



SEP 26 2001

After recording, please deliver to: Marian Sheppard, BOS

GROUND LEASE AND USE AGREEMENT

THIS GROUND LEASE AND USE AGREEMENT (the "Lease") is made as of the 27th day of September, 2001, by and between Miami Unified School District No. 40, a political subdivision of the State of Arizona, hereinafter referred to as "Lessor", and Gila County, a political subdivision of the State of Arizona, hereinafter referred to as "Lessee".

RECITALS:

1. Lessor owns that certain real property and improvements (hereinafter referred to as "the Real Property"), located in the County of Gila, State of Arizona, and described as Assessor Parcel Number 20709141, 5515 S. Apache Avenue, Globe, AZ, commonly known as the "Central Heights School."
2. Lessee conducts Gila County governmental services and is in need of additional property and improvements within which to locate certain governmental departments.
3. Lessor and Lessee desire to enter into a mutually beneficial agreement whereby Lessor provides the Real Property and Lessee provides improvements; renovations, equipment, and other tangible personal property, (hereinafter "Assets"), all of which shall be used by Lessor pursuant to this Lease.
4. This Agreement is entered into pursuant to the powers granted to Lessor pursuant to A.R.S. §15-342(7), and to Lessee pursuant to A.R.S. §11-251(54).

COVENANTS:

For valuable consideration and the mutual promises and covenants herein contained, the Lessor and Lessee agree as follows:

1. Leased Premises: Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, pursuant to the provisions of this Lease, the Real Property described above, along with all buildings, ground space, appurtenances, curtilage, playground, parking areas (hereinafter, the "Leased Premises"), together with the right to use the parking areas on the Real Property for Lessee's employees, agents, public, and other invitees.

2. Term. This Lease shall be for a twenty (20) year term, commencing on the date hereof (hereinafter the "Term"), and shall automatically be extended by additional five (5) year increments, unless written notice is given by either party, no less than 12 months prior to the expiration date, of an intent not to renew the Lease.

3. Rent. Lessee intends to construct permanent renovations and improvements to the Leased Premises. The consideration for this Lease shall be the value of Lessee's renovation investment, which renovations shall become Lessor's pursuant to Section 10. Such renovations and improvements shall include a roof with a 40 year life, and permanent connection of waste water disposal to the City of Globe's wastewater discharge system.

4. Surrender of Premises. Lessee shall, on the expiration of the Term or terms hereby created, or upon other termination of this Lease, quit and surrender the Leased Premises in good order, condition and repair.

5. Purpose of Lease. The Leased Premises shall be open to the public during the hours and days on which Gila County government is in operation. At this date, Lessee intends to locate the following governmental departments in the Leased Premises:

- A. Gila County Community Services Division
- B. Gila County Elections Department
- C. Gila County Library District
- D. Gila County Public Fiduciary
- E. University of Arizona Cooperative Extension Office

However, Lessee may modify or add additional departments or other general office purposes as the Leased Premises may accommodate.

6. Utilities, Janitorial Services and Supplies. Lessee shall fully and promptly establish and pay for all gas, heat, light, power, water, janitorial services, and refuse collection, furnished to or consumed upon the Leased Premises during the Term hereof. All other costs and expenses of every kind incurred in connection with the use, operation, and maintenance of the Leased Premises and all activities conducted hereon, including but not limited to telephone service, telephone lines required for computer linkups and supplies and materials shall be provided and paid for by Lessee. Lessor shall not be liable for any interruption or failure in the supply of any utilities to the Leased Premises unless such a failure is the result of an act of the Lessor or Lessor's agents.

7. Insurance.

a. Building and Improvements. Lessor shall obtain and keep in force, a standard form property insurance policy or policies in the name of Lessor, at the expense of the Lessee, insuring against the perils of fire—extended coverage, vandalism, malicious mischief—special extended coverage

(all risk) loss or damage to the Leased Premises. The amount of such insurance shall be equal to the full (100%) replacement cost of the Leased Premises as the same shall exist from time to time, but in no event more than the commercially reasonable and available insurable value thereof. Such building and improvement casualty insurance policy shall additionally insure the Lessee-installed improvements and fixtures to the Leased Premises but shall not insure Lessee's personal property and trade fixtures which shall be insured by Lessee individually under Paragraph 7(c). If the coverage is available and commercially appropriate, such policy or policies shall insure against all risk of direct physical loss or damage (except perils of flood and/or earthquake), including coverage for debris removal and any required upgrading, demolition, reconstruction, replacement of any portion of the Leased Premises as a result of a covered loss.

b. Liability Insurance. Lessee agrees to provide, pay for and keep in force during the term of this Lease and any extension thereof, at its sole cost and expense, a policy or policies of comprehensive general liability insurance protecting Lessee and Lessor against claims for bodily injury, personal injury, and property damage based upon or resulting from the ownership, use, occupancy or maintenance of the Leased Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis, providing single-limit coverage in amounts as shown:

Personal Injury:	\$2,000,000 per person
	\$5,000,000 per accident
Property Damage:	\$ 500,000

Lessee shall use its best efforts to provide an endorsement on each policy or policies whereby the insurer gives to Lessor at least thirty (30) days written notice prior to alteration, cancellation or other occurrence which in any way affects the coverage provided. Lessor shall be named as an additional insured on such policies of comprehensive general liability insurance.

c. Lessee's Personal Property and Trade Fixtures. Lessee shall obtain and keep in force, a standard form property insurance policy or policies in the name of Lessee, at the expense of Lessee, insuring against the perils of fire—extended coverage, vandalism, malicious mischief—special extended coverage (all risk) loss or damage to the Leased Premises upon the personal property of Lessee and any trade fixtures of Lessee located at the Leased Premises. Lessee shall alone be entitled to the receipt of all insurance proceeds paid for in connection with any of the trade fixtures and personal property of Lessee insured under such policy.

d. Insurance Policies. All policies maintained pursuant to this Lease shall be with companies or entities duly licensed and properly authorized to transact such business in the state of Arizona. Lessor specifically approves Lessee's obtaining and maintaining any such policies with the

Arizona Counties Insurance Pool ("ACIP"). Each party shall, at the request of the other party, deliver to the other party evidence of such policies of insurance or certificate evidencing the existence and amounts of the required insurance. Failure of any party to obtain a policy of insurance required by this section shall entitle the other party to obtain the policy required hereunder and seek reimbursement for such costs and any losses occurring from such party's failure to maintain the insurance required.

e. Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils insured hereunder whether due to the negligence of Lessor or Lessee or their agents, employees, contractors and/or invitees. The parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor, Lessee, as the case may be so long as the insurance is not invalidated thereby.

8. Damage or Destruction

a. Insured Loss Damage. Subject to the provisions of subsection (c) below, if the Leased Premises are damaged or destroyed by any casualty or element and such damage and casualty does not occur within the last six (6) months of any term which has not been extended by Lessee, this Lease shall continue in full force and effect at the option of the Lessee and Lessee may, in its sole discretion, require Lessor to utilize the proceeds from any property insurance to restore, repair or rebuild the Leased Premises to substantially the same condition they were in before their damage or destruction. Such funds shall be advanced for the rebuilding of the Leased Premises to substantially the same condition they were in before their damage or destruction. Such funds shall be advanced for the rebuilding of the Leased Premises to Lessee to fund the rebuilding of the Leased Premises consistent with proper construction financing requirements and procedures. In the event Lessee elects to repair the Leased Premises, Lessee shall be responsible for any construction management and oversight required for the rebuilding required for the rebuilding of the Leased Premises which shall be done in accordance with the rules and regulations governing such matters. In the event Lessee does not desire to repair the damage to the Leased Premises, and damage exceeds \$100,000.00, Lessee may upon written notice terminate this Lease and neither party shall have any further liability to the other except for any continuing indemnity obligations required under this Lease.

b. Uninsured Loss Damage. Subject to the provisions of subsection (c) below, if at any time during the Term of this Lease there is damage which is not an insured loss, unless caused by a grossly negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessee may at Lessee's option either (i) repair such damage as soon as reasonably possible at Lessee's expense, in which event this Lease shall continue in full force and effect, or (ii) if damage

exceeds \$100,000.00, give written notice to Lessor of termination of this Lease and neither party shall have any further liability to the other except for any continuing indemnity obligations required under this Lease.

c. Damage Near End of Term. At any time during the last six (6) months of any term which has not been extended by Lessee there is damage, whether or not an insured loss, either party may at its option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to the other party within sixty (60) days after the date of occurrence of such damage.

d. Lessee's Trade Fixtures and Personal Property. Lessor shall not be required to make any repairs or replacement of any Lessee trade fixtures or personal property. Any and all insurance proceeds for Lessee's trade fixtures and personal property shall belong solely to Lessee and shall be utilized by Lessee as Lessee determines appropriate in its sole discretion as set forth in subsection 7(c) above.

9. Repairs. Lessor shall not be responsible for maintenance or repairs of any kind on or to the Leased Premises. Lessee shall, at all times during the term hereof, at its own cost and expense, maintain, replace and keep in good condition and repair the Leased Premises and improvements placed or erected on the Leased Premises and the mechanical systems therefor. Lessee shall keep the Leased Premises free and clear of all liens arising out of or claimed by reason of any work performed, materials furnished or obligations incurred by or at the instance of Lessee. Similarly, Lessor shall not use or allow any liens or activities on the Leased Premises that would interfere with Lessee's use and enjoyment of the Leased Premises.

10. Construction of Improvements; Changes and Alterations; Delivery of Premises. Lessee shall have the right, with Lessor's consent (which consent shall not be unreasonably withheld) to construct improvements, additions or renovations on the Leased Premises during the Term, or any extension period. Lessor shall notify Lessee of its intended improvements, additions or renovations. If Lessor does not protest within thirty (30) days of notification, Lessee's consent shall be deemed granted.

Trade fixtures and furniture may be removed by Lessee at the end of the Term, provided any damage to the Leased Premises done by removal shall be repaired by Lessee. Lessor shall cooperate with Lessee in the acquisition of all permission and permits, licenses, etc. required for such improvements/alterations/renovations.

11. Access to Premises. Lessor or Lessor's agents shall be entitled to enter the Leased Premises at all reasonable hours for any reasonable purpose, including but not limited to, inspection of the Leased Premises.

12. Assignment, Subletting and Successors. Lessee shall have the right to sublet all or part of the Leased Premises with Lessor's consent (which consent shall not be unreasonably withheld.)

13. Entire Agreement. This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties other than are herein set forth. No representations have been made to, or relied upon by, either party or anyone acting for or on behalf of either party by any person, which are not fully and completely set forth herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them.

14. Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law, unless the partial invalidity shall make the remaining portion of the Lease unreasonable to enforce.

15. Notices. All notices, demands or elections of whatsoever sort which this Lease requires or permits either party to give to the other, shall be in writing and shall be personally delivered or shall be delivered by certified mail, return receipt requested, addressed to the respective parties as follows:

LESSEE:

Gila County
County Administrator
1400 E. Ash Street
Globe, AZ 85501

LESSOR:

Miami Unified School District No. 40
Governing Board President
PO Drawer H
Miami, AZ 85539

Miami Unified School District No. 40
Superintendent
PO Drawer H
Miami, AZ 85539

Either party may designate to the other in writing, given in accordance with this paragraph, a different address for service of notice. Notice by registered or certified mail shall be deemed served upon receipt.

16. Governing Law and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Should suit be brought by Lessor or Lessee to enforce or to recover on any of the terms and conditions contained in this Lease, the substantially prevailing party therein shall be entitled to reasonable attorneys' fees and court costs.

17. Waiver. No waiver of any covenant of this Lease or a breach of such covenant shall constitute a waiver of any covenant or the continued breach of the covenant.

18. This Lease may be cancelled by either party under the conditions specified in A.R.S. §38-511.

19. Indemnification by Lessee. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against any assessment, claim, demand, obligation, liability, loss, cost, damage, or expense, including without limitation, interest, penalties, and reasonable attorneys' fees resulting from, arising out of, or relating to any breach or default in the performance by Lessee of any covenant or agreement of Lessee contained in this Lease; or any liability arising out of any and all actions, suits, proceedings, claims, demands, judgments, costs, and expenses caused by Lessee's actions or inactions.

Lessor shall promptly notify Lessee of any such liability, breach of warranty, inaccuracy, misrepresentation, or other claim arising under the foregoing indemnification provision. Lessee may contest and defend in good faith any claim of third parties covered by this section provided such contest is made without cost or prejudice to Lessor, and provided Lessee notifies Lessor within thirty (30) days from receipt of notice thereof of Lessee's desire to contest the claim. If Lessee does not notify Lessor of Lessee's desire to contest the claim, Lessee shall reimburse Lessor on demand for any payment actually made by Lessor at any time after the closing date with respect to any liabilities, obligations, expenditures, or claims to which the foregoing indemnity relates.

20. Indemnification by Lessor. Lessor agrees to indemnify, defend and hold harmless Lessee from and against any assessment, claim, demand, obligation, liability, loss, cost, damage, or expense, including without limitation, interest, penalties, and reasonable attorneys' fees resulting from, arising out of, or relating to any breach or default in the performance by Lessor of any covenant or agreement of Lessor contained in this Lease; or liability arising out of any and all actions, suits, proceedings, claims, demands, judgments, costs, and expenses caused by Lessor's actions or inactions.

Lessee shall promptly notify Lessor of any such Liability, breach of warranty, inaccuracy, misrepresentation, or other claim arising under the foregoing indemnification provision. Lessor may contest and defend in good faith any claim of third parties covered by this section provided such contest is made without cost or prejudice to Lessee, and provided Lessor notifies Lessee within thirty (30) days from receipt of notice thereof of Lessor's desire to contest the claim. If Lessor does not notify Lessee of Lessor's desire to contest the claim, Lessor shall reimburse Lessee on demand for any payment actually made by Lessee at any time after the closing date with respect to any liabilities, obligations, expenditures, or claims to which the foregoing indemnity relates.

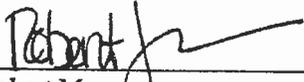
IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LESSOR:

MIAMI UNIFIED SCHOOL
DISTRICT NO. 40

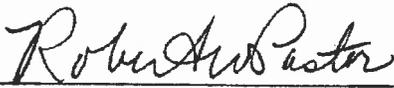
LESSEE:

GILA COUNTY

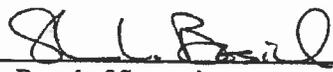
by: 
Robert Mawson
President, Governing Board

by: 
Cruz Salas
Chairman, Board of Supervisors

ATTEST:

by: 
Clerk, Governing Board

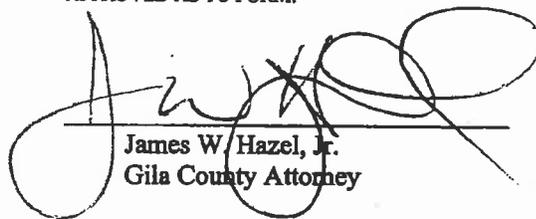
ATTEST:

by: 
Clerk, Board of Supervisors

APPROVED AS TO FORM:


Attorney for Lessor

APPROVED AS TO FORM:


James W. Hazel, Jr.
Gila County Attorney



Ground Lease and Use Agreement
between Gila County and Miami Unified School District 40
for Central Heights School building