

TO: James L. App, City Manager
FROM: Meg Williamson, Assistant to the City Manager
SUBJECT: Airport Lease Assignment & Amendment – KMBG, LLC
DATE: December 21, 2004

Needs: For the City Council to consider authorizing the assignment of the long-term property lease on Parcel 14-B of the Airport Industrial Park.

Facts:

1. On October 16, 2003, the City approved the assignment of a long-term Airport lease from Pacific Management & Development to KMBG, Ltd. on Parcel 14-B (3003 Rollie Gates Drive).
2. The lease is in full compliance with the terms and conditions contained therein.
3. In accordance with provisions in the lease agreement, the City is requested to approve the assignment of the lease agreement to KMBG, LLC, a Colorado Limited Liability Company, owned by the principals of the existing leaseholder.
4. The specified use for the lease site shall continue to conform to lease requirements. All other terms and conditions of the lease shall remain unchanged.

**Analysis
and**

Conclusion: The requested assignment is consistent with the provisions of the approved lease agreement. The intended use and occupancy of the premises are allowed and encouraged. The current tenants continue to be a valuable part of the local economy. Their occupancy in the Airport Industrial Park is a model operation of technology and efficiency.

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. 04-xx approving the lease assignment to KMBG, LLC as requested and authorize the required execution thereof.
- b. Amend, modify, or reject the above option.

Attachments (2)

- 1) Resolution
- 2) Assignment and Amendment of Lease

ASSIGNMENT AND AMENDMENT OF LEASE

This Assignment and Amendment of Lease ("Assignment") is made as of July 9, 2004, by and between KMBG, Ltd. ("Assignor") and KMBG, LLC ("Assignee").

RECITALS

A. The City of El Paso de Robles ("Landlord"), as landlord, and KMBG, Ltd. ("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 A, pursuant to which Lessor leased to Lessee and Lessee leased from Lessor that certain property identified as Parcel 14-B of Parcel Map PRAL 80-53, and consisting of 3.9 acres, commonly known as 3003 Rollie Gates Drive, more particularly described on Exhibit A attached hereto, and incorporated herein by reference, for a term of 50 years, commencing on April 1, 1988, and ending on March 31, 2038, unless subject to earlier termination as provided in the Lease.

B. Lessee (hereinafter, "Assignor") desires to assign the subject Lease to KMBG, LLC, a Colorado Limited Liability Company (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 Agreement.

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 Landlord under the Lease as they become due and payable.

Section 3. Amendments to Lease

The Lease Agreement is amended to read as follows:

As Lessee: KMBG, LLC
 2450 Mission Street
 San Marino, CA 91108

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

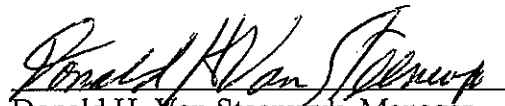
KMBG, Ltd.


Donald H. Van Steenwyk, Managing Partner
Signature to be notarized


Elizabeth A. Van Steenwyk, Managing Partner
Signature to be notarized

ASSIGNEE

KMBG, LLC


Donald H. Van Steenwyk, Manager
Signature to be notarized

LAS99 1346901-1.063827.0011

CONSENT OF LANDLORD

The undersigned Lessor, as Landlord under the Lease, hereby approves and gives consent to this Assignment and Amendment of the Lease of Parcel 14-B of Parcel Map PRAL 80-53 to Assignee, KMBG, LLC, as indicated, and hereby releases Assignor, KMBG, Ltd., 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 amendment referenced in Section 3 of the Assignment.

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

Executed this _____ day of _____, 2004, in Paso Robles, California, on behalf of the City of El Paso de Robles.

By: _____

City Manager

ATTEST:

Deputy City Clerk

RESOLUTION NO. 04-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING THE ASSIGNMENT OF A LONG-TERM PROPERTY LEASE OF
PARCEL 14-B, PRAL 80-53, IN THE PASO ROBLES AIRPORT INDUSTRIAL PARK
FROM KMBG, LTD. TO KMBG, LLC

WHEREAS, the City of El Paso de Robles (herein "City") entered into a long-term Lease Agreement (herein "Lease") with Pacific Management & Development, dated April 1, 1988 for premises on the Municipal Airport; and

WHEREAS, said lease with amendments was assigned to KMBG, Ltd. ("Lessee") on July 1, 1989; and

WHEREAS, Lessee requests the lease agreement be assignment to KMBG, LLC, a Colorado Limited Liability Company (Assignee); and Lease provisions allow for City approval of the requested assignment; and

WHEREAS, the Lease is found to be currently in full force and compliance, and the proposed Assignee has proven to be a responsible and qualified Lessee.

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 A (14A) of Parcel Map PRAL 83-127, and the terms and conditions therein stated.

SECTION 2. That the City Council of the City of El Paso de Robles does hereby release KMBG, Ltd. from any and all responsibility and obligation under the terms of the Lease Agreement and hereby recognizes KMBG, LLC as Assignee and Tenant under the Lease agreement.

SECTION 3. 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, as required.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 21st day of December 2004 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk