

“CONSENT”

**CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
PARCEL NUMBER 406-08-064
Clyde and Lois Henderson to B and B Revocable Trust**

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

CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
PARCEL NUMBER 406-08-068E

Once fully executed, this Consent is legally binding as of _____
_____ 2016 (the "Effective Date").

DEFINITIONS

ASSIGNOR: Clyde and Lois E. Henderson

ASSIGNEE: B and B Revocable Trust

LANDLORD: City of Cottonwood

PROPERTY: as Described in Exhibit A, Lot 131 of the Cottonwood
Airpark Tract 1 Parts A and B, APN: 406-08-064, Address: 650 S.
Airpark Road, Cottonwood, AZ, 86326.

UNIT: All Improvements made to PROPERTY.

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, which seeks to serve the public interest by providing opportunities for industrial development, and by promoting economic development and the creation of new employment opportunities.
- Cottonwood Airpark L.C. the successor to 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.

- B. 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").
- C. The Ground Lease Agreement recorded in Book 4797, Page 649; which 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 Fifth Amendment dated January 1, 1993; the Sixth Amendment dated July 5, 1994; the Seventh Amendment dated September 16, 1997; the Eighth Amendment recorded December 22, 1998, in Book 3626, Page 140; the Ninth Amendment recorded October 1, 2001, in Book 3867, Page 214; the Tenth Amendment recorded March 17, 2003, in Book 4011, Page 367; the Eleventh Amendment recorded July 20, 2005, in Book 4288, Page 640; the Twelfth Amendment recorded July 20, 2005, in Book 4288, Page 644; the Thirteenth Amendment recorded July 20, 2005, in Book 4288, Page 649; the Fourteenth Amendment recorded January 20, 2006, in Book 4356, Page 475; the Fifteenth Amendment recorded August 21, 2006, in Book 4427, Page 538; the Sixteenth Amendment which was recorded September 3, 2008, in Book 4619, Page 633; and the Seventeenth Amendment which was recorded on February 27, 2009, in Book B-4651, Page 879. The Ground Lease Agreement and all Amendments are collectively referred to as the "Ground Lease".
- D. Thereafter by Assignment, recorded January 20, 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 of Cottonwood Airpark Tract One Parts A & B described on the Results of Survey performed by SEC dated June 16, 2005, together with all rights, privileges, easements, appurtenances and improvements thereon to Backus Family Investments, L.L.C. (BFI) an Arizona Limited Liability Company.
- E. The City of Cottonwood and Backus Family Investments (BFI) thereafter subdivided the above mentioned parcel of land which is now legally described as Cottonwood Airpark Tract One-Parts B & C, recorded in the office of the Yavapai County Recorder in Book 59, Page 57, dated March 13, 2007.
- F. Thereafter by Assignment, dated May 18, 2007, as recorded in Book 4513 Page 834 of the Yavapai County Records, BFI assigned an interest as tenant under the Ground Lease of said PROPERTY together with all rights, privileges, easements, appurtenances and

improvements thereon to Clyde and Lois E. Henderson (HENDERSON).

- G. Clyde and Lois E Henderson now wish to assign the rights possessed by HENDERSON under its ground lease with the City of Cottonwood said PROPERTY 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 HENDERSON of its rights as Tenant under the Ground Lease to ASSIGNEE. The City of Cottonwood has indicated that it will grant its consent to this transaction by execution and delivery of this Consent, in consideration for and subject to the covenants and conditions recited below.
- I. Landlord, ASSIGNOR and ASSIGNEE hereby specifically reaffirm the following language from the First Amended Ground Lease dated May 5, 1983:
- a. The City of Cottonwood (“Landlord”) is an Arizona municipality which seeks to serve the public interest by providing opportunities for industrial development, and by promoting economic development and the creation of new employment opportunities.
- b. Landlord and Tenant jointly will serve the public interest by providing residents of Cottonwood with access to improved job opportunities on the property.

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 Clyde and Lois Henderson to ASSIGNEE of its rights under the Ground Lease to PROPERTY. Such consent to be effective upon execution of this instrument by ASSIGNEE, provided, however, that during the entire Term of the Lease and any extensions thereof, any and all transfers shall be subject to review and approval by the Cottonwood City Council.
2. Acceptance of Assignment and Promise to Perform. By its signature below, ASSIGNEE hereby accepts, reaffirms and agrees to faithfully perform all of ASSIGNOR’s duties, obligations and undertakings with respect to the PROPERTY and hereby agrees to the following conditions.

- 2.1 **Aviation Usage.** The Unit shall be primarily utilized for Aeronautical Use as defined, from time to time, by the Federal Aviation Administration. Owners and Occupant of the Unit shall not permit or keep on or in the Unit, except fuel inside a fuel tank of an aircraft or as approved in writing by the Board, any flammable, combustible or explosive material, chemical or substance in a manner, which may, by virtue of the type of material or quantity kept, increase the insurance rate or make insurance on any unit unobtainable or unenforceable. All such substances shall be kept in containers or other receptacles as directed by the applicable Fire Department, insurance agency, or other governmental authority. Further, no toxic materials of any kind in quantities exceeding that allowable by law shall be stored or kept in or on the Unit, or any portion thereof. All such material shall be kept on the Property in strict accordance with all applicable laws, statutes, rules, ordinances and regulations. The Unit may not be used as a residence.
- 2.2 **Inspection.** The City of Cottonwood shall be allowed to immediately enter into and inspect the Unit at any time should the City of Cottonwood determine in its sole discretion that an emergency exists. The City of Cottonwood shall also be allowed to inspect the UNIT and PROPERTY, during customary business hours, upon giving the ASSIGNEE (5) five days' notice of such inspection. Assignee hereby agrees to reasonably cooperate by opening the Unit to facilitate such an inspection.
- 2.3. **Rules and Regulations.** The City of Cottonwood reserves the right to adopt, amend and enforce reasonable rules and regulations governing the Leased Premises and the public area and facilities used by the Assignee. Such rules and regulations shall be consistent with the safety, security and overall public utility of the Airport and with the rules, regulations and orders of the Federal Aviation Administration or such other successor agency as may hereafter be designated by the Federal Government with respect to aircraft and airport regulation. Assignee agrees to obey by all such rules and regulations adopted or amended by the Landlord and specifically agrees that violation of any such rule and regulation shall constitute an Event of Default as provided in this Agreement.
- 2.4 **Part 77.** Assignee agrees to comply with the notification and review requirements contained in Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) in the event any future structure or building is planned for the premises, or in the event of any planned modification or alteration of any

present or future building or structure situated on the premises. Assignee expressly agrees that it will not erect or permit the erection of any structure or object such that the object encroaches into any Part 77 airspace. In the event that Assignee allows or fails to mitigate an object that encroaches into any Part 77 airspace, the City of Cottonwood reserves the right to enter into the Leased premises and remove the offending structure or object at the expense of the Assignee.

- 2.5 **Non-Discrimination.** Assignee agrees that: (i) no person on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; (ii) in the construction of any improvements on, over or under such land, in providing employment, and in the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (iii) Assignee shall use the premises in compliance with all of the requirements imposed by or pursuant to 41 C.F.R. Part 60, 49 USC 306, 49 C.F.R. Part 21, 49 C.F.R. Part 27, or the assurances contained in FAA Order 5100.38A as said laws, regulations, or assurances may be amended from time to time. Assignee assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to insure that no person shall, on the grounds of race, creed, color, national origin, sex, sexual orientation, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Assignee or its transferee for the period during which Federal assistance is extended to the airport program, except for Federal assistance as to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. Assignee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided, however, that

Assignee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers or users.

- 2.6 **Affirmative Action.** Regardless of the applicability of 14 C.F.R. Part 152 to the airport, Assignee assures that it will undertake an affirmative action program as described in 14 C.F.R. Part 152, subpart E to assure that no person shall, on the grounds of race, creed, color, national origin, sex or sexual orientation be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, subpart E. Assignee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Assignee agrees that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Lease for a purpose for which a DOT program or activity is extended, or for another purpose involving the provision of similar service or benefits, Assignee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs with the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 as said regulations may be amended from time to time
- 2.7 Subordination Assignee agrees that this Assignment of Unit #2 shall be subordinate to the provisions and requirements of any existing or future agreement between the City of Cottonwood and the United States, or the City of Cottonwood and the State of Arizona, relative to the development, operation or maintenance of the Airport.
3. Release. In exchange for ASSIGNEE's faithful performance hereunder, and as of Effective Date of this Agreement, the City as Landlord under the Ground Lease, hereby:
- 3.1 Certifies that formal approval of the Assignment to ASSIGNEE is hereby granted by the City;
- 3.2 Acknowledges and agrees that ASSIGNOR has assigned its rights, duties and obligations to the PROPERTY to ASSIGNEE. Landlord agrees to look solely to ASSIGNEE for collection of all rents and other amounts arising from the Ground Lease for the PROPERTY after the Effective Date of this Consent and releases ASSIGNOR (and its predecessors)

as Tenant from all obligations or duties arising under the Ground Lease relative to the PROPERTY;

- 3.3 Acknowledges receipt of all rent and other amounts owed by Tenant to Landlord under the Ground Lease with respect to the PROPERTY as of the Effective Date;
 - 3.4 Ratifies, affirms and confirms the validity of all other terms and conditions of the Ground Lease;
 - 3.5 Confirms that, to Landlord's knowledge, there are no uncured defaults or breaches by Tenant under the Ground Lease;
 - 3.6 Agrees that the property taxes for the UNIT shall be separately assessed and paid by ASSIGNEE;
 - 3.7 Acknowledges that ASSIGNEE may encumber its leasehold interest in the PROPERTY to Purchase or construct certain improvements which may be subject to an encumbrance in favor of a Lender. Landlord agrees to provide notice to the Lender and in the event of a default by ASSIGNEE under the Ground Lease pertaining to the PROPERTY if requested by such Lender, and will execute a separate instrument to that effect if asked to do so.
 - 3.8 Acknowledges that pursuant to Section 20 of the Ground Lease the address for the Tenant under the PROPERTY is;
1287 Settlers Circle
Cottonwood, AZ 86326
Phone Number 928-821-2249
 - 3.9 **NAME OF ASSIGNEE:** B and B Revocable Trust
 - 3.10 Affirms that the Term of the Lease to the Lot runs until December 31, 2033.
4. Ratification of Ground Lease with Respect to the Unit. Except as modified herein, the terms and conditions contained in the Ground Lease with respect to the PROPERTY 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 all other rights and obligations under the Ground Lease with respect to the Unit. The parties represent that to the best of their knowledge and belief, there are no other amendments, modifications, supplements or other agreements or understandings with respect to the subject

matter of this Consent (i.e., the PROPERTY) except for those identified herein. The City as Landlord further acknowledges (i) that ASSIGNOR as Tenant has paid all rent due with respect to the PROPERTY, and (ii) that, to the City's knowledge, ASSIGNOR has fully performed all of its obligations and is in good standing under the Ground Lease with respect to the PROPERTY.

5. Further Documentation. The City 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.
6. 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, provided that it shall not take effect until it is fully executed by both the City and ASSIGNEE.

The undersigned Representatives of the City of Cottonwood hereby personally affirm and certify that there has been full compliance with all 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:

Diane Joens, Mayor

Approved as to Form:

Attest:

Steve Horton, Esq.
City Attorney

Marianne Jiménez
City Clerk

The undersigned ASSIGNEE hereby personally affirms and accepts the duties of ASSIGNEE as outlined above.

NAME OF ASSIGNEE:

David Palm

Exhibit "A"
Legal Description

Lot # 131, parcel #406-08-064 of Cottonwood Airpark Tract-One Parts B&C as recorded in Book 59 Page 57 of the Yavapai County Official Records.