

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Airport Lease Assignment and Amendment – Blythe to Graves
DATE: April 15, 2003

NEEDS: For the City Council to consider approving the assignment of a long-term property lease at the Paso Robles Municipal Airport.

- FACTS:**
1. On May 5, 1995, the City entered into a long-term Lease Agreement (“Lease”) with Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust dated February 28, 1994 for Parcel 1 of PRAL 95-001 (incorrectly identified in the original Lease Agreement as Parcel 38 and a portion of Parcel 39 of PRAL 95-001.
 2. The Lease allows for the assignment of the Lease to another party. The City has been requested to approve the assignment of the Lease to John R. and Koene R. Graves, Trustees for the Living Trust of John R. Graves and Koene R. Graves (“Assignee”).
 3. The Lessee and Assignee agree that uses on the leased premises shall be limited to those specified in the Lease, and all other terms and conditions of the lease will remain unchanged.
 4. The lease remains in full compliance with the terms and conditions contained therein.

**ANALYSIS
AND**

CONCLUSION: The requested Assignment and Amendment of Lease is consistent with the provisions of the approved Lease Agreement and the intended use and occupancy of the premises are allowed in the existing Lease. The new lessees have demonstrated suitable financial and business ability to maintain the Lease. Additional modifications to the site and/or allowed uses will comply with current City development procedures.

POLICY

REFERENCE: Airport Lease Policy; Airport Minimum Standards

FISCAL

IMPACT: None. The established rental rates in the Lease Agreement remain unchanged

- OPTIONS:**
- a. Adopt Resolution No. 03-xx approving the subject Assignment and Amendment of Lease, approving the Consent to Security Interest in a Lease, directing staff to have the Memorandum of Assignment and Amendment of Lease Recorded with the County Clerk Recorder, and authorizing the City Manager to execute all aforementioned documents on behalf of the City.
 - b. Amend, modify, or reject the above option.

Attachments (3)

- 1) Resolution
- 2) Lease Assignment
- 3) Consent to Security Interest in a Lease
- 4) Memorandum of Lease Assignment

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING ASSIGNMENT OF A LONG-TERM PROPERTY LEASE OF PARCEL 1,
PRAL 95-001, IN THE PASO ROBLES AIRPORT INDUSTRIAL PARK FROM HARRY E. AND
HELEN S. BLYTHE, TRUSTEES OF THE HARRY E. BLYTHE AND HELEN S. BLYTHE 1994
REVOCABLE TRUST TO JOHN R. AND KOENE R. GRAVES, TRUSTEES OF THE LIVING TRUST
OF JOHN R. GRAVES AND KOENE R. GRAVES

WHEREAS, the City of El Paso de Robles (herein "City") has entered into a long-term Lease Agreement (herein "Lease") with Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, dated February 28, 1994 for premises on the Municipal Airport; and

WHEREAS, said tenants have requested an assignment of the Lease to John R. and Koene R. Graves, Trustees of the Living Trust of John R. Graves and Koene R. Graves (herein "Assignee"); and

WHEREAS, provisions within the Lease allow for City approval of the requested assignment; and

WHEREAS, the Lease is currently found to be in full force and compliance; and

WHEREAS, the proposed Assignee is determined to be a responsible and qualified Lessee under the provisions of the subject Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. That the City Council of the City of El Paso de Robles does hereby approve the Assignment of Lease of Parcel 1 (incorrectly referred to as Parcel 38 and a portion of Parcel 39) of Parcel Map PRAL 95-001, and the terms and conditions therein stated.

SECTION 2. That the City Council of the City of El Paso de Robles does hereby release Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, from any and all responsibility and obligation under the terms of the Lease Agreement.

SECTION 3. That the City Council of the City of El Paso de Robles does hereby recognize John R. and Koene R. Graves, trustees of the Living Trust of John R. Graves and Koene R. Graves as the Assignees and Tenants under the Lease agreement.

SECTION 4. That the City Council of the City of El Paso de Robles does hereby authorize the execution of the required documents and the recordation of the Memorandum of Assignment and Amendment of Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 15th day of April 2003 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

ASSIGNMENT AND AMENDMENT OF LEASE

This Assignment and Amendment of Lease (“Assignment”) is made as of April 15, 2003, by and between **Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, u/d/t dated February 28, 1994** (“Assignor”), and **John R. and Koene R. Graves, Trustees of the Living Trust of John R. Graves and Koene R. Graves** (“Assignee”).

RECITALS

A. The City of El Paso de Robles (“Lessor”), as lessor, and Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, u/d/t dated February 28, 1994 (“Lessee”), as lessee, entered into a Non-Subordinated Airport Ground Lease (hereinafter, “Lease”), a copy of which is attached and incorporated by reference as Exhibit “B”, pursuant to which Lessor leased to Lessee and Lessee leased from Lessor that certain property identified as **Parcel 1 of Parcel Map PRAL 95-001, consisting of 7.12 acres, (incorrectly referred to as Parcel 38 and a portion of Parcel 39 of PRAL 95-001 in original Lease dated February 28, 1994)** more particularly described in Lease Exhibit “A”, attached hereto, and incorporated herein by reference, for a term of 50 years, commencing on May 5, 1995, and ending on May 31, 2045, unless subject to earlier termination as provided in the Lease. Memorandum of Lease was recorded October 20, 2000, as Instrument #2000-062080 of Official Records of the County of San Luis Obispo.

B. Lessee (hereinafter, “Assignor”) desire to assign the subject Lease to **John R. and Koene R. Graves, Trustees of the Living Trust of John R. Graves and Koene R. Graves** (hereinafter, “Assignee”), and Assignee desires to accept the assignment of the Lease from the Assignor and assume all responsibilities and obligations of Lessee under the Lease.

C. Assignor desires to be released from the obligations of the subject Lease, and Assignee desires to be substituted as Lessee under the terms and conditions of the lease agreement.

Therefore, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Assignor and Assignee agree as follows:

Section 1. Assignment.

Assignor assigns and transfers to Assignee all right, title, and interest in the Lease and Assignee accepts from Assignor all right, title, and interest, subject to the terms and conditions set forth in this Assignment.

Section 2. Assumption of Lease Obligations.

Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor as Lessee under the Lease, including the making of all payments due to or payable on behalf of Lessor under the Lease as they become due and payable.

Section 3. Amendments to Lease

- a. The Lease Agreement is amended to read as follows:
As Lessee: John R. Graves
 P.O. Box 3470
 Paso Robles, CA 93447

- b. Section XXIX, 5th Sentence is amended to delete the Blythe children, as named therein; and to add the heirs to the Graves Trust: “Notwithstanding the foregoing, Lessee shall have the right to transfer its right in the premises to the son of John and Koene Graves, Jason Graves, any entity controlled by Jason Graves or by Virginia Graves Weisz, sister of John R. Graves, by giving notice of such assignment to Lessor and by signing such documentation memorializing such assignment.

Section 4. Assignor’s Covenants.

- a. Assignor covenants that the copy of the Lease attached as Exhibit “B” is a true and accurate copy of the Lease as currently in effect and that there exists no other agreement affecting Assignor’s tenancy under the Lease.

- b. Assignor covenants that the Lease is in full effect and no default exists under the Lease, nor any acts or events which, with the passage of time or the giving of notice or both, could become defaults.

Section 5. Litigation Costs.

If any litigation between Assignor and Assignee arises out of this Assignment or concerning the meaning of interpretation of this Assignment, the losing party shall pay the prevailing party’s costs and expenses of this litigation, including, without limitation, reasonable attorney fees.

Section 6. Indemnification.

Assignor indemnifies Assignee from and against any loss, cost, or expense, including attorney fees and court costs relating to the failure of Assignor to fulfill Assignor’s obligations under the Lease, and accruing with respect to the period on or prior to the date of this Assignment. Assignee indemnifies Assignor from and against any loss, cost, or expense, including attorney fees and court costs relating to the failure of Assignee to fulfill obligations under the Lease, and accruing with respect to the period subsequent to the date of this Assignment.

Section 7. Successors and Assigns.

This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

Section 8. Governing Law.

This Assignment shall be governed by and construed in accordance with California law.

The parties have executed this Assignment as of the date first above written.

ASSIGNOR:

ASSIGNEE:

Harry E. Blythe

John R. Graves

Helen S. Blythe

Koene R. Graves

CITY OF PASO ROBLES:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

APPROVED AS TO FORM:

Iris P. Yang, City Attorney

Consent of Landlord

The undersigned Lessor, as Landlord under the Lease, hereby approves and gives consent to this Assignment of the Lease of Parcel 1 of Parcel Map PRAL 95-001 (*incorrectly referred to as Parcel 38 and a portion of Parcel 39 of Parcel Map PRAL 95-001 in the subject lease agreement*) to Assignees, Living Trust of John R. Graves and Koene R. Graves, as indicated, and hereby releases Assignor, Harry E. Blythe and Helen S. Blythe, as Tenants, from any and all responsibilities and obligations under the terms of the subject agreement.

By this Consent, Landlord hereby accepts Assignee as Tenant under the terms of the subject lease agreement and agrees to his assumption of all rights, responsibilities and obligations of the Tenant, as specified under the terms and conditions contained therein.

Further, Lessor agrees to the amendments referenced in Section 3 of the Assignment.

Approved this 15th day of April 2003, in Paso Robles, California, on behalf of the City of El Paso de Robles.

By: _____
James L. App, City Manager

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

Recording Requested by and
When Recorded Return to:

**City of Paso Robles
Department of Public Works
1000 Spring Street
Paso Robles, CA 93446**

For Recorder Use Only

**MEMORANDUM OF
ASSIGNMENT AND AMENDMENT OF LEASE
PARCEL 1 of PRAL 95-001**

This Memorandum of Assignment and Amendment of Lease (“Memorandum”) is made and agreed to as of **April 15th, 2003**, by and among **Harry E. and Helen S. Blythe**, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, u/d/t dated February 28, 1994 (“Assignor”), **John R. and Koene R. Graves**, Trustees of the Living Trust of John R. Graves and Koene R. Graves (“Assignee”) and the **City of El Paso de Robles** with respect to that certain Assignment and Amendment of Lease between all parties (“Amendment”) for Parcel 1 of PRAL 95-001, July 18, 1995, Book 51, Page 63 of Parcel Maps in the Official Records of the County of San Luis Obispo, commonly known as 4301 Second Wind Way, Paso Robles, California (herein the “Property”).

1. Lease Agreement; Premises

Pursuant to that certain Lease dated May 5, 1995, the City of El Paso de Robles entered into a Non-Subordinated Airport Ground Lease (hereinafter, “Lease Agreement”) for property within the Airport Industrial Park with Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, u/d/t dated February 28, 1994, as Lessee of the Property and the City of El Paso de Robles as Lessor. The Lease incorrectly refers to the leased premises as Parcel 38 and a Portion of Parcel 39 of PRAL 95-001.

2. Assignment, Amendment of Lease

Pursuant and subject to the provisions contained in the Lease Amendment, all obligations of the Assignor under the Lease Agreement have been assigned to and assumed by Assignee. Except as expressly assigned, modified and/or amended by the Lease Amendment, all the terms and conditions set forth in the Lease Agreement shall remain in full force and effect. On April 15, 2003, the City of El Paso de Robles adopted Resolution 03-____ approving the Assignment, with findings. A true and correct copy of said Resolution is attached hereto as Exhibit A.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease Amendment as though fully set forth herein.

This Memorandum of Assignment of Lease is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease Amendment, of which this is a memorandum.

IN WITNESS WHEREOF, Harry E. and Helen S. Blythe, Trustees of the Harry E. Blythe and Helen S. Blythe 1994 Revocable Trust, u/d/t dated February 28, 1994, John R. and Koene R. Graves, Trustees of the Living Trust of John R. Graves and Koene R. Graves and the City of El Paso de Robles have executed this Memorandum of Assignment and Amendment of Lease as of the date first written above.

ASSIGNOR:

ASSIGNEE:

Harry E. Blythe

John R. Graves

Helen S. Blythe

Koene R. Graves

Above Signatures to be Notarized

LESSOR:

CITY OF PASO ROBLES

James L. App, City Manager

CONSENT TO SECURITY INTEREST IN A LEASE

This CONSENT TO SECURITY INTEREST IN A LEASE is made and entered into as of April 15, 2003, by and among the City of El Paso de Robles, California (“Master Landlord ”), Bank of Albuquerque (“Bank”), and the Living Trust of John R. Graves and Koene R. Graves (“Tenant”).

This Consent is entered into with reference to the following facts:

- A. Master Landlord is the present owner in fee simple of the real property located at the Paso Robles Airport identified as Parcel 1 of Parcel Map PRAL 95-001 (“Premises”), commonly known as 4301 Second Wind Way. These premises were heretofore incorrectly referred to as Parcel 38 and a portion of Parcel 39 of PRAL 95-001.
- B. Master Landlord entered into a Non-Subordinated Airport Ground Lease (“Lease Agreement”) dated May 5, 1995 for the Premises. Said Lease Agreement was assigned to Tenant by action of the City Council on April 15, 2003. The subject Premises is identified on Exhibit “A” hereto attached.
- C. Tenant has requested the Bank to extend credit on the premises, to be secured in part by a security interest in the Premises created by the Lease.
- D. The Bank is willing to extend credit to Tenant in the amount he has requested if, among other things, Master Landlord will execute this Consent.

Now, therefore, the parties agree as follows:

- A. Master Landlord hereby consents to the execution by Tenant of a promissory note in favor of the Bank and any other institutional lenders to which the Bank may assign some or all of its interest in an amount not to exceed 80% of the value of the leasehold and its improvements, as determined by a current, certified appraisal, or \$1,600,000, whichever is greater; which shall evidence Bank’s extension of credit to Tenant and which shall be secured by a deed of trust to be recorded against Tenant’s interest in the leased Premises.
- B. As a material part of the consideration for the Bank’s extension of credit to Tenant and with the understanding that the Bank and the Bank’s assignees are relying on the representations made by this Consent, Master Landlord represents that, to Master Landlord’s knowledge, the Lease Agreement is currently in full force and effect and has not been modified and that no default currently exists thereunder.
- C. Master Landlord agrees that in the event the Tenant should be found in default on the promissory note, the Bank or the Bank’s Assignees shall provide Master Landlord with written notice of intent to foreclose concurrently with other notifications initiating such procedure. Master Landlord shall have the option of curing the default in accordance with procedures specified in the lease. If Master Landlord does not exercise this option, as prescribed, and Bank or Bank’s Assignee forecloses on the security instrument securing its interest in the Lease Agreement and acquires Tenant’s interest in the Leased Premises at such foreclosure sale, then Bank shall have the right to seek out a new tenant who shall assume the Lease upon consent of Master Landlord, which consent shall not be

unreasonably withheld for a Tenant whose proposed uses are consistent with the requirements of the lease, and who assumes the terms of the present lease agreement or substantially similar terms. The new Lease Agreement shall, if approved, thereafter also be referred to as the "Lease Agreement".

- D. This Consent shall remain in full force and effect so long as the Bank or the Bank's Assignees have any interest in the Lease Agreement.

This Consent is executed as of the date first written above.

Bank of Albuquerque

Ed Larranaga, Vice President

Nonsubordinated Airport Ground Lease

John R. Graves, Tenant

Koene R. Graves, Tenant

City of El Paso de Robles – Master Landlord

James L. App, City Manager

ATTEST:

Sharilyn Ryan, Deputy City Clerk