

RESOLUTION NO. 14-163

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING AN ASSIGNMENT AND ASSUMPTION AND FIRST AMENDMENT TO AND
PARTIAL TERMINATION OF MUNICIPAL AIRPORT PROPERTY LEASE BETWEEN CITY
AND PROPELLER INVESTMENT PROPERTIES AND APPLIED TECHNOLOGIES
(3020 & 3034 Propeller Drive)

WHEREAS, City (as Landlord) and Propeller Investment Properties, LLC (as Tenant) (“PIP”) entered into that certain Municipal Airport Property Lease/Nonsubordinated Airport Ground Lease, dated October 22, 2009 (the “PIP Lease”) whereby PIP has leased from Landlord that certain property referred to as Parcels 3, 4 and 5 of Parcel Map No. PRAL 88-207 (Assessor’s Parcel Nos. 025-452-003, -004 and -005) and commonly known as 3034 Propeller Drive and 3020 Propeller Drive), together with certain other property (all, collectively, the “Original Premises”); and

WHEREAS, the referenced Parcels 3 and 5 are improved with existing buildings, and Parcel 4 is improved with surface parking for the users and guests of said existing buildings; and

WHEREAS, PIP submitted an application to City, and City has approved a lot line adjustment and lot merger (LLA No. 14-0038) to shift the existing lot line separating Parcels 3 and 4 so that the parking currently existing on Parcel 4 is divided, and a portion of said parking is merged with Parcel 3 to create a new Parcel 1 (as shown on Parcel Map No. PRAL 14-0038) (referred to hereinafter as the “Applied Premises”), and the remainder of the parking area on Parcel 4 is designated as new Parcel 2 (as shown on Parcel Map No. PRAL 14-0038) to serve as parking for Parcel 5 (said parking for Parcel 5 and Parcel 5 are collectively referred to herein as the “PIP Premises”); and

WHEREAS, Applied Technologies, Inc. (“Applied”) is in the process of purchasing all of PIP’s rights and interest in the PIP Lease as to the Applied Premises; and

WHEREAS, to implement such sale and purchase, PIP, Applied and City desire to amend the PIP Lease to provide for the assignment by PIP and assumption by Applied of all of PIP’s rights, title and interest under the PIP Lease as to the Applied Premises, to provide that PIP be relieved of all obligations, commitments and responsibilities under the PIP Lease as to the Applied Premises, and to make other conforming changes related thereto; and

WHEREAS, in furtherance of such assignment and assumption, Applied desires to enter into a separate Municipal Airport Property Lease/Nonsubordinated Airport Ground Lease (the “Applied Lease”) relating to the Applied Premises, and thus provide for the concurrent partial termination of the PIP Lease as it relates to the Applied Premises; and

WHEREAS, as a condition to such new Applied Lease and the partial termination of the PIP Lease as to the Applied Premises, PIP and Applied must execute and record a reciprocal easement and maintenance or similar instrument (“REA”) against the Applied Premises and the PIP Premises providing for certain reciprocal access easements for vehicular and pedestrian ingress and egress and utilities across the parking areas located on the PIP Premises and the Applied Premises, and other

related provisions, including without limitation the sharing of the costs of maintenance and repairs to such parking areas;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of El Paso de Robles as follows:

Section 1. The City Council hereby approves the Assignment and Assumption and First Amendment to and Partial Termination of Municipal Airport Property Lease (the "Assignment/Amendment"), in substantially the form attached hereto as Exhibit A and incorporated herein by reference, and hereby authorizes the City Manager to execute said Assignment/Amendment on behalf of the City, subject to any minor technical or clarifying changes approved by the City Attorney, and any documents necessary to effectuate the assignment and assumption, amendment and partial termination provided for in the Assignment/Amendment. The City Council further authorizes and directs the execution and recordation of a Memorandum of the Assignment/Amendment, in form and content acceptable to the City Attorney, and such other actions as may be necessary to carry out the obligations of the City under the Assignment/Amendment.

Section 2. The City Council hereby further authorizes the City Manager to execute and record against the PIP Premises and the Applied Premises an REA, as provided for in Section 5 of the Assignment/Amendment, which REA shall be in form and content acceptable to the City Attorney.

PASSED AND ADOPTED this 2nd day of December, 2014, by the following vote:

AYES: Strong, Hamon, Reed, Martin
NOES:
ABSENT:
ABSTAIN: Gregory



Steven W. Martin, Mayor

ATTEST:


Caryn Jackson, Deputy City Clerk

EXHIBIT A

**ASSIGNMENT AND ASSUMPTION AND FIRST AMENDMENT TO
AND PARTIAL TERMINATION OF MUNICIPAL AIRPORT PROPERTY LEASE
BETWEEN CITY OF EL PASO DE ROBLES,
PROPELLER INVESTMENT PROPERTIES, LLC and
APPLIED TECHNOLOGIES, INC.**

THIS ASSIGNMENT AND ASSUMPTION AND FIRST AMENDMENT TO AND PARTIAL TERMINATION OF MUNICIPAL AIRPORT PROPERTY LEASE (this "Amendment") is made and entered into as of _____, 2014, by and between the **City of El Paso de Robles**, a municipal corporation of the State of California, ("Landlord"), **Propeller Investment Properties, LLC**, A California limited liability company ("PIP" or "Assignor"), and **Applied Technology Associates, Inc.**, a California corporation ("Applied" or "Assignee"), who agree as follows:

RECITALS

A. Landlord and PIP (as Tenant) entered into a Municipal Airport Property Lease (also referred to as a Nonsubordinated Airport Ground Lease), dated October 22, 2009, a Memorandum of which was recorded in the Official Records of San Luis Obispo County on _____, 2009, as Instrument No. _____ (the "PIP Lease") whereby PIP has leased from Landlord that certain property referred to as Parcels 3, 4 and 5 of Parcel Map No. PRAL 88-207 (Assessor's Parcel Nos. 025-452-003, -004 and -005) and commonly known as 3034 Propeller Drive and 3020 Propeller Drive), and Parcels 4, 5 and 6 of Parcel Map No. PRAL 96-025 (Assessor's Parcel Nos. 025-454-004, -005 and -006) located in the City of Paso Robles, County of San Luis Obispo, California, as more particularly described in Exhibit "A", attached hereto and incorporated herein by reference (the "Original Premises"). Except for the adjustment to the Monthly Rent, as set forth in Section 4, below, to account for the reduced area of the Original Premises as provided for herein, this Amendment applies only to that portion of the Original Premises referred to as Parcels 3, 4 and 5 of Parcel Map No. PRAL 88-207 (referred to hereinafter as "Parcel 3," "Parcel 4" and "Parcel 5," respectively).

B. Parcels 3 and 5 are improved with existing buildings, and Parcel 4 is improved with surface parking for the users and guests of said existing buildings. PIP submitted an application to City, and City (through its Community Development Department) has approved a lot line adjustment and lot merger (LLA No. 14-0038) to shift the existing lot line separating Parcels 3 and 4 so that the parking currently existing on Parcel 4 is divided, and a portion of said parking is merged with Parcel 3 to create a new Parcel 1 (as shown on Parcel Map No. PRAL 14-0038) (referred to hereinafter as the "Applied Premises"), and the remainder of the parking area on Parcel 4 is designated as new Parcel 2 (as shown on Parcel Map No. PRAL 14-0038) to serve as parking for Parcel 5 (said parking for Parcel 5 and Parcel 5 are collectively referred to herein as the "PIP Premises"). The Applied Premises is shown and described in Exhibit "B", attached hereto and incorporated herein by reference. The PIP Premises is shown and described in Exhibit "C", attached hereto and incorporated herein by reference.

C. For valuable consideration, Assignee has purchased and acquired all of Assignor's rights and interest in the PIP Lease as to the Applied Premises.

D. The parties desire to enter into this Amendment to provide for the assignment by PIP/Assignor and assumption by Assignee of all of Assignor's rights, title and interest under the PIP Lease as to the Applied Premises, and to provide that PIP/Assignor be relieved of all obligations, commitments and responsibilities under the PIP Lease as to the Applied Premises and make other conforming changes related thereto.

AGREEMENTS

1. Lease Assignment and Assumption. Assignor hereby assigns to Assignee all of Assignor's rights, title, duties and obligations under the PIP Lease as it relates to the Applied Premises, and Assignee hereby accepts and unconditionally assumes all of Assignor's rights, title, duties and obligations under the PIP Lease as it relates to the Applied Premises. The parties hereby agree that PIP/Assignor is hereby released from any and all obligations and responsibilities under the PIP Lease as it relates to the Applied Premises and, subject to Section 2, below, Applied/Assignee shall be recognized as the Tenant under the terms of the PIP Lease as it relates to the Applied Premises, and shall be solely responsible for full compliance with all terms and conditions of the PIP Lease as it relates to the Applied Premises. By its execution of this Amendment, Landlord consents to the assignment and assumption provided for in this Section 1.

2. New Applied Lease; Partial Termination of PIP Lease. In implementation of the assignment and assumption provided for in Section 1, above, concurrently with execution of this Amendment, Assignee shall execute a separate Municipal Airport Property Lease/Nonsubordinated Airport Ground Lease (the "Applied Lease") relating to the Applied Premises. The Applied Lease shall be in the same format and contain substantially the same provisions and term as the existing PIP Lease, as such provisions apply to the Applied Premises. Following execution of this Amendment and the Applied Lease, and provided the Applied Lease is in full force and effect, the PIP Lease shall be deemed to be terminated as to the Applied Premises, and thereafter all rights, title, duties and obligations relating to the Applied Premises shall be governed by, and shall be as set forth in the Applied Lease; provided, however, the PIP Lease, as amended by this Amendment, shall thereafter continue to remain in full force and effect as to the PIP Premises and the remainder of the Original Premises not affected by this Amendment (i.e., Parcels 4, 5 and 6 of Parcel Map No. PRAL 96-025 (Assessor's Parcel Nos. 025-454-004, -005 and -006)).

3. Revised Legal Description of the Premises. As of the effective date of this Amendment, and provided the new Applied Lease has been executed and is in full force and effect, the Legal Description of the Premises attached to the PIP Lease as Exhibit A thereto shall be replaced in its entirety with the Legal Description of the Premises (Revised 2014), attached hereto as Exhibit "D" and incorporated herein by reference, which Legal Description includes the PIP Premises and the remainder of the Original Premises not affected by this Amendment (i.e., Parcels 4, 5 and 6 of Parcel Map No. PRAL 96-025 (Assessor's Parcel Nos. 025-454-004, -005 and -006) (hereinafter collectively referred to as the "Remaining PIP Leased Premises").

4. Rent. As of the effective date of this Amendment, the Base Rent payable under Section 4.1 of the PIP Lease shall be [redacted] Dollars (\$ [redacted]) for the Remaining PIP Leased Premises. The Parties acknowledge that said amount does not constitute

a modification in the amount of Base Rent payable under the PIP Lease, but is merely a proportional adjustment to the Base Rent to take into account the elimination of the Applied Premises from the provisions of the PIP Lease, it being understood that the Base Rent for the Applied Premises shall be governed by the provisions of the Applied Lease. All other provisions relating to the payment of Rent under the PIP Lease, including without limitation the cost-of-living increases provided for under Section 4.3 of the PIP Lease, shall remain unchanged and in full force and effect.

5. REA. Prior to or concurrently with the execution of this Amendment and the Applied Lease, the Parties shall prepare, execute and record a Reciprocal Easement and Maintenance Agreement or similar instrument (the "REA") against the Applied Premises and the PIP Premises properties. The REA shall be in a form mutually agreeable to PIP and Applied, and acceptable to the City Attorney, and shall provide reciprocal access easements for vehicular and pedestrian ingress and egress and utilities across the parking areas located on the PIP Premises and the Applied Premises. Applied will be responsible for improving the parking areas on both the PIP Premises and the Applied Premises, including repaving and restriping of the parking spaces, including handicapped parking spaces, as shown on the Lot Line Adjustment PRAL 14-038, or as otherwise approved by the City. The REA shall provide for the maintenance and repairs to the parking areas, and the costs for such maintenance and repairs (collectively, the "Maintenance Costs") shall be divided on a pro-rata basis, with thirty-eight and 6/10 percent (38.6%) of the Maintenance Costs to be allocated to and paid by PIP, and the remaining sixty-one and 4/10 percent (61.4%) of the Maintenance Costs to be allocated to and paid by Applied.

6. Notices. All notices, demands and communications between the Parties shall be provided in the manner set forth in Section 21.25 of the PIP Lease. Notices to Assignee/Applied shall be addressed as follows:

Applied Technology Associates, Inc.

Attn: _____

7. No Further Amendment. Except as set forth in this Amendment, all of the provisions of the PIP Lease as amended by this Amendment, shall remain unchanged and in full force and effect.

8. Memorandum of Amendment. This Amendment shall not be recorded, but the Parties agree to execute and deliver a Memorandum of this Amendment in recordable form to be recorded in the Official Records of San Luis Obispo County.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed effective the date first mentioned above.

LANDLORD:

CITY OF EL PASO DE ROBLES

By: _____
James L App, City Manager

APPROVED AS TO FORM:

By: _____
Iris P. Yang, City Attorney

ATTEST:

By: _____
Dennis Fansler, City Clerk

ASSIGNOR / PIP:

PROPELLER INVESTMENT PROPERTIES, LLC,
A California limited liability company

By: _____
_____, Manager

ASSIGNEE / APPLIED:

APPLIED TECHNOLOGY ASSOCIATES, INC.,
A California corporation

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE ORIGINAL LEASED PREMISES

That certain real property located in the City of El Paso de Robles, County of San Luis Obispo, California, more particularly described as:

A leasehold estate described as follows:

Parcels 3, 4 and 5 of Parcel Map No. PRAL 88-207 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded June 4, 1991, in Book 48, Page 23 of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-452-003, 025-452-004, 025-452-005

Parcels 4, 5 and 6 of Parcel Map No. PRAL 96-025 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded September 11, 1996, in Book 52, Page 16 of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-454-004, 025-454-005, 025-454-006

EXHIBIT B

LEGAL DESCRIPTION OF THE APPLIED PREMISES

That certain real property located in the City of El Paso de Robles, County of San Luis Obispo, California, more particularly described as follows:

A leasehold estate described as follows:

Parcel 1 of Parcel Map No. PRAL 14-038 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded _____ 2014, in Book _____, Page _____ of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-452-003

EXHIBIT C

LEGAL DESCRIPTION OF THE PIP PREMISES

Parcel 2 of Parcel Map No. PRAL 14-038 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded _____ 2014, in Book _____, Page _____ of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-452-004

Parcel 5 of Parcel Map No. PRAL 88-207 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded June 4, 1991, in Book 48, Page 23 of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-452-005

EXHIBIT D

LEGAL DESCRIPTION OF THE PREMISES (REVISED 2014)

[Replaces Exhibit A of the PIP Lease]
[Reflects the Legal Description of the Remaining PIP Leased Premises]

That certain real property located in the City of El Paso de Robles, County of San Luis Obispo, State of California, more particularly described as follows:

A leasehold estate described as follows:

Parcel 2 of Parcel Map No. PRAL 14-038 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded _____ 2014, in Book _____, Page _____ of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-452-004

Parcel 5 of Parcel Map No. PRAL 88-207 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded June 4, 1991, in Book 48, Page 23 of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-452-005

Parcels 4, 5 and 6 of Parcel Map No. PRAL 96-025 in the City of El Paso de Robles, County of San Luis Obispo, State of California, according to map recorded September 11, 1996, in Book 52, Page 16 of Parcel Maps, in the office of the County Recorder of said County.

APN: 025-454-004, 025-454-005, 025-454-006