

LEASE AGREEMENT

This Agreement is made by and between the Board of Education of the Gadsden Independent School District, hereinafter "Lessor," and Texas Migrant Council, Inc., a non-profit Corporation hereinafter "Lessee".

ARTICLE 1. LEASE

1.01 In consideration of the mutual covenants and agreements herein set forth, the rent herein reserved, and for good and valuable consideration, Lessor does hereby demise and lease to Lessee, and Lessee does hereby lease land from Lessor, at the La Mesa Elementary School campus located at 201 E. Barela, La Mesa, New Mexico 88044. The real property described in Exhibit A, attached hereto and made a part hereof, hereinafter called the "Leased Premises".

ARTICLE 2. TERM AND PURPOSE

The term of this Agreement shall be twenty (5) years from November 1, 2007. This lease may be renewed for four (1) additional five (5) year term upon the same terms and conditions as are contained herein and upon written notice by the Lessee to the Lessor at least ninety (90) days prior to the expiration of any term. Lease renewal will not be unreasonably withheld.

2.02 The Leased Premises are to be used solely for the following purpose and no other;

Use of a childcare facility under the Migrant and Seasonal Head Start Program, hereinafter "Program," as defined under applicable federal law.

Use of the Leased Premises for any other purpose by Lessee shall constitute a default by Lessee and shall entitle Lessor to exercise all rights and remedies under this Agreement and available to it at law or in equity.

2.03 As part of the permitted use, Lessee shall be allowed, at Lessee's sole cost and expense, to install and occupy a modular building, to erect and/or build playgrounds for the benefit of the Program, to provide education for the intended beneficiaries of the Program, and to operate its facility as a day-care facility for such beneficiaries. Said modular building and playground, including climbing structures, swings, bike paths and fencing, will hereinafter be referred to as "Playground facilities".

ARTICLE 3. RENT

3.01 Lessee agrees to pay Lessor and Lessor agrees to accept as rent for the Leased Premises the sum of \$1.00 per year payable annually, the first installment to be paid on or before

November 1, 2007, and each succeeding installment to be paid annually thereafter throughout the term of the Lease.

ARTICLE 4. IMPROVEMENTS TO LEASED PREMISES

- 4.01 Lessor hereby permits Lessee to install and occupy a modular building and place Playground Facilities on the Leased Premises. The modular building (hereinafter "Building") shall be purchased or procured by Lessee from Federal grant money for the Federal Head Start Program and, in accordance with applicable federal law and procurement requirements, ownership of the Building shall be vested in the federal government over the useful life of the Building. The Playground facilities are to be considered equipment and personal property to Lessee. The Playground Facilities and other removable appurtenant facilities constructed or placed by Lessee on the Leased Premises shall be hereinafter called "Lessee's "appurtenant Facilities".
- 4.02 Personal property other than property deemed fixtures under the law placed on installed in the Building shall remain the personal property of Lessee. Such personal property shall include fences, kitchen equipment, stoves, sinks, refrigerators, freezers, window air conditioners, or other portable air conditioning equipment ("Personal Property" hereinafter).
- 4.03 Lessee shall provide, secure and maintain, at its sole expense, all utility hookups and utilities for the Building and appurtenant Facilities and will pay promptly all utility charges which may be incurred in connection with Lessee's use of the Leased Premises, and will save Lessor harmless there from, and Lessee shall maintain water, sewage, gas and electric facilities serving the Leased Premises in good repair, in a sanitary condition, and adequate for the purposes for which the Leased Premises are leased.

ARTICLE 5. TERMINATION AND SURRENDER

- 5.01 Lessor may also terminate this Agreement immediately upon default or breach by Lessee of any provision herein provided Lessor has provided Lessee written notice of such default or breach and thirty (30) days to cure same.
- 5.02 This Agreement may be terminated for convenience by Lessee by providing one-hundred eighty (180) days written notice to Lessor. Lessee may also terminate this Agreement upon default or breach by Lessor of any provision herein provided Lessee has provided Lessor written notice of such default or breach and thirty (30) days to cure same.
- 5.03 Upon termination of this Agreement whether in accordance with this Article or as provided elsewhere herein, Lessee shall deliver to Lessor the Leased premises in the same condition as existed at the start of this Agreement.

- 5.04 If the Building has remaining useful life on the effective date of termination of this Agreement, ownership to the Building shall remain in the federal government in accordance with applicable federal law. Any subsequent use or disposition of the Building shall be governed by applicable federal law
- 5.05 Upon the termination of this Agreement, Lessee shall have the right to remove Lessee's Appurtenant Facilities and Personal Property from the Leased Premises and shall be obligated to do so and to complete removal of same no later than the effective date of termination of this Agreement. Lessee shall also remove all hazards, waste, or nuisances from the Leased Premises not later than the effective date of the Agreement termination.

ARTICLE 6. GENERAL OBLIGATIONS OF LESSEE

- 6.01 Prior to undertaking any improvements or alteration to the Leased Premises, including the installation of Lessee's Building and Appurtenant Facilities as described herein, Lessee shall submit design plans for such improvements or alterations to Lessor, at the address shown herein for approval. Lessor or its designee shall review such plans, and Lessee shall make no such alterations or improvements until such plans are approved by Lessor, such approval not to be unreasonably withheld. Lessor's review is limited to the general appropriateness of the plans and does not include an inspection for compliance with state, federal or local building requirements or safety-designed features. Upon receipt by Lessor's Superintendent, Lessor or its designee shall have thirty (30) days thereafter to review said plans and to state objections, if any. If Lessor or designee fails to respond with the said thirty (30) days, approval shall be deemed given and construction may proceed.
- 6.02 Lessee shall maintain the Leased Premises at its own expense and keep them free from waste and nuisance, and in good appearance during the term set forth herein. Lessor shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises or to any of Lessee's Building, facilities, equipment, Appurtenant Facilities, or fixtures therein, all of which shall be Lessee's sole responsibility.
- 6.03 Lessee may garage school buses on the leased premises but Lessee shall not permit the Leased Premises to be used for dead storage of motor vehicles or for motor vehicle repairs, other than occasional incidental repairs of motor vehicles such a changing a flat tire, or emergency road service. Lessee shall not permit the storage of unused or discarded equipment on the Leased Premises, and shall not permit trash, discarded materials or equipment of any kind or description to accumulate on the Leased Premises.
- 6.04 Lessee shall not conduct within the Leased Premises any fire, auction or bankruptcy sale. Lessee shall not permit any objectionable or unpleasant odors to emanate from the Leased Premises, nor place or permit any loud speaker or amplified or signs or devices emitting flashing lights on the Leased Premises where same can be heard, seen from outside the Leased Premises, nor take any action which would constitute a nuisance, or which is disruptive of adjacent or nearby school facilities and operations of Lessor.

- 6.05 Lessee shall not at any time leave the Leased Premises vacant and unused for the purposes stated in Article 2 herein, but shall in good faith continuously throughout the term of this Agreement conduct and carry on the entire Leased Premises the purpose for which the Leased Premises are leased.
- 6.06 Lessee shall procure at its own expense any permits and licenses required for the transaction of business in the Leased Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations.
- 6.07 Lessee shall prohibit firearms and alcoholic beverages on the Leased Premises.
- 6.08 Lessee, at its sole cost and expense, shall keep and maintain the Leased Premises and its improvements in a good state of repair and preservation, and maintain the Leased Premises and its improvement in clean and habitable condition, free of insects, rodents, vermin and other pests and shall make all repairs and replacements which are necessary or desirable to keep the Leased Premise and its improvements in good order and repair, and shall not suffer or permit any continuing nuisance on the Leased Premises.
- 6.09 All trash, refuse and garbage shall be placed in trash bins or other refuse containers and maintained in a neat and sanitary condition, free from offensive odors. Lessee shall not permit the contents of same to contact the ground or to be scattered in or about the Leased Premises by wind or water. Lessee shall be responsible for regularly removing and property disposing of all garbage and refuse produced on or collected from the Leased Premises.
- 6.10 Lessee shall pay, before they become delinquent, and fully discharge all general taxes or assessments or governmental charges of any kind imposed during the Agreement term or levied and assessed against either the Leased Premises or (i) on real property improvements, alterations, or additions constructed or installed on or in the Leased Premises by Lessee, and including but not limited to, Lessee's Building and Appurtenant Facilities, and (ii) on Lessee's personal property, fixtures and personal property improvements including, but not limited to, trade fixtures, appliances, equipment, and other personal property placed or constructed by Lessee in, on, or about the Leased Premises.
- 6.11 Lessee shall be responsible for *ad valorem* property taxes in the event same should be demanded from or due to the Appraisal District or other lawful authority based on Lessor's interest in the Leased Premises and/or Lessee's use and/or occupancy of the Leased Premises for taxing periods coinciding in whole or in part with the term of this Agreement.
- 6.12 Lessor any at any time request the payment of any item of taxes, assessments, governmental charges, including but not limited to *ad valorem* taxes, which Lessee is obligated to pay under the provisions of this Agreement, if due and payable but remains unpaid, Lessor may give written notice to Lessee of its default, specifying the same, and if Lessee continues to fail to pay such item of taxes assessments or governmental charges after 30 days from such written notice, Lessor may pay the items specified in the notice. Lessee covenants thereupon on demand, to reimburse and pay Lessor any amount so paid or expended in the payment of the items specified in the notice, and including but not limited to interest, costs

or expenses paid by Lessor to discharge such item. However, the 30 day period shall be tolled provided that Lessee has filed a timely contest of same before the appropriate governmental authority, but such tolling shall not apply in the event such contest has reached a conclusion by judgment or decision against Lessee, and Lessee does no timely appeal or has no right of appeal. If Lessor does not pay the items specified in the notice, Lessee shall be in default of this Agreement and Lessor may terminate this Agreement immediately. The obligations of this Paragraph shall survive the termination of this Agreement.

- 6.13 All taxes assessed for a period coincident with the term of this Agreement but due and payable to the appropriate governmental authority, after the termination of this Agreement, shall be the responsibility of Lessee, and Lessee shall pay same to Lessor upon demand when the amount due becomes known. This obligation shall survive the termination of this Agreement.
- 6.14 Lessee shall not store, dispose of, or utilize hazardous materials including but not limited to gasoline, oil, solvents, pesticides and lubricants on the Leased Premises. "Hazardous materials" include but are not limited to any materials defined as hazardous by any state or federal law.
- 6.15 Lessee expressly understands and agrees that Lessee shall bear sole responsibility for the security of the Leased Premises, and for the security of Lessee's employees, agents, invitees, customers, visitors, and all other persons whomsoever who come on or about the Leased Premises. Lessor will not be obligated to provide security personnel, security lighting, or any other form of security for the Leased Premises.
- 6.16 Lessee shall conduct all construction and repairs to the Leased Premise in a good and workmanlike manner, in compliance with all governmental requirements, and in such manner so as not endanger minor or interfere or disrupt the school-related operations of Lessor at adjacent or nearby locations to the Leased Premises.
- 6.17 Lessee may place signs on the Leased Premises only with the advance written approval of Lessor, which approval shall not be unreasonably withheld. All personal property, signs and improvements of Lessee, its employees, agents, customers and invitees shall be kept on or near the Leased Premises at the sole risk of the Lessee, and Lessor shall not be liable for any damage thereto.
- 6.18 Lessee will permit Lessor to come upon the Leased Premises at all reasonable times in order to inspect the condition, use, or security of the Leased Premises
- 6.19 Lessee will comply with all applicable federal, state and local laws and with any applicable rules and regulations of Lessor, and will ensure that those persons using the Leased Premises so comply. Lessee shall indemnify Lessor and hold it harmless from and against any and all claims, damages, loss and liability (including but not limited to attorney's fees and cost of litigation) suffered by Lessor by reason of Lessee's failure to comply with the foregoing terms of paragraph 6.19.

ARTICLE 7. INSURANCE

- 7.01 Lessee, at its sole cost and expense, shall carry and maintain in full force and effect during the term of this Lease or any extensions thereof, public liability insurance covering Lessor and Lessee for Liability for personal injury and property damage in a form and with an insurance company acceptable to Lessor. The insurance provided under this Paragraph shall be carried with per occurrence limits of not less than \$500,000 for property damage and not less than \$1,000,000 per person per accident for personal injury, and shall be carried with one or more insurance companies duly authorized and admitted to transact business in Texas and New Mexico. Lessor shall be named as an additional insured on such policies, and shall be entitled to receive notice of cancellation of such insurance. Such insurance shall protect both Lessor and Lessee against liability arising from Lessee's use and occupancy of the Leased Premises.
- 7.02 If lessee does not maintain such insurance in full force and effect, Lessor may, at its option, terminate this Agreement pursuant to Article 4 herein, or procure such insurance as it deems appropriate to protect its interests. Lessor does not assume thereby, any duty to Lessee to procure insurance for the benefit of Lessee, and Lessor's procurement or failure to procure insurance shall be without liability of any kind to Lessee or Lessor.
- 7.03 Lessee at Lessee's sole cost and expense shall carry and maintain in full force and effect during the term of this Lease and any renewal thereof, fire and extended coverage insurance upon the Building and upon all alterations, additions and improvements on the Leased Premises in an amount equal to the replacement value of such Buildings, alterations, additions and improvements. In the event that such Building, additions, alterations and improvements should be destroyed or substantially damaged in whole or in part, and such loss is covered by fire and extended coverage insurance, Lessee shall have the option to either continue this Lease and use Lease and tender to the Lessor such proportion of the proceeds as well as compensate Lessor for the value of its lost or destroyed Building, additions, alterations, and improvements, including the costs required to clear the Leased Premises of all such buildings, additions and improvements including foundations.
- 7.04 Lessee, at its sole cost and expense, shall carry and maintain in full force and effect during the term of this Lease or any extensions thereof, business auto liability insurance (including owned, non-owned, and hired vehicles) covering Lessor and Lessee for liability for bodily injury and property damage in a form and with an insurance company acceptable to Lessor. The insurance provided under this paragraph shall be carried with per occurrence limits of not less than \$100,000 for property damage and not less than \$750,000 per person per accident for personal injury, and shall be carried with one or more insurance companies duly authorized and admitted to transact business in Texas and New Mexico. Lessor shall be named as an additional insured on such policies, and shall be entitled to receive notice of cancellation of such insurance. Such insurance shall protect both Lessor and Lessee against liability arising from Lessee's use of vehicles on the Leased Premises.

ARTICLE 8. INDEMINIFACTION

- 8.01 LESSEE AGREES TO PROTECT DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSS, DEMANDS, DAMAGES, ACTIONS SUITS, LIABILITY, COST AND EXPENSES INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES FOR THE DEFENCE THEROF, ARISING FROM LESSEE'S USE OR OCCUPANCY OF, OR THE CONDUCT, OPERATION OR MANAGEMENT OF LESSEE'S ACITIVITES IN OR ABOUT, OR LESSEE'S BUILDING CONSTRUCTION ON OR ABOUT, THE LEASED PREMISES OR ARISING FROM THE NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SERVANTS, SUBTENANTS, INVITEES OR LICENSEES IN OR ABOUT THE LEASED PREMISES. SAID AGREEMENT TO SO PROTECT, DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS EXTENDS, BUT IS NOT LIMITED TO, ALL CLAIMS BASED ON PERSONAL INJURY, LIABILITY, AND BREACH OF WARRANTY. "LESSOR" IN EACH OF ITS OCCURRENCES INT HIS PROVISION SHALL INCLUDE WITHOUT LIMITATION, THE CLOVIS MUNICIPAL SCHOOLS DISTRICTS, ITS BOARD OF EDUCATION IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, ITS EMPLOYEES, SERVANTS, AGENTS, AND REPRESENTATIVES.**
- 8.02 Lessor and Lessor's agent, employees and trustees, in both their official and individual capacities, shall not be liable to Lessee or to Lessee's agents, invitees, customers or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Leased Premises arising from the negligence or misconduct of Lessee, or Lessee's agents, or of any other person entering the Leased Premises, whether or not with the express or implied permission of Lessee, or Lessee's agents, and Lessor and its officials, employees and agents are hereby RELEASED from any such liability.

ARTICLE 9. DEFAULT

- 9.01 Lessee shall be deemed in default under this Agreement by its failure to comply with any term, provision, or covenant of the Agreement, and shall fail to cure same within thirty (30) days after written notice of same to Lessee, unless some shorter notice period shall be expressly provided herein in connection with some specific tern, provision, or covenant, in which case, such shorter notice period shall govern. Forbearance by Lessor over any period time whether days, months or years, to issue notice of default and to provide the written notice permitted hereunder after knowledge of such default, shall not be deemed or construed, and shall not constitute, a waiver of such default, or an estoppel to assert such default.
- 9.02 On the occurrence of any default by Lessee, and after the lapse of any period of notice required herein, Lessor shall have the option without further notice to Lessee to terminate

this Agreement, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so, Lessor may without prejudice to any other remedy which it may have under this Agreement or in law or equity re-enter and take possession of the Leased Premises and remove all persons and property there from by force if necessary, without being liable to Lessee for damages and without being deemed guilty of or liable for any manner of trespass.

- 9.03 Pursuit by Lessor of any remedy hereunder shall not preclude pursuit of any other remedies provided herein or by law or in equity, nor shall pursuit of any other such remedy constitute an election of remedies or a forfeiture or waiver of any damages to which Lessor may be entitled.
- 9.04 Forbearance by Lessor to enforce one or more of the remedies herein provided in the event of default shall not be deemed or construed to constitute a waiver of such default.
- 9.05 Lessee agrees to reimburse Lessor, and to be responsible for, any reasonable attorney's fees incurred by Lessor in enforcing or defending any rights of Lessor hereunder.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.01 Lessee shall not have the right to sublet, assign, mortgage, subordinate, alienate or hypothecate the Leased Premises, or any part thereof, or any or transfer any interest in this Agreement without prior express written consent of Lessor. Any purported assignment or transfer in violation of this provision shall be void and of no effect and further, at Lessor's election, shall constitute a default by Lessee entitling Lessor to terminate this Agreement and pursue other remedies available to it. The term "sublet" shall include without limitation the granting of licenses, concessions, or other rights of occupancy and use of any portion of the leased premises.
- 10.02 Lessee and Lessor agree that, for the purpose of posting any notice as the "front door" of the leased premises shall include any of the doors used by Lessee's business invites to enter the Leased Premises during normal business hours.
- 10.03 All rights and remedies of Lessor under this Agreement shall be cumulative, and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises. No waiver by Lessor of a breach of any of the covenants or conditions of this Agreement may be construed a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this Agreement.
- 10.04 Any termination or cancellation of this Agreement as provided herein shall not relieve Lessee from paying any sum or sums due and payable to Lessor under the Agreement at the time of termination, or any claim for damages then or previously accruing against Lessee hereunder, or from recovering damages from Lessee foe any default under this Agreement.

- 10.05 This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Venue for any action to enforce or interpret this Agreement shall be in Brooks County, Texas
- 10.06 This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto and their respective administrators, legal representatives, successors, and permitted assigns.
- 10.07 In the event that Lessor commences any legal action or proceeding, including actions for declaratory or specific performance, by reason of failure of Lessee to perform or keep any term, covenant, or condition of this Agreement, Lessor shall be entitled to recover from Lessee, in addition to costs, reasonable attorney's fees.
- 10.08 All amendments and/or supplements to this Agreement must be in writing and executed by each party hereto. However, such amendments and/or supplements may be executed in counterparts, all of which shall be deemed to constitute one document.
- 10.09 This Agreement represents the entire and integrated Agreement between Lessor and Lessee and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Lessor and Lessee.
- 10.10 If any of the terms and provisions herein contained are found to be void, voidable, unenforceable, or invalid, that fact shall not affect the validity and enforceability of the remainder of the terms and provisions hereof and this Agreement shall remain valid and enforceable and shall be construed as though the void, voidable, unenforceable, or invalid terms and provisions were never included herein.
- 10.11 **No Warranties.** LESSOR EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY NATURE, KIND OR CHARACTER WHATEVER, EXPRESS OR IMPLIED, REGARDING THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE LEASED PREMISES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND LESSEE HEREBY ACCEPTS THE LEASED PREMISES IN A AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS, AND LESSEE FURTHER AGREES That IT IS NOT RELYING ON ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PHYSICAL CONDITION OF THE LEASED PREMISES OR WITH RESPECT TO THE OPERATIONS OF THE LEASED PREMISES AND AGREES THAT LESSEE HAS MADE ITS OWN INDEPENDENT INVESTIGATION OF THE LEASED PREMISES AND ITS NOT RELYING ON ANY INFORMATION PROVIDED BY LESSOR.
- 10.12 All notices to be given under this Agreement shall be given by certified mail, return receipt requested, addressed to the proper party, at the following addresses:

If to Lessor: Gadsden Independent School District
1325 W. Washington
P.O Drawer 70
Anthony, New Mexico 88021
ATT: Superintendent of Schools

If to Lessee: Texas Migrant Council, Inc.
P. O. Box 2579
Laredo, Texas 78044-2579
Attention: Ms. Mary G. Capello, CEO

10.13 In the event that all or any portion of the Leased Premises is condemned by any governmental body or agency, Lessor shall be entitled to all compensation awarded or paid without participation by Lessee.

This Agreement is effective from the date of execution appearing below by the duly authorized representative for each party, or if more than one date appears, the later of those dates.

LESSOR: (1)

LESSEE: (1)

Gadsden Independent School District

Texas Migrant Council, Inc.

Signature

Signature

Printed Name

Mary G. Capello
Printed Name

School Board President
Title

CEO
Title

Date

Date

Signature

Printed Name

Superintendent
Title

Date