground Lease, Square D constructed certain "Improvements" consisting of a building or buildings and other miscellaneous improvements. Square D now wishes to sell and transfer all of its rights in the Improvements to Robert G. Flynn and Carol J. Flynn, husband and wife (the "Flynns"). Square D further wishes to terminate and end all of its rights, obligations, duties and responsibilities under the GSI Ground Lease with Cottonwood Airpark L.C.
 - I. As part of this transaction the Flynns are seeking an assignment and transfer of all of the rights possessed by Cottonwood Airpark L.C. under its Ground Lease with the City of Cottonwood to Lots 105 and 106 simultaneously with the termination of the GSI Ground Lease and simultaneously with the acquisition of fee title to the Improvements owned by Square D. The Flynns will then directly lease those lots from the City.
 - J. The Ground Lease requires the written consent of the City of Cottonwood to the assignment by Cottonwood Airpark L.C. of its rights as Tenant under the Ground Lease to the Flynns. It appears that the best interests of the City will be served by permitting the Flynns to move their business to the Cottonwood Airpark, thus the City of Cottonwood now wishes to grant its consent to this transaction.

AGREEMENT

Now, therefore, for valuable consideration received, the parties agree that:

1. **Incorporation by Reference.** The facts, circumstances, descriptions and definitions contained in the Background section of this Assignment are hereby incorporated by reference as an integral part of this Consent.
2. **Assignment.** As of the Effective Date, Cottonwood Airpark L.C. has assigned and transferred to the Flynns all of Cottonwood Airpark L.C.'s rights as Tenant to Lots 105 and 106 arising under the Ground Lease. Cottonwood Airpark L.C. specifically reserved all other rights to all other parcels which it possesses as Tenant under the Ground Lease.
3. **Acceptance of Assignment and Indemnity.** By signing a separate document, the Flynns accepted the assignment of all Tenant's rights, duties, obligations and undertakings under the Ground Lease as to Lots 105 and 106 and agreed to fully and faithfully perform all duties, obligations and responsibilities arising thereunder.
4. **Consent.** The City of Cottonwood hereby consents to the assignment by Cottonwood Airpark L.C. to Flynns of its rights to Lots 105 and 106 under the Ground Lease and consents to the sale by Square D of its Improvements to the Flynns, all as of the Effective Date.
5. **Release.** As of the Effective Date, the City as Landlord under the Ground Lease hereby:
 - 5.1 releases Cottonwood Airpark L.C. (and its predecessors) as "Tenant" from all obligations under the Ground Lease relative to Lots 105 and 106.

5.4 certifies that this Consent was formally approved by the Cottonwood City Council pursuant to proper notice all as required by law; and

5.5 confirms that there are no uncured defaults or breaches by Tenant under the Ground Lease.

6. **Further Documentation.** Each party agrees in good faith to execute such further or additional documents as become necessary or appropriate to carry out the intent and purpose of this Consent.

7. **Counterparts and Facsimiles.** This Consent may be executed by facsimile or in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

This Consent is legally binding as of the Effective Date regardless of the actual date of signing.

I, the undersigned Secretary of the City of Council of the City of Cottonwood hereby personally affirm and certify that this Consent and the Seventh Amendment to the Ground Lease have been duly considered and there has been full compliance with all legal requirements for approval by the City Council and do further affirm and certify that this Consent and the Seventh Amendment have been approved, ratified and accepted by the City Council on behalf of the City of Cottonwood.

THE CITY OF COTTONWOOD

By [Signature]
City Manager

Date: 9.17.97

By [Signature]
City Clerk

Date: 9-18-97

STATE OF ARIZONA)
) ss.
County of Yavapai)

Before me, the undersigned Notary Public, on this 18th day of September, 1997, personally appeared Marianne Jimenez, the City Clerk of the City of Cottonwood, who is personally known to me (or satisfactorily proved himself/herself) to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

[Signature]
Notary Public

My Commission Expires:
October 22, 1997

STATE OF ARIZONA)
) ss.
County of Yavapai)

Before me, the undersigned Notary Public, on this 17th day of September, 1997, personally appeared Brian Mickelsen, the City Manager of the City of Cottonwood, who is personally known to me or satisfactorily proved himself/herself) to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Eve Schoemaker
Notary Public

My Commission Expires:

October 22, 1997

Approved as to form and content:
MAGNUM, WALLS, STOOPS & WARDEN
City attorneys for the City of Cottonwood

By _____

STATE OF ARIZONA)
) ss.
County of _____)

Before me, the undersigned Notary Public, on this ____ day of _____, 1997, personally appeared _____ of Magnum, Walls, Stoops & Warden, the attorney for the City of Cottonwood, who is personally known to me (or satisfactorily proved himself/herself) to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.

County of _____)

Before me, the undersigned Notary Public, on this ____ day of _____, 1997, personally appeared _____, the City Manager of the City of Cottonwood, who is personally known to me or satisfactorily proved himself/herself) to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Notary Public

My Commission Expires:

Approved as to form and content:
MAGNUM, WALLS, STOOPS & WARDEN
City attorneys for the City of Cottonwood)

By *Melinda Garrahan*

STATE OF ARIZONA)
) ss.

County of COCONINO)

Before me, the undersigned Notary Public, on this 18th day of September, 1997, personally appeared MELINDA GARRAHAN of Magnum, Walls, Stoops & Warden, the attorney for the City of Cottonwood, who is personally known to me (or satisfactorily proved himself/herself) to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Kristin Oddy
Notary Public

My Commission Expires:

