



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

06024196

**CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
LOT 104 OF COTTONWOOD AIRPARK**

This "Consent" is legally binding as of June 30, 2006 (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, and the Ninth Amendment recorded October 1, 2001. The Tenth Amendment was dated March 17, 2003. The Eleventh, Twelfth and Thirteenth Amendments were recorded on July 20, 2005; and the Fourteenth Amendment was recorded January 20, 2006. The Ground Lease Agreement and all Amendments are collectively referred to as the "Ground Lease." (Upon approval hereof, a Fifteenth Amendment reflecting these actions will be recorded with the Yavapai County Recorder.)
- 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. CALC now wishes to make an assignment to The Seeley, L.L.C., an Arizona limited liability company owned and controlled by William Seeley ("Assignee"), of some of

FEE
\$0
\$8
\$5
\$1
\$30



the rights possessed by CALC under its Ground Lease with the City of Cottonwood, i.e., to Lot 104, consisting of approximately 44,625 square feet, as shown on the Results of Survey performed by SEC dated June 16, 2005 with the exact legal description as attached hereto as Exhibit "A" (the "Parcel").

- F. The Ground Lease requires the written consent of the City of Cottonwood to the assignment by CALC 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 develop the Parcel, 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 CALC to ASSIGNEE of its rights to the 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 CALC has assigned its rights, duties and obligations to the 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 Parcel after the Effective Date of this Consent and releases CALC (and its predecessors) as Tenant from all obligations or duties arising under the Ground Lease relative to the 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 Parcel, which totals 44,625 square feet, is \$.01 per square foot of the area within the Improvement Parcel per year with the next payment due on January 1, 2007.
 - 2.7 agrees that the property taxes for the Parcel 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 Parcel and shall not be considered a default by Tenant or its successors under the Ground Lease affecting any of the other rights of CALC or affecting any other property



leased by CALC or its successors. Landlord agrees to exercise its remedies for a default by ASSIGNEE as provided under the Ground Lease solely against the Parcel.

- 2.9 agrees that in the event of a default by CALC or its successors under the Ground Lease, Landlord will exercise its rights solely against CALC or its successors and will not construe a default by CALC or its successors as a default by ASSIGNEE under the Parcel. So long as ASSIGNEE pays its rent and timely performs all other obligations as required under the Ground Lease, any default by CALC or its successors regarding its other obligations under the Ground Lease shall not be construed as a default by ASSIGNEE.
- 2.10 agrees that the obligation of CALC or its successors to perform certain development work specified in the Ground Lease Agreement dated May 5, 1983 under Exhibit 5, Development Plan and Timetable, does not apply to ASSIGNEE. The parties agree that the ASSIGNEE is obligated to a Development Plan and Timetable as set forth in Exhibit 1.
- 2.11 acknowledges that ASSIGNEE intends to encumber the 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 in the event of a default by ASSIGNEE under the Ground Lease pertaining to the Parcel 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 Section 14 of the Ground Lease;
- 2.13 acknowledges that pursuant to Section 20 of the Ground Lease the address for the tenant under the Parcel is:

The Seeley, L.L.C.,
an Arizona limited liability company
owned and controlled by William A. Seeley
101A Airpark Road
Cottonwood, AZ 86326

With a copy to:

- 2.14 agrees that the Term of the Lease for the 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. There are no amendments, modifications, supplements or other agreements or understandings except for those



contained in the Ground Lease. Landlord acknowledges (i) that CALC or its successors as Tenant has paid all rent, and (ii) that, to Landlord's knowledge, CALC has fully performed all of its obligations and is in good standing under the Ground Lease as they pertain to the Parcel.

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.

6. **Full Compliance.** 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.

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

THE CITY OF COTTONWOOD

By  _____
City Manager

Date: 6.20.06

By  _____
City Clerk



STATE OF ARIZONA)
) ss.
County of Yavapai)

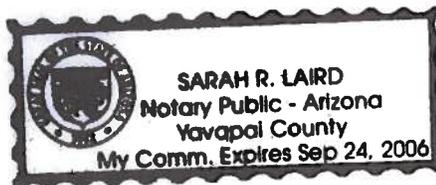
On this, the 22 day of JUNE, 2006, before me, the undersigned Notary Public, personally appeared BRIAN MICKELSEN, the City Manager, Cottonwood, AZ, known to me (or satisfactory proved to me) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes therein contained.

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

Sarah R Laird
Notary Public

My Commission Expires:

9-24-2006



STATE OF ARIZONA)
) ss.
County of Yavapai)

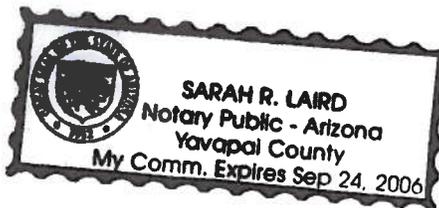
On this, the 22 day of JUNE, 2006, before me, the undersigned Notary Public, personally appeared MARIANNE JIMENEZ, the City Clerk, Cottonwood, AZ, known to me (or satisfactory proved to me) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes therein contained.

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

Sarah R Laird
Notary Public

My Commission Expires:

9-24-2006





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Page: 6 of 6
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EXHIBIT A

Lot 104, of 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.