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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 10-106 Council District: 4

For Meeting of October 5, 2009
 (Adoption Date)

TITLE: A RESOLUTION AUTHORIZING AN ASSIGNMENT OF A LAND LEASE FOR PARCEL 38 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM KENNETH R. KENTOSH TO SUSAN E. KENTOSH AND AMENDING THE LEASE TERM FROM 20 TO 30 YEARS.

PURPOSE(S) OF ACTION: To assign the late Kenneth R. Kentosh's airport Land Lease to his wife, Susan E. Kentosh, and to extend the lease term from 20 to 30 years.

Name of Drafter: Lisa Murphy LM Airport Administrator		Department: Facilities/Airport		Phone: 541-2471	
Department	Signature	Phone	Department	Signature	Phone
Facilities		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		2124	City Manager		2070

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: Kenneth R. Kentosh entered into a 20-year Land Lease at the Las Cruces International Airport for a 10,000 square foot parcel of land known as Parcel 38, pursuant to Resolution 06-231, on January 17, 2006. The parcel currently contains a hangar which is used for the operation of an aircraft repair and maintenance shop.

Mr. Kentosh unexpectedly passed away in March of 2009, and his wife and heir, Susan E. Kentosh, thus requests that the Land Lease be assigned to her. The terms of airport land leases allow assignment with City Council approval.

Prior to his death, Mr. Kentosh had requested that his lease term be extended from 20 years to 30 years with two five-year extensions. Mrs. Kentosh also requests the lease extension. The majority of land leases at the airport are for a 30-year term and Mr. Kentosh wished to benefit from the long-term stability and financial advantages a longer lease term will bring. All other provisions of the Land Lease will remain the same.

The Airport Advisory Board considered the Lease Amendment request at their February 12, 2009 meeting and the assignment request at their April 9, 2009 meeting and recommended approval of both requests.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Exhibit "A", Land Lease Amendment
3. Resolution 06-231
4. Letter from Kenneth Kentosh dated 1-9-09 requesting extension of lease term
5. Letter from Susan Kentosh dated 3-25-09 requesting extension of lease term
6. Letter from attorney Dana Kyle requesting Land Lease assignment
7. Letters Testamentary and Acceptance from 3rd Judicial District Court
8. Assignment document for signature
9. Map of airport showing parcel location

OPTIONS / ALTERNATIVES:

1. Vote "Yes" and approve the Resolution. This would assign the Lease for Parcel 38 at the Las Cruces International Airport from the late Kenneth R. Kentosh to his wife, Susan E. Kentosh, and extend the lease term from 20 years to 30 years with two five-year extensions.
2. Vote "No" and do not approve the Resolution. This will result in the Lease not being assigned to Mrs. Kentosh and the lease term for Parcel 38 to remain at 20 years.
3. Amend the Resolution. This may include approving a different lease term than is requested.
4. Postpone consideration of the lease and direct staff to negotiate other terms.

(Continue on additional sheets as required)

RESOLUTION NO. 10- 106

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF A LAND LEASE FOR PARCEL 38 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM KENNETH R. KENTOSH TO SUSAN E. KENTOSH AND AMENDING THE LEASE TERM FROM 20 TO 30 YEARS.

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico, a municipal corporation, is the owner of certain real property known as the Las Cruces International Airport; and

WHEREAS, on January 17, 2006, the City entered into a Land Lease Agreement for land known as Parcel 38 at the Las Cruces Airport; and

WHEREAS, the Land Lease for Parcel 38 is held by Kenneth R. Kentosh; and

WHEREAS, Mr. Kentosh unexpectedly passed away in March of 2009, and his wife and heir Susan E. Kentosh has requested that the Land Lease be assigned to her; and

WHEREAS, the terms of the Land Lease allow assignment of lease with City Council approval; and

WHEREAS, Mrs. Kentosh has requested that the term of the Land Lease be increased from 20 years to 30 years with two five-year extensions for a lease termination date of December 31, 2036; and

WHEREAS, the majority of land leases at the airport are for a 30-year term; and

Resolution No. 10- 106, cont.

WHEREAS, the Airport Advisory Board considered the lease extension request at their meeting of February 12, 2009, and the assignment request at their meeting of April 9, 2009, and recommended that both be approved.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces assigns the Land Lease for Parcel 38 from Kenneth Ray Kentosh to Susan E. Kentosh.

(II)

THAT the City of Las Cruces amends the Land Lease for Parcel 38 as set forth in the Land Lease Amendment, attached hereto as Exhibit "A", and made a part of this Resolution.

(III)

THAT the Mayor is authorized to execute the lease amendment and lease assignment documents on behalf of the City.

(IV)

THAT City staff and officials are directed to do all deeds necessary in the accomplishment of the herein above.

Resolution No. 10- 106 , cont.

DONE AND APPROVED this _____ day of _____,
2009.

APPROVED:

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

Moved by: _____

Seconded by: _____

APPROVED TO FORM:



City Attorney

EXHIBIT "A"

Land Lease Amendment

City of Las Cruces, New Mexico, International Airport.

SUSAN E. KENTOSH, LESSEE

This Amendment to the Land Lease is made by and between the City of Las Cruces (Lessor) and Kenneth Ray Kentosh, (Lessee).

Recitals

- 1. The parties executed the Lease on January 1, 2006.
- 2. The Lessee has requested a longer lease term than the originally approved 20 years.
- 3. Lessor has no objection to granting amendments to the Lease as necessary to grant the Lessee a longer lease term.
- 4. In order to resolve these issues and clarify lease terms, the parties desire to amend the Lease.

Now, Therefore, it is mutually agreed as follows:

- 1. Paragraph 2(a) of the Lease is stricken and a new paragraph 2(a) is hereby inserted in the Lease to read as follows:

2a. Initial Lease Term. The term of this Lease shall be thirty (30) years (hereinafter "Lease Term") commencing on the "commencement Date," as hereinafter defined, and terminating on the thirtieth (30th) anniversary of the Commencement Date. The Commencement Date shall be the 1st day of January, 2006, and the thirtieth anniversary date shall be the 31st day of December, 2036. Possession of the Parcel by the Lessee shall begin on the Commencement Date.

All other terms and conditions of this lease except as specified in this amendment remain in force and effective.

IN WITNESS WHEREOF, City and Lessee have executed the Lease to be in effect as of the date set forth below.

CITY OF LAS CRUCES, LESSOR

SUSAN E. KENTOSH , LESSEE

Ken Miyagishima, Mayor _____

BY: _____

(Signature) (Date)

(Signature) (Date)

CITY CLERK
(SEAL)

APPROVED AS TO FORM:



City Attorney

(Lessee's Initials)

RESOLUTION NO. 06- 231

A RESOLUTION APPROVING A LAND LEASE OF THE CITY-OWNED PARCEL 38 AT THE LAS CRUCES INTERNATIONAL AIRPORT TO KENNETH RAY KENTOSH FOR A TERM OF TWENTY YEARS AT AN INITIAL RENT OF TWO THOUSAND DOLLARS (\$2,000) PER YEAR.

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico, a municipal corporation, is the owner of certain real property known as the Las Cruces International Airport; and

WHEREAS, the City, with the approval of the Federal Aviation Administration, has identified specific areas of the airport for development through the lease of land parcels; and

WHEREAS, Kenneth Ray Kentosh has requested to execute a lease agreement with the City of Las Cruces for land known as Parcel 38, for the construction of an aircraft hangar; and

WHEREAS, Mr. Kentosh has agreed to the City's terms and conditions, and a Lease has been prepared with those terms and conditions in accordance with the Las Cruces Municipal Code Section 7.5; and

WHEREAS, under Section 3-54-1, NMSA, 1978, as amended, the property may be leased without referendum.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces hereby approves the Lease of Parcel 38 at the Las Cruces International Airport for the terms and conditions contained in the Las Cruces

International Airport Land Lease, Parcel 38, Kenneth Ray Kentosh, Lessee, attached hereto and made part of this Resolution.

(II)

THAT the Mayor is authorized to execute the Lease on Behalf of the City.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 17th day of January, 2006.

APPROVED:

William Mattiace
Mayor William Mattiace

ATTEST:

Shirley Clark
City Clerk

VOTE:

Mayor Mattiace:	<u>aye</u>
Councillor Fietze:	<u>aye</u>
Councillor Connor:	<u>aye</u>
Councillor Archuleta:	<u>aye</u>
Councillor Trowbridge:	<u>aye</u>
Councillor Jones:	<u>aye</u>
Councillor Miyagishima:	<u>aye</u>

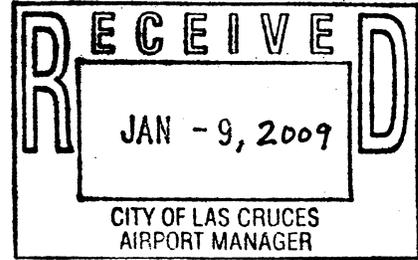
Moved by: Archuleta

Seconded by: Trowbridge

APPROVED TO FORM:

Paul P...
City Attorney

January 9, 2009



TO: Lisa Murphy, Airport Manager
Las Cruces International Airport

FR: Kenneth Kentosh, Airport Tenant

RE: Lease Term

Please accept this request to modify the lease terms on Parcel # 38, 685 White Lightning Drive, Las Cruces, NM 88007.

I request that the lease term be changed to February 1, 2006 through January 31, 20036.

I also request the right to enter into two additional five-year terms at the land lease rate prevailing at the beginning of each respective period.

Thank you.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Date: March 25, 2009

To: Lisa Murphy, Airport Manager
Las Cruces International Airport

From: Susan Kentosh

Re: Lease Assignment and Extension on Parcel 38, 685 White Lightning Drive, at the
Las Cruces International Airport

In confirmation of our conversation earlier today, I am requesting the above-mentioned lease be transferred into my name as the named executor for Ken's estate.

In accordance with Ken's wishes prior to his death, I am requesting an extension of the lease agreement from a 20-year to a 30-year term. In addition, I am requesting the lease be amended to reflect my right to enter into two additional 5-year terms at the land lease rate in effect at the beginning of each of the five-year terms.

I can be reached at (575) 524-2171 if you have any further questions. Thank you for your assistance in this matter.

THE LAW OFFICES OF

DANA M. KYLE, P.A.

1020 SOUTH MAIN
LAS CRUCES, NM 88005P.O. Box 2277
LAS CRUCES, NM 88004-2277

PHONE (575) 525-8202

FAX (575) 525-8483

DANA@DMKYLELAW.COM

September 4, 2009

City of Las Cruces International Airport
Attn: Lisa Murphy
P.O. Box 20000
Las Cruces, New Mexico 88004

Re: Kenneth Ray Kentosh (Lessee), Land Lease with City of Las Cruces, New Mexico,
International Airport

Dear Ms. Murphy:

I represent Susan E. Kentosh and am handling the probate for the Estate of Kenneth Kentosh. Mr. Kentosh has a twenty (20) year land lease with the City of Las Cruces, New Mexico, International Airport. The leased area is described as:

The City hereby Leases to the Lessee, a 10,000 square foot (100 feet by 100 feet) parcel of real Property located in the NW ¼ of Section 26, T23S., R.1W., N.M.P.M. of the U.S.G.L.O. Surveys, within the City Limits of Las Cruces in the County of Dona Ana, State of New Mexico, described as Parcel 38 on Plat Showing Lease Property and more particularly Exhibit "A" attached hereto and incorporated herein by this reference, together with an easement for ingress and egress to the property (hereinafter "Parcel") by the Lessee.

The land lease needs to be assigned to his wife, Susan E. Kentosh, naming her the new lessee. Enclosed you will find a copy of the Certified Letters Testamentary and Acceptance appointing Susan E. Kentosh as personal representative for the Estate of Kenneth Kentosh, thus giving her authority to make this request. Please let me know what documentation you need to make this assignment. If you prefer, I would be happy to draft a proposed assignment for your consideration.

Please contact me if you have any questions.

Best regards,

The Law Offices of Dana M. Kyle, P.A.



Dana M. Kyle

DMK/rcc

Enclosure as noted

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

2009 APR 17 PM 1:36

IN THE MATTER OF THE ESTATE OF)
KENNETH KENTOSH)
)
)
Deceased.)

No. PB-2009- 37
Judge _____

LETTERS TESTAMENTARY AND ACCEPTANCE

ISSUANCE OF LETTERS:

The Last Will and Testament of KENNETH KENTOSH, deceased, having been informally admitted to probate and having been filed and recorded with the District Court, and an Order of Informal Probate having been entered by the Court on April 17, 2009 appointing SUSAN E. KENTOSH as Personal Representative of the decedent's estate, pursuant thereto these Letters evidence that SUSAN E. KENTOSH has been hereby appointed to serve as Personal Representative of the Estate of KENNETH KENTOSH and is entitled to exercise all of the powers and authorities granted to Personal Representatives under the laws of the State of New Mexico.

Dated this 17th day of April, 2009.

CLERK OF THE DISTRICT COURT
OF DOÑA ANA COUNTY, NEW MEXICO

By Nakeawner
Deputy Clerk

TEST: CERTIFIED AS A TRUE AND CORRECT COPY
OF THE ORIGINAL FILE IN THIS OFFICE ON
April 17, 2009 (Date)
GREG TOOMEY
DISTRICT COURT CLERK
Date 8/2/09 By [Signature] Deputy

STATE OF NEW MEXICO)
)ss.
COUNTY OF DONA ANA)

I, SUSAN E. KENTOSH, do hereby accept the duties of Personal Representative of the Estate of KENNETH KENTOSH, deceased, and do solemnly swear that I will perform, according to law, the duties of Personal Representative of his Estate.

Susan E. Kentosh
SUSAN E. KENTOSH

SUBSCRIBED AND SWORN TO before me this 13th day of April, 2009.



OFFICIAL SEAL
PATRICIA S. CONTRERAS
NOTARY PUBLIC - STATE OF NEW MEXICO
My commission expires: 3-15-2010

Patricia S. Contreras
Notary Public

Prepared by:

The Law Offices of Dana M. Kyle, P.A.
P.O. Box 2277
Las Cruces, NM 88005
(575) 525-8202

By *[Signature]*
Dana M. Kyle
Attorneys for Personal Representative

ASSIGNMENT OF LEASE

SUSAN E. KENTOSH, executor of estate, assignor herein and lessee of premises described as follows:

A portion of the lease, that portion being all of Parcel 38 as shown on the attached map marked Exhibit "A-1" and described in Exhibit "A" and made a part hereof,

which was demised by a lease designated to KENNETH RAY KENTOSH by the Las Cruces City Council Resolution 06-231 on January 17, 2006, as executor of estate Susan E. Kentosh, assignee of the lease, assigns the lease to assignee subject to all the terms and conditions thereof, and assignee accepts the assignment and shall perform all the terms and conditions thereof, including payment of all rent applying to Parcel 35 required by the provisions of the lease. Assignee shall enjoy the same right and power to assign the lease as assignor enjoyed under the lease.

The CITY OF LAS CRUCES, NEW MEXICO, a municipal corporation, lessor under the lease, consents to the assignment of the lease to assignee, but does not waive any rights against assignor that lessor has under the lease.

In witness whereof, the parties have executed this assignment at Las Cruces, New Mexico the _____ day of _____, 2007.

SUSAN E. KENTOSH, executor of estate
Assignor

ATTEST:

(Seal)

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

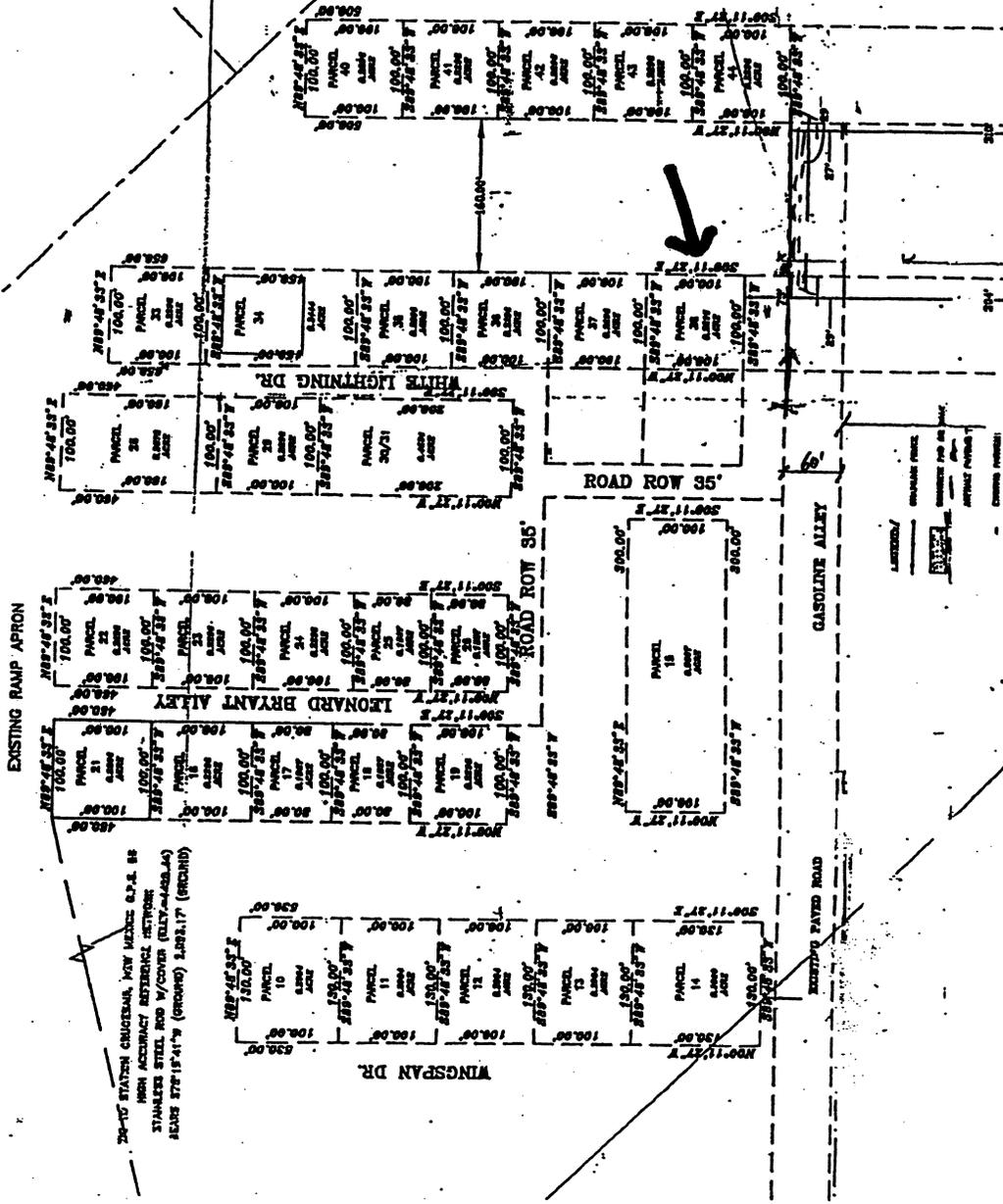
The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Susan E. Kentosh.

Notary Public

My Commission Expires:

PRELIMINARY

PLAT SHOWING LEASE PROPERTIES
AT THE LAS CRUCES INTERNATIONAL AIRPORT
NW 1/4 OF SECTION 26, T.23S., R.1W.,
N.M.P.M. OF THE U.S.G.L.O. SURVEYS
LAS CRUCES, DONA ANA COUNTY, NEW MEXICO



11.5002 ACRE

26-10 STATION CHORDS, NEW MEXICO S.P.A. 88
HIGH ACCURACY REFERENCE NETWORK
STANLEY STEEL ROD W/COVER (RLY-4484A)
BEARS 277-15-11" (GROUND) 282.17' (GROUND)

LEGEND
EXISTING
EXISTING PAVED ROAD
EXISTING STRUCTURE
EXISTING FENCE
EXISTING UTILITY