

When recorded return to:
City Clerk
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86362

FEE
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3790394 BK 4207 PG 696
Yavapai County, Arizona
Patsy Jenney-Colon, Recorder
11/17/2004 04:03P PAGE 1 OF 6
YAVAPAI TITLE AGENCY
RECORDING FEE 6.00
SURCHARGE 8.00
POSTAGE 1.00

CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
LOT #109
OF THE COTTONWOOD AIRPARK TRACT ONE- PARTS A&B
BACKUS FAMILY INVESTMENTS, L.L.C. TO PHILLIPS FAMILY ENTERPRISE
L.L.C.

This "Consent" is legally binding as of 11-17, 2004 (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 and to encourage economic development within the City of Cottonwood.
- B. Cottonwood Airpark L.C. ("CALC") 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, the Seventh Amendment dated September 16, 1997, the Eighth Amendment which was recorded December 22, 1998, the Ninth Amendment recorded October 1, 2001 and the Tenth Amendment dated March 3rd 2003. 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").
- E. On March 17th 2003 CALC made an assignment to Backus Family Investments, L.L.C., an Arizona limited liability company the rights possessed by CALC under its Ground Lease with the City of Cottonwood, i.e., to the South 1/2 of Lot 108 and Lots 109 through 118 (collectively, the "Lots").
- F. The CITY OF COTTONWOOD and BACKUS FAMILY INVESTMENTS thereafter replated the above mentioned subdivision which is now legally described as REPLAT OF COTTONWOOD AIRPARK TRACT ONE PARTS A & B, recorded in the offices of the Yavapai County Recorder at Book 48, Page 90. (see Exhibit attached)

- G. Backus Family Investments L.L.C. ("BFI") lessee now wishes to make an assignment to Phillips Auto Repair, Inc. (ASSIGNEE) all the rights as lessee possessed by BFI under its Ground Lease with the City of Cottonwood i.e., Lot # 109 of the REPLAT OF COTTONWOOD AIRPARK TRACT ONE-PARTS A&B.
- H. The Ground Lease requires the written consent of the City of Cottonwood to the assignment by BFI of its rights as Tenant under the Ground Lease to ASSIGNEE. It appears that the best interests of the City will be served by permitting ASSIGNEE to construct new improvements on the Lot, thus increasing the development and tax base for the City of Cottonwood. Thus, the City of Cottonwood has indicated that it will grant its consent to this transaction by execution and delivery of this Consent.

AGREEMENT

Now, therefore, for valuable consideration received, The City of Cottonwood agrees that:

- 1. Consent. The City of Cottonwood hereby consents to the Assignment by BFI to ASSIGNEE of its rights to the Lot under the Ground Lease.
- 2. Release. As of the Effective Date, the City as Landlord under the Ground Lease hereby:
 - 2.1 Certifies that formal approval of the Assignment to ASSIGNEE is hereby granted by the City;
 - 2.2 acknowledges and agrees that BFI has assigned its rights, duties and obligations to the Lot to ASSIGNEE, all as set forth in the "Assignment." Landlord agrees to look solely to ASSIGNEE for collection of all rents and other amounts arising from the Ground Lease for the Lots after the Effective Date of this Consent and releases BFI (and its predecessors) as Tenant from all obligations or duties arising under the Ground Lease relative to the Lots.
 - 2.3 acknowledges receipt of all rent and other amounts owned by Tenant to Landlord under the Ground Lease as of the Effective Date;
 - 2.4 ratifies, affirms and confirms the validity of all other terms and conditions of the Ground Lease as defined above.
 - 2.5 confirms that, to Landlord's knowledge, there are no uncured defaults or breaches by Tenant under the Ground Lease;
 - 2.6 agrees that the "Rent" for the Lot, which total .59 acres, 25,737 square feet is \$125 / unimproved acre per year, and \$0.01 per square foot of the area within the Improved lot per year, as set forth in Sections 4B.2&3 of the Ground Lease Agreement dated May 5, 1983 with the next payment due on January 1, 2005
 - 2.7 agrees that the property taxes for the Lots shall be separately assessed and paid by ASSIGNEE;
 - 2.8 agrees that the failure of ASSIGNEE to pay rent, to pay property taxes, or to otherwise fully comply with the terms of the Ground Lease shall be considered a default by ASSIGNEE only as to the Lots and shall not be considered a default by Tenant under the Ground Lease affecting any of the other rights of BFI or affecting any other property leased by BFI.

Landlord agrees to exercise its remedies for a default by ASSIGNEE as provided under the Ground Lease solely against the Lot.

- 2.9 agrees that in the event of a default by BFI under the Ground Lease, Landlord will exercise its rights solely against BFI and will not construe a default by BFI as a default by ASSIGNEE under the Lot. So long as ASSIGNEE pays its rent and timely performs all other obligations as required under the Ground Lease, any default by BFI regarding its other obligations under the Ground Lease shall not be construed as a default by ASSIGNEE.
- 2.10 agrees that the obligation of BFI to perform certain development work specified in the Ground Lease Agreement dated February 28, 2003 under Development Plan and Timetable, does not apply to ASSIGNEE, and
- 2.11 acknowledges that ASSIGNEE intends to encumber the Lot to construct certain improvements which will be subject to an encumbrance in favor of a "Lender." Landlord agrees to provide notice to the Lender and to BFI in the event of a default by ASSIGNEE under the Ground Lease pertaining to the Lot pursuant to separate documents to be submitted by the Lender to Landlord for review and approval.
- 2.12 acknowledges that ASSIGNEE shall independently comply with the insurance provisions of the Landlord.
- 2.13 acknowledges that pursuant to Section 20 of the Ground Lease the address for the tenant under the Lot is:

NEW ASSIGNEE ADDRESS:

Phillips Family Enterprise L.L.C.
1343 Hermits Circle
Cottonwood, Az. 86326

- 2.14 agrees that the Term of the Lease for the Lot will expire on December 31, 2033.
3. Ratification of Ground Lease. The terms and conditions contained in the Ground Lease are hereby ratified, confirmed and continue in full force and effect. The Term Commencement date of December 1983 began a 25 year term as to certain portions of the Lease and a 50 year Term as to certain other portions. The Lease also granted options for renewal. The parties intend to ratify and affirm the length of the term and of the option rights to the maximum extent allowed at law or in equity. There are no amendments, modifications, supplements or other agreements or understandings except for those contained in the Ground Lease. Landlord acknowledges (i) that BFI as Tenant has paid all rent, and (ii) that, to Landlord's knowledge, BFI has fully performed all of its obligations and is in good standing under the Ground Lease.
4. Further Documentation. Landlord 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.
5. 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.

The undersigned Representatives of the City of Cottonwood hereby personally affirm and certify that there has been full compliance with all legal requirements for approval of the Assignment by the City and do further affirm and certify that this Consent is hereby approved, ratified and accepted by the City of Cottonwood.

THE CITY OF COTTONWOOD

By [Signature]
Brian Mickelsen City Manager
Date: 10.29.04

By [Signature]
Marianne Jimenez City Clerk
Date: 11-8-04

Approved as to Form Only
By: [Signature] Date: 8/10/04
Brandon J. Kavanagh
Mangum, Wall, Stoops & Warden, PLLC
City Attorneys

State of Arizona
) ss.
County of Yavapai

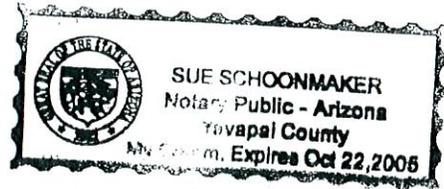
On this the 8th of November, 2004, before me, the undersigned Notary Public, personally appeared **Brian Mickelsen** the City Manager of the City of Cottonwood, who is personally known to me or satisfactorily proved himself/herself to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

[Signature]
Notary Public

My Commission Expires: October 22, 2005

State of Arizona
) ss.
County of Yavapai

SEAL

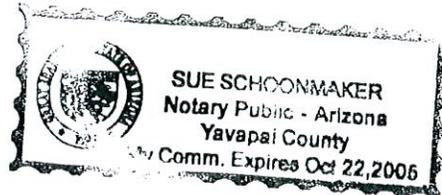


On this the 8th of November, 2004, before me, the undersigned Notary Public, personally appeared **Marianne Jimenez** the City Clerk of the City of Cottonwood, who is personally known to me or satisfactorily proved himself/herself to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

[Signature]
Notary Public

My Commission Expires: October 22, 2005

SEAL



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Lot 109, COTTONWOOD AIRPARK, TRACT ONE, PARTS A & B, according to the plat of record in the office of the County Recorder, Yavapai County, Arizona, recorded in Book 25 of Maps, page 19 and replated in Book 48 of Maps, page 90.