

When recorded return to:

**City Clerk
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86362
Folder**



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CORR 4137916

**CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
COTTONWOOD AIRPARK**

**This "Consent" is legally binding as of April 3, 2007
(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. 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").

D. 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, (the proposed Fifth Amendment dated January 1, 1993 was never signed), the Sixth Amendment dated July 5, 1994, the Seventh Amendment dated September 16, 1997, the Eighth Amended recorded December 22, 1998, and the Ninth Amended recorded October 1, 2001. The Tenth Amendment was recorded on March 17, 2003. The Eleventh, Twelfth and Thirteenth Amendment were recorded simultaneously on July 20th, 2005.

E. Thereafter by Assignment, recorded January 20th, 2006, in Book 4356 , page 473 of Official Records, CALC assigned an interest as Tenant under the Ground Lease of approximately 8.91 acres located south of Lot #122 of the Replat Cottonwood Airpark Tract One Parts A&B described on the Results of Survey performed by SEC dated June 16th, 2005, together with all rights, privileges, easements, appurtenances and improvements thereon to Backus





Family Investments, L.L.C. an Arizona Limited Liability Company

F. The CITY OF COTTONWOOD and BACKUS FAMILY INVESTMENTS thereafter subdivided the above mentioned parcel of land which is now legally described as COTTONWOOD AIRPARK TRACT ONE -PARTS B & C, recorded in the offices of the Yavapai County Recorder at Book 59, Page 57. Dated, March 13th, 2007.

G. Backus Family Investments, LLC, an Arizona limited liability company, hereafter referred to as ("BFI") now wishes to assign to ("Assignee") the rights possessed by BFI under its Ground Lease with the City of Cottonwood, i.e., Lot # 124, Parcel # 406-08-057 of the COTTONWOOD AIRPARK TRACT ONE-PARTS B&C, as further described in Exhibit A, attached hereto and incorporated by reference.

H. The Ground Lease requires the written consent of the City of Cottonwood to the assignment by BFI of its rights to the Assigned Parcel as Tenant under the Ground Lease to Assignee. It appears that the best interests of the City will be served by permitting Assignee to develop the Assigned Parcel, thus increasing the development and tax base for the City of Cottonwood. (The Assigned Parcel and any improvements constructed thereon are collectively referred to as the "Parcel.") Thus, the City of Cottonwood has indicated that it will grant its consent to this transaction by execution and delivery of the attached "Consent."

AGREEMENT

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

Consent. The City of Cottonwood hereby consents to the Assignment, attached hereto as Exhibit B and incorporated by reference.

1. by BFI to Assignee of its rights to the Assigned Parcel 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 Assigned Parcel 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 Assigned Parcel 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 Assigned Parcel.

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 Assigned Parcel, is \$125/unimproved acre/year, and \$0.01 per square foot of the area within the Improvement Parcel which is subleased to a subtenant, as set forth in Sections 4B.2&3 of the Ground Lease Agreement dated May 5, 1983 per year. Agrees that the property taxes for the Assigned Parcel shall be separately assessed and paid by Assignee;

2.7 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 Assigned Parcel 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 Assigned Parcel.

2.8 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 Assigned Parcel. 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.

2.9 agrees that the obligation of BFI to perform certain development work specified in the Ground Lease Agreement does not apply to Assignee

2.10 acknowledges that Assignee intends to encumber the Assigned Parcel 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 Assigned Parcel pursuant to separate documents to be submitted by the Lender to Landlord for review and approval.

2.11 acknowledges that Assignee shall independently comply with the insurance provisions of the Ground Lease;

2.12 acknowledges that pursuant to Section 20 of the Ground Lease the address for the tenant under the Assigned Parcel is:

The Gradijan Family Trust
PO Box 277 Cottonwood, AZ 86326
(925) 639-1144

2.13 agrees that the Term of the Lease for the Assigned Parcel 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 and may be extended for two successive periods of twenty-five years each. 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.

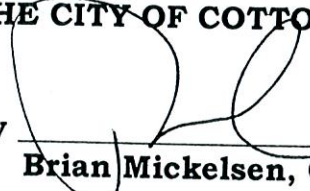
4. Further Documentation. Landlord agrees in good faith to execute such further or additional documents as become necessary or appropriate to carry out the intent and purpose of this Consent.

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 
Brian Mickelsen, City Manager

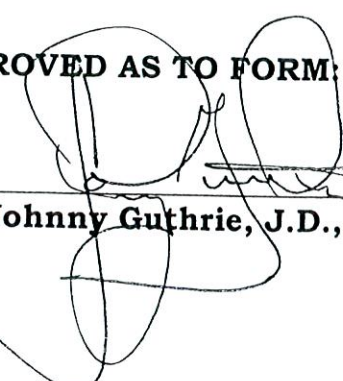
Date 4.9.07

ATTEST:

By 
Marianne Jimenez, City Clerk

Date 4-10-07

APPROVED AS TO FORM:

By 
Johnny Guthrie, J.D., City Attorney

Date April 9, 2007



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STATE OF ARIZONA)
) ss.

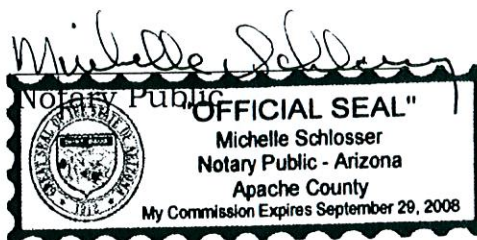


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County of Yavapai)

On this, the 9th day of April, 2007, before me, the undersigned Notary Public, personally appeared Brian Mickelsen, the City Manager, Cottonwood, AZ, known to me (or satisfactory proved to me) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



My Commission Expires:

9/29/08

STATE OF ARIZONA)
) ss.

County of Yavapai)

On this, the 10th day of April, 2007, before me, the undersigned Notary Public, personally appeared Marianne Jiménez, the City Clerk, Cottonwood, AZ, known to me (or satisfactory proved to me) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Michelle Schlosser
Notary Public



My Commission Expires:

9/29/08



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Exhibit "A"
Legal Description

Lot # 124, Parcel # 406-08-057 Cottonwood Airpark Tract One-Parts B&C



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