

to read

BOARD OF SUPERVISORS' AGENDA ITEM REVIEW FORM

Submitter's Name and Department:	Robert J. Mawson, Community Development Dir.
Presenter's Name:	Robert J. Mawson
Date Received: (To be entered by Deputy Clerk)	
Requested date to be placed on Board of Supervisors' meeting agenda:	September 16, 1997
Item Description: (Proposal and/or requested Board action)	
Information/Discussion/Action:	
	To approve an Agreement between Cyprus Miami Mining Corporation and Gila County whereby Gila County will lease the Armory Property for 20 years

PRE-AGENDA ITEM REVIEWS
Legal Review (Include initials of person reviewing):
7112106 - original lease agreement filed in vault. CB
Detailed Summary (To be provided in lieu of back-up material or when back-up material does not sufficiently explain purpose of proposal and/or request):
2/16/98 - orig. 1 recommended copy to Sharon Garris

BOARD ACTION TAKEN			
Approved	Disapproved	Deleted	Continued to:
9-16-97			

9/16/97 kept 1 original, entire original sent to K. Mawson to forward to Cyprus Miami Mining Corp. to K. Mawson for review.



LEASE

THIS LEASE made this 9th day of Sept., 1997, between Cyprus Miami Mining Corporation ("Cyprus Miami") and Gila County ("County").

For and in consideration of the covenants and agreements hereinafter set forth, Cyprus Miami hereby leases to the County and County hereby agrees to lease from Cyprus Miami that certain land and buildings thereon, commonly described as the Armory Property and more particularly shown on Exhibit "A" to this Lease (the "Property") located in County of Gila, State of Arizona; provided, however, that the Property shall not include the portion of the Armory Property more particularly described in Exhibit "B" to this Lease. Said leasing is upon and subject to the terms, covenants and conditions set forth in this Lease and County covenants, as a material part of the consideration for this Lease, to keep and perform each and all of said terms, covenants and conditions. County further agrees that this Lease is made upon the condition of such performance.

1. TERM

The term of this lease shall be twenty years (unless sooner terminated as herein provided) commencing on the 9th day of September, 1997.

2. CONSIDERATION

In consideration for this Lease, during the term of this Lease, County shall pay Cyprus Miami a rental fee equal to the full amount of any yearly assessed property taxes. If at any time during this Lease the Property should become subject to any additional property tax, County shall pay Cyprus Miami for the full amount of any such property tax within thirty (30) days following receipt of a demand for such payment from Cyprus Miami.

3. CONDITION OF PROPERTY, IMPROVEMENTS AND ALTERATIONS

County expressly agrees and acknowledges that the Property is leased in "AS IS, WHERE IS" condition. Cyprus Miami makes no warranties whatsoever, whether express or implied, regarding the condition of the Property or its fitness for any intended purpose. County, at its sole cost and expense, may make alterations, improvements and/or additions to the Property; provided, however, that any material or permanent alterations, improvements and/or additions shall not be made without Cyprus Miami's advance written consent, which consent shall not be unreasonably withheld. At the termination of the Lease, County shall, at its sole cost and expense, remove any alterations, additions and/or improvements made by County, designated by Cyprus Miami to be removed and any alterations, additions and/or improvements made by County that County desires to remove. Any alterations, improvements and/or additions not removed by the County within sixty (60) days following the expiration of this Lease, or any extension thereto, shall become the

property of Cyprus Miami and shall remain upon the Property without compensation to County. If any alterations, improvements and/or additions are removed from the Property by County, either of County's own choice or at the request of Cyprus Miami, the original property shall be repaired and restored to its original conditions, reasonable wear and tear excepted

4. MAINTENANCE/REPAIRS

County shall be responsible, at its sole cost and expense, for all maintenance and repairs on the Property during the term of this Lease. County shall maintain in good condition the structural parts of the Property, including without limitation, the foundations, bearing and exterior walls, subflooring and roof and exterior doors and windows and shall keep all Property equipment, including, but not limited to, plumbing, heating, air conditioning and similar equipment in good condition and repair. During the term of this Lease, County agrees that County will maintain the Property in a safe, clean, neat and sanitary condition.

5. LIENS

County shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by County.

6. USE OF PROPERTY

The Property is to be used for the sole purpose of the offices and facilities of Gila County. The parties agree that should County cease to use the Property for the above stated purpose, this Lease shall terminate, County shall have no rights to the Property and Cyprus Miami shall have no liability or obligation to County whatsoever. Furthermore, County agrees that it will (i) not use or allow the Property to be used for any improper, immoral or unlawful purpose, (ii) comply with all applicable laws, ordinance, and regulations now and hereafter in force in connection with its use of the Property, and (iii) not commit nor suffer the commission of any waste or knowingly permit any explosives to enter the Property.

7. CONDEMNATION

In the event the Property, or any portion of the Property is taken under eminent domain proceeding, County shall have no right, title or interest to any award for such taking.

8. ASSIGNMENT AND SUBLEASE

County shall not, either voluntarily or by operation of law, sell, assign, hypothecate or transfer this Lease, or sublet the Property or any part thereof, or permit the Property, or any part thereof to be occupied by anyone other than County. Any sale, assignment, mortgage, transfer or subletting of this Lease shall cause the Lease to terminate. Upon such termination, County shall have

no rights to the Property and Cyprus Miami shall have no liability or obligation to County whatsoever.

9. ACCESS

Cyprus Miami and its representatives and agents shall have the right to enter onto the Property at all times for the purpose of examining, inspecting, testing (including, but not limited to performing water testing and drilling) or performing remedial work for any purpose; provided, however, that Cyprus Miami shall not unreasonably interfere with the ability of County to operate the offices and facilities of the County, unless in the opinion of Cyprus Miami such interference is necessary to comply with federal, state or local law, rule or regulation. Additionally, Cyprus Miami reserves to itself the right, from time to time, to grant such easements, rights and dedications that Cyprus Miami deems necessary or desirable.

10. UTILITIES

County, at its own cost, expense and risk, shall be responsible for providing and securing all utility services, including, but not limited to water service, to and for the Property; provided, however, that under no circumstances shall County drill any wells on the Property or use the ground water on the Property for any purpose.

11. SALE

In the event of a sale or conveyance by Cyprus Miami of the Property, the same shall operate to release Cyprus Miami from any and all liability or obligation under this Lease.

12. INDEMNIFICATION

(a) County shall indemnify, defend and hold Cyprus Miami and its affiliates and their respective officers, directors, employees, shareholders, agents and representatives, harmless from and against any and all claims for liability for any injury (including death) or damage to any person or property (including environmental) whatsoever arising from County's use of the Property or from the conduct of County's business or from any activity, work or things done, permitted or suffered by County in or about the Property or elsewhere, and County shall further indemnify, defend and hold Cyprus Miami, and its affiliates, and their respective officers, directors, employees, shareholders, agents and representatives, harmless from and against any and all claims, costs and expenses arising from any breach in the performance of any of County's obligations under the terms of this Lease or arising from any act or omission of County, or any of its agents, contractors, employees, or invitees, and from and against all costs, attorney's fees, expenses or liabilities incurred by Cyprus Miami as the result of County's use, conduct, activity, work, things done, permitted or suffered, breach, default or negligence and from all costs, attorney's fees, expenses and liabilities incurred as a result of any such claim or any action or proceeding brought thereon. In the event that any action or proceeding be brought against Cyprus Miami, County, upon notice from Cyprus Miami,

shall defend the same at County's sole cost and expense, by counsel satisfactory to Cyprus Miami. Cyprus Miami need not have first paid any such claim in order to be so indemnified.

(b) The provisions of this Section shall survive the expiration or termination of this Lease.

13. **INSURANCE, WAIVER OF SUBROGATION**

(a) County shall, at its own cost and expense, obtain and keep in force during the term of this Lease (i) Comprehensive General Liability Insurance with a Broad Form General Liability Endorsement in an amount of not less than \$2,000,000 combined single limit per occurrence and (ii) Broad Form Property Damage Insurance in an amount of not less than \$2,000,000 combined single limit per occurrence. Cyprus Miami shall be a named insured under such policies. Compliance with the above requirement shall not, however, limit the liability of County hereunder.

(ii) County shall deliver to Cyprus Miami certificates evidencing the existence and amounts of such insurance prior to the Commencement Date. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty days prior written notice to Cyprus Miami. County shall, at least thirty (30) days prior to the expiration of such policies, furnish Cyprus Miami with renewals thereof.

(iii) County hereby releases and relieves Cyprus Miami and waives its entire right to recovery against Cyprus Miami for direct or consequential loss or damage arising out of or incident to this Lease due in whole or in part to the negligence or wilful misconduct of County or its agents, representatives, employees, contractors, officers, directors or invitees.

14. **WAIVER**

No waiver by Cyprus Miami of any provision of this Lease or of any breach by County hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by County of the same or any other provision. Cyprus Miami's consent to or approval of any act by County requiring Cyprus Miami's consent or approval shall not be deemed to render unnecessary the obtaining of Cyprus Miami's consent to or approval of any subsequent act of County.

15. **NOTICES**

All notices, demands or other communications in this Lease provided to be given, made or sent by either party hereto to the other party shall be deemed to have been duly given, made or sent when made in writing and deposited in the United States mail, certified or registered, postage prepaid, or sent via facsimile with written confirmation and addressed as follows:

To Cyprus Miami: P O Box S
Claypool, Arizona 85532
Attention: Land Department
Fax: (520) 473-7473

County 1400 E. Ash Street
Globe, Arizona 85501
Attention: Gila County Administrator
Fax: (520) 425-0319

16. DEFAULT

In the event County fails to keep and perform any of the terms or conditions hereof, or otherwise breaches this Lease or defaults hereunder, time being of the essence, or in the event of the taking by execution of judgement or other process of law of all or any part of the County's interest in this Lease, then ten days after written notice of default from Cyprus Miami, Cyprus Miami may, if such default has not been corrected, resort to any and all legal remedies or combination of remedies which Cyprus Miami may be permitted by law to assert including, but not limited to one or more of the following: (i) lock the doors of the Property and exclude County therefrom; (ii) retain or take possession of any property on the Property pursuant to Cyprus Miami's statutory lien; (iii) enter the Property and remove all persons and property therefrom; (iv) declare this Lease at an end and terminated; and (v) sue for any damages sustained by Cyprus Miami.

17. INTEREST ON COUNTY DOT'S OBLIGATIONS AND LATE CHARGES

Any amount due from County to Cyprus Miami which is not paid when due shall bear interest of eighteen percent (18%) per annum until paid, but the payment of such interest shall no excuse nor cure the default.

18. TIME

Time is of the essence of this Lease in each and all of its provisions.

19. RECORDATION

County shall not record this Lease or a short form memorandum thereof without the prior written consent of Cyprus Miami.

20. CHOICE OF LAW

This Lease shall be governed by the Laws of the State of Arizona.

21. COUNTY'S RESPONSIBILITY REGARDING HAZARDOUS SUBSTANCES

(a) The term "Hazardous Substances", as used in this Lease, shall include without limitation, flammable, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB's), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereinafter enacted or promulgated by any governmental authority.

(b) The County shall not cause or permit to occur

(i) Any violation of any federal, state or local law, ordinance, or regulation now or hereinafter enacted, related to environmental conditions on, under, or about the Property arising from the County's use or occupancy of the Property, including, but not limited to, soil and ground water conditions; or

(ii) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance, except as disclosed in this Lease, and except as required in the ordinary course of the business for the sole purpose of operating the offices and facilities of the County.

(c) County's environmental clean-up responsibilities.

(i) The County shall, at the County's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances ("Laws").

(ii) The County shall, at the County's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities") under the Laws.

(iii) Should any authority or any third party demand that a clean-up plan be prepared and that a clean-up be undertaken because of any deposit, soil, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Property, which arises at any time from the County's use or occupancy of the Property, then the County shall immediately reimburse Cyprus Miami for any and all costs associated with the clean-up, including, but not limited to, the preparation and submission of clean-up plans and the carrying out of such clean-up plans.

(iv) The County shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is requested by Cyprus

Miami If the County fails to fulfill any duty imposed under this subparagraph (c) within reasonable time, Cyprus Miami may do so and in such case, the County shall cooperate with Cyprus Miami in order to prepare all documents Cyprus Miami deems necessary or appropriate to determine the applicability of the Laws to the Property and the County's use thereof, and for compliance therewith, the County shall execute all documents promptly upon Cyprus Miami's request. No such action by Cyprus Miami and no attempt made by Cyprus Miami to mitigate damages under any Law shall constitute a waiver of any of the County's obligations under this subparagraph (c).

(v) The County's obligations and liabilities under this subparagraph (c) shall survive the expiration of this Lease.

(d) County's indemnity.

(i) The County shall indemnify, defend, and hold harmless Cyprus Miami, and its affiliates, and their respective officers, directors, employees, shareholders, partners and agents from all fines, suites, procedures, claims and actions of every kind, and all costs associated in therewith (including attorney's and consultant's fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Property which arises at any time from County's use or occupancy of the Property, or from County's failure to provide all information, make all submissions and take all steps required by all Authorities under the Laws and all other environmental laws.

(ii) County's obligations and liabilities under this subparagraph (d) shall survive expiration of this Lease.

22. SEVERABILITY

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

23. COVENANTS AND CONDITIONS

Each provision of this Lease performable by County shall be deemed both a covenant and condition.

24. STATUTORY TERMINATION

Statutory authority for the County to enter into this Lease is stated in ARS 11-251(54). Pursuant to that section, County may exercise its rights as stated in sections 11-651 and 11-653 since this Lease is for a term exceeding one (1) year.

25. ENTIRE AGREEMENT

This Lease and any Exhibits, Amendments or Addendums attached to this Lease or specifically referred to in this Lease are hereby incorporated by reference, and in the aggregate contain the entire agreement between the parties, and any agreement hereafter made shall be ineffective to change or modify this Lease, in whole or in part, unless such agreement is in writing and signed by both parties.

IN WITNESS WHEREOF, Cyprus Miami and County have executed this Lease the day and year first above written

CYPRUS MIAMI MINING CORPORATION

COUNTY OF GILA

R. K. Watkins
By: R. K. Watkins
Its: Vice President and General Manager

Cruz Salas
By: Cruz Salas
Its: Chairman, Board of Supervisors

ATTEST:

Steven L. Besich
By: Steven L. Besich
Its: Clerk of the Board

APPROVED AS TO FORM:

Jerry B. DeRose
By: Jerry B. DeRose
Its: County Attorney

EXHIBIT "A"

**ATTACHED TO AND MADE A PART OF THAT CERTAIN LEASE BY AND
BETWEEN CYPRUS MIAMI MINING CORPORATION AND GILA COUNTY**

The surface to a depth of 10 feet lying immediately beneath those certain pieces or parcels of land lying in and being a portion of a subdivision known as Lower Miami Map No. 1, Revised, Gila County Plat No. 66, on file and of record in the office of the Gila County Recorder of the County of Gila, State of Arizona, and situated in the South One-Half of the Southeast Quarter (S½SE¼) of Section 20, Township 1 North, Range 15 East, Gila and Salt River Meridian, County of Gila, State of Arizona, more particularly described as follows:

All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Block 7;

The West One-Half of Lot 16 of Block 7;

All of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 8;

The East 10 feet of Lot 9 of Block 8;

All of Lots 15, 16, 17, and 18 of Block 8;

All the east-west alleyway in Block 8 which lies between Lots 1 through the East 10 feet of Lot 9, and the East 10 feet of Lot 14 through Lot 18;

That portion of the east-west alleyway in Block 7 which lies between Lots 8 through 12, and 13 through West One-Half of Lot 15.

All of Fourth Street lying between Block 7 and Block 8;

SUBJECT to all existing taxes, assessments, covenants, conditions, easements, right of way, restrictions, exceptions and reservations of record; specifically including, but not limited to, that certain easement for public highway purposes dated November 1, 1948, and recorded in Book 66 of Deeds to Real Estate at Page 67, Records of the County of Gila, covering a portion of the Northerly part of said Block 8.