w/c

(#2)

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE: 05/13/03 TIME: 1423
FEE : 0.00
PAGES: 12
FEE NO: 2003-031410

LEASE AGREEMENT

This LEASE AGREEMENT, made and entered into this 2 day of April, 2003, by and between PINAL COUNTY, a political subdivision of the State of Arizona, ("Lessor") and the Apache Junction Fire District ("Lessee").

RECITALS

A. WHEREAS, Lessor is authorized to enter into this LEASE AGREEMENT pursuant to the provisions of A.R.S. § 11-251 and A.R.S. § 11-256.01; and,

B. WHEREAS, Lessee is a duly formed Arizona fire district and is therefore authorized to enter into a lease of property owned by lessor for an amount less than the fair rental value of the property pursuant to A.R.S. § 11-256.01; and,

C. WHEREAS, Lessor is the owner of the real property (the "Premises") legally described in Exhibit A attached hereto and incorporated herein; and,

D. WHEREAS, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises legally described in Exhibit A; and,

E. WHEREAS, Lessee intends to develop the Premises into its administrative facility; and

F. WHEREAS, the Lessee intends to use the property for fire district use.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. DESCRIPTION OF LEASED PROPERTY: Lessor leases to Lessee and Lessee leases from Lessor that certain property (the Premises) legally described in Exhibit A attached hereto.

A. Lessee has the right to assign its right title and interest in and to the Premises pursuant to this LEASE AGREEMENT to a bank, or other financial institution, in connection with such bank's financing of improvements on the Premises, in which event, during the term of such assignment as security for the related financing, and subject to a sublease of the improved Premises to the Lessee for the purposes of complying with the use restrictions contained in Section 7 below, such bank or financial institution shall be deemed to be a lessee for the purposes hereof.

B. In the event of a default by Lessee of its obligation or obligations to the bank as referenced in the above paragraph A, and in addition to any other rights or remedies available to Lessor, Lessor

UNOFFICIAL

may, in its sole discretion, pay off the balance of Lessee's financing obligation secured by an assignment of this LEASE AGREEMENT and take possession of all improvements secured thereby.

2. TERM: This lease shall commence on 5-7-03 and continue thereafter for a period of twenty-five (25) years unless otherwise terminated in accordance with the terms of this LEASE AGREEMENT.

3. RENEWAL OF LEASE AGREEMENT: Upon termination of the initial twenty-five (25) year term of this LEASE AGREEMENT, the LEASE AGREEMENT shall be renewed for a subsequent twenty-five year term, unless at least one hundred and eighty (180) days prior to the expiration date of the initial term, or any subsequent renewal term, either party gives notice to the other party of its intention to cancel or re-negotiate the terms of this LEASE AGREEMENT.

4. TERMINATION: Lessee may terminate this LEASE AGREEMENT for any reason upon thirty (30) days written notice to Lessor and all liabilities and obligations of Lessee with respect to the Premises surrendered shall terminate on the date specified in the Notice, except as to obligations and liabilities existing or incurred prior to the effective date of termination, surrender, or the expiration of the term of this LEASE AGREEMENT.

5. AMOUNT OF RENTAL: Lessee agrees to pay Lessor, as rent for the Premises, the amount of One Dollar ($1.00) per year, the entire amount ($25.00) due and payable on or before the date this LEASE AGREEMENT goes into effect plus the one-time payment in the amount of $7,500 as reimbursement for the appraisal of the Premises.

6. INDEPENDENT CONTRACTOR: The relationship of the parties hereto is that of Lessor and Lessee, and in performing this Agreement, Lessee is an independent contractor and not an agent or employee of Lessor. Lessee agrees not to hold itself out to the public as an agent, subsidiary, partner, or employee of Lessor, and Lessee shall have no authority whatsoever to bind Lessor to any contract or agreement without Lessor's prior written consent.

7. USE: It is agreed by the parties that the Premises shall be used by Lessee for administrative offices by the fire district or for other fire district use.

8. REPAIRS AND REPLACEMENTS: Lessee shall accept the Premises in an "as is" condition. Lessee shall, at Lessee's sole cost and expense, keep and maintain the premises, and every part thereof, in adequate condition and repair. Lessee shall, upon the expiration or sooner termination of this Lease, surrender the Premises in as good a condition as existed at the commencement of this Lease, ordinary wear and tear excepted.

9. SERVICES AND FACILITIES: Lessee shall be solely responsible for the connection of and operating expenses for any and all services and facilities,

including but not limited to telephone, gas, water, electricity, sewage and removal of trash, garbage or refuse from the Premises. Lessor shall not be required to furnish any facilities or services of any kind to the Lessee during the term of this Lease.

10. IMPROVEMENTS: All improvements constructed and fixtures installed on the Premises by Lessee prior to or during the leased term shall be Lessee's property and shall not become part of the Premises, and may be removed by Lessee from the Premises at or before the end of the leased term if Lessee is not then in default under this Lease. Lessee shall, at its own cost and expense, clean up the Premises after removing all of its property. If the parties fail to renew the Lease upon termination, Lessee shall convey the improvements to the Premises to Lessor for payment of an amount equal to the appraised value of the improvements, such appraisal to be by a qualified independent fee appraiser who has an office in Arizona.

11. INSURANCE: Prior to the effective date of this LEASE AGREEMENT, Lessee shall procure and maintain the following insurance from an insurer satisfactory to Lessor:

a. General Liability Insurance, including provisions insuring against contracted liability, bodily injury, and property damage in the minimum amount of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) General Aggregate Limit.

b. Lessee shall require insurance coverage, in the same amounts set forth above, from each and every organization using the Premises for any purpose.

c. The insurance coverage required by this LEASE AGREEMENT shall name Lessor, its agents, representatives, directors, officials, employees, and officers as Additional Insureds, and each policy shall specify that said insurance shall be primary insurance and that any insurance coverage carried by Lessor, its agents, representatives, directors, officials, employees, and officers shall be excess coverage to that provided by Lessee. The insurance policy or policies required by this LEASE AGREEMENT shall not be cancelled without thirty (30) days prior notice to Lessor.

d. In the event any insurance policy required by this LEASE AGREEMENT is written on a claims-made basis, coverage shall extend for two (2) years past the termination of this LEASE AGREEMENT.

12. INDEMNIFICATION:

a. To the fullest extent permitted by law, Lessee shall indemnify, defend, save, and hold harmless Lessor, its agents, representatives, officers, directors, officials, and employees from any and all liability, demands,

proceedings, suits, actions, claims, losses, costs, and damages of every kind and description, arising out of, resulting from, or alleged to have resulted from this LEASE AGREEMENT or the use or enjoyment of the Premises whether authorized or unauthorized by Lessee and not attributable to sole negligence of Lessor.

b. Lessee's duty to indemnify, defend, save and hold harmless Lessor, its agents, representatives, officers, directors, officials, and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, or employees' liability claims, damages, losses or expenses (including but not limited to attorneys' fees, court costs, and/or arbitration costs and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death, or injury to, impairment or destruction of property, including loss of use resulting therefrom caused by or contributed to, in whole or in part, by any omission, fault, mistake or negligent act, whether active or passive, of Lessee, its employees, agents, or anyone for whose acts Lessee may be liable.

c. To the fullest extent permitted by law, Lessee shall indemnify, defend, save, and hold harmless Lessor, its agents, representatives, officers, directors, officials, and employees from any and all liability, demands, proceedings, suits, actions, claims, losses, costs, and damages of every kind and description, arising our of, resulting from, or alleged to have resulted from this LEASE AGREEMENT or the use or enjoyment of the Premises whether authorized or unauthorized by Lessor and not attributable to the sole negligence of Lessee.

d. Lessor's duty to indemnify, defend, save and hold harmless Lessee, its agents, representative, officers, directors, official, and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, or employee's liability claims, damages, losses or expenses (including but not limited to attorneys; fees, court costs, and/or arbitration costs and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property, including loss or use resulting therefrom caused by or contributed to, in whole or in part, by any omission, fault, mistake or negligent act, whether active or passive, of Lessor, its employees, agents, or anyone for whose acts Lessor may be liable.

e. The type and amount of any insurance coverage herein provided shall in no way be construed as limiting the scope of the indemnity in this section.

f. A party's obligation under this indemnity shall not extend to the sole negligence of the other party, its agents, representatives, officers, directors,

officials, and employees. Indemnification to the extent set forth in this section shall be required by each party from its subcontractors, sublessees, and assignees on behalf of the other party.

13. SURVIVABILITY: Every provision of paragraph 11 (Insurance) and paragraph 12 (Indemnification) shall survive the termination or cancellation of this LEASE AGREEMENT.

14. WAIVER: The insurance policies required by this LEASE AGREEMENT shall contain a waiver of rights of recovery (subrogation) against Lessor, its agents, representatives, directors, officers, and directors for any claims against Lessee arising out of this LEASE AGREEMENT.

15. INSPECTION AND ACCESS: Lessor, its agents, attorneys or employees, shall have the right of access to the Premises at all reasonable times for the purposes of inspection or for other reasonable and proper purposes related to Lessor's interest in the Premises; provided, however, that such inspections do not unreasonably interfere with or disrupt Lessee's use of the Premises. Said access does not allow a "through-the-fence" operation by Lessor. "Through-the-fence" operation is defined as access from adjacent properties.

16. EMINENT DOMAIN:

a. If the whole of the Premises shall be taken by right of eminent domain by any municipality, public authority or other body having the right of condemnation, this Lease shall be canceled and terminated on the date of vesting of title pursuant to such proceedings, and condemnation proceeds for the real property shall be paid to Lessor and the condemnation proceeds for the improvements of the Premises shall be paid to Lessee. Any and all rents and other obligations of Lessee hereunder shall be adjusted to such date of termination.

b. If a substantial part of the Premises shall be taken back by right of eminent domain so that the remainder of the Premises cannot be reasonably used for the same purpose as before said condemnation or taking, and said condemnation or such taking will prevent the use of the remaining portion of the Premises for the purposes contemplated by the Lease, or in the event of a restriction of any kind or nature which would prevent or substantially interfere with Lessee's use of the Premises, the parties hereto shall have the option of terminating this Lease. Said termination shall be effected by notice in writing to the other party within thirty (30) days of the date of such taking or restriction. In the event of such termination, condemnation proceeds or the like for the real property shall be paid to Lessor, and the condemnation proceeds for the improvements on the Premises shall be paid to Lessee, and any and all rents and other obligations of Lessee hereunder shall be adjusted to such date of termination. If neither party exercises its

option to terminate this Lease as provided herein, then rents reserved in this Lease shall be abated on a fair and just basis and all condemnation proceeds and the like received shall be used to make such repairs and restorations as may be necessary to fully restore the remaining portion of the Premises, provided that neither party hereto shall be obligated to expend more than the net award received for the Premises.

17. DISCLAIMER: Lessee acknowledges that neither Lessor nor its agents have made any representations or promises with respect to the Premises, except as expressly set forth in this Lease, and no rights, easements or licenses are acquired by Lessee by implication or otherwise, except as expressly set forth herein. Lessee acknowledges that this Agreement shall not be modified or amended in any way except by a writing executed subsequent to or contemporaneously with this document by both parties which is specifically identified as an amendment or addendum to this Agreement

18. GOVERNING LAW: This LEASE AGREEMENT and the performance thereof shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any dispute arising out of this LEASE AGREEMENT shall be in the Superior Court of Arizona, in and for Pinal County, or the Federal District Court of the State of Arizona.

19. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall at any time or to any extent be declared or otherwise become invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstance other than those as to which it his held invalid or unenforceable, shall not be affected thereby and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

20. CONFLICT OF INTEREST: Lessor may cancel this LEASE AGREEMENT without penalty or further obligation for conflict of interest as provided by A.R.S. § 38-511.

21. NOTICE: All notices given hereunder shall be by United States mail, postage prepaid, addressed as follows:

TO LESSOR: Pinal County
Attention: County Manager
PO Box 827
Florence, AZ 85232

DRAFT

TO LESSEE: Apache Junction Fire District
Attention: Fire Chief
3955 E. Superstition Blvd.
Apache Junction, AZ 85219

22. ATTORNEY'S FEES: The prevailing party to any dispute under this Lease, including arbitration, shall be entitled to recover its reasonable attorney's fees and costs from the other party, including arbitration.

23. PRIOR AGREEMENTS: This LEASE AGREEMENT contains all of the agreements of the parties hereto with respect to the matters covered or mentioned in this Lease and supersedes any prior lease, consent, contract, amendment, agreement or understanding between Lessor and Lessee.

24. WAIVER: If the Lessee should default as to any of the conditions, covenants or agreements herein contained and the Lessor, having knowledge of such breach, fails to serve notice of default upon Lessee for the same, such failure on its part shall not be construed as a waiver of such conditions, covenants or agreements as to future violation and the right of termination shall remain in full force and effect unless expressly waived in writing.

25. INTERPRETATION: Paragraph headings are for convenience only and are in no way to be construed as part of this LEASE AGREEMENT or as a limitation of the scope of the particular section to which they may refer.

26. DEFAULT: Lessor may terminate this LEASE AGREEMENT for default. However, Lessee shall not be in default unless Lessor fails to perform obligations required of Lessee within a reasonable time, but in no event later than thirty (30) days after written notice by Lessor to Lessee, specifying wherein Lessee has failed to perform such obligation. Provided, however, that the nature of Lessee's obligation is such that more than thirty (30) days are required for performance, then Lessee shall not be in default if Lessee commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

27. ESTOPPEL CERTIFICATES: Either party shall, without charge, at any time and from time to time, within ten (10) days after written request of the other, certify by written instrument to any person specified in such request: (a) as to whether this LEASE AGREEMENT has been supplemented or amended, and if so, the substance and manner of such supplements or amendment; (b) as to the validity and force and effect of this Lease in accordance with its tenor as then constituted; (c) as to the existence of any default hereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; and (e) as to any other matters as may be reasonably requested. Any such certificate may be relied upon by the party requesting it and by any other person to whom the same may be exhibited.

28. MEMORANDUM OF LEASE: It is agreed between the parties hereto that each may execute any memorandum of lease for the purpose of recording so long as the terms are not in conflict herewith.

IN WITNESS WHEREOF, the parties have duly executed this LEASE AGREEMENT the day and year first above-written.

"LESSOR"

PINAL COUNTY, a political subdivision of the State of Arizona,

By _____
Chairman, Board of Supervisors

ATTEST:

_____
Clerk of the Board

Approved as to form:

ROBERT CARTER OLSON
Pinal County Attorney
By _____
Rick V. Husk
Deputy County Attorney

Unofficial

"LESSEE"

Apache Junction Fire District, an Arizona fire district

By Linda L. Sloan
Chairperson, Apache Junction Fire District

ATTEST:

Clerk of the Board

Approved as to form:

By Donna M. Aversa
Donna M. Aversa
Attorney for Apache Junction Fire District

State of Arizona)
) ss.
County of Pinal)

The foregoing instrument was acknowledged before me, a Notary Public, this 2nd day of April, 2003 by Linda L. Sloan, Chairperson and James H. Cowles, Clerk.

Notary Public

My Commission Expires:

OFFICIAL SEAL
MARIE BOYD
NOTARY PUBLIC STATE OF ARIZONA
MARICOPA COUNTY
MY COMM. EXPIRES SEPT.19, 2004

State of Arizona)
) ss.
County of Pinal)

The foregoing instrument was acknowledged before me, a Notary Public, this 7th day of May, 2003 by Becky Canalez Notary Public

Notary Public

My Commission Expires: May 11, 2004

OFFICIAL SEAL
BECKY CANALEZ
NOTARY PUBLIC-STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires May 11, 2004

Unofficial Document