

RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION

WHEREAS, Lorin Henry, Director of the Cibecue Athletic Department, has presented to the Tribal Council a recommendation that the lobby of the Cibecue Gymnasium be leased to a business known as Rent-A-Flick, which rents video home movies to consumers; and

WHEREAS, the Tribal Council has been advised of the terms of the proposed lease, the area to be leased, the rental fee and the duration of the lease, which is attached hereto and incorporated by reference herein; and

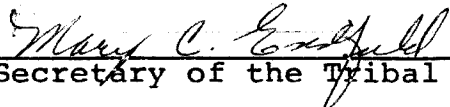
WHEREAS, the Tribal Council concludes that it is presently in the best interest of the Cibecue Athletic Department to approve Mr. Henry's recommendation as set forth herein.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves leasing the Cibecue Gymnasium Lobby to Rent-A-Flick, pursuant to the lease terms and conditions set forth herein.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby authorizes the Tribal Chairman and in his absence, the Vice Chairman, to execute all documents and lease agreements necessary to carry out the purposes of this resolution.

The foregoing resolution was on June 13, 1985, duly adopted by a vote of 8 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984)

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

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BUSINESS LEASE  
WHITE MOUNTAIN APACHE TRIBE  
OF THE FORT APACHE INDIAN RESERVATION

LEASE NO. \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

LESSOR: White Mountain Apache Tribe  
P.O. Box 700  
Whiteriver, Arizona 85941

LESSEE: Keith M. and Lynda K. Flake  
P.O. Box 296  
Snowflake, Arizona 85937  
536-2300 or 536-7729

THIS CONTRACT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 1985, by and between the WHITE MOUNTAIN APACHE TRIBE, doing business as Cibecue Athletic Department, (hereinafter referred to as "Lessor") and Keith M. & Lynda K. Flake, DBA Rent-A-Flick (Hereinafter referred to as "Lessee") in accordance with the provisions of the Act of August 9, 1955 (69 Stat. 539) as implemented by Part 162, Leasing and Permitting, for the Code of Federal Regulations, Title 25-Indians, and any amendments thereto, which by reference are made a part hereof.

1. Definitions:

"Secretary" means the Secretary of the Interior of the United States of America or his authorized representative, delegate or successor.

2. Leased Premises:

For and in consideration of the rents, covenants and agreements hereinafter set out, the Lessor hereby leases to the Lessee these certain premises within the Cibecue Community Gymnasium described as follows:

The Lobby area of the Gymnasium

3. Term:

The term of this lease shall be six (6) months, beginning the 1st of July, 1985 and ending on December 31, 1985, subject to approval by the Secretary. This lease may be renewed for a further term of six (6) months commencing at the expiration of the original term subject to the terms negotiated and agreed upon by the Lessor and Lessee sixty (60) days prior to the expiration of the original term.

4. Condition of Leased Premises:

Lessee has examined and knows the premises and no representations as to the condition thereof, unless otherwise expressly provided for in this contract have been made by the Lessor or any agent of the Lessor, prior to or at the execution of this lease and Lessee warrants that it has not relied on any warranty or representation made by or for Lessor but solely upon Lessee's independent investigation.

5. Purpose

Lessee shall use and operate the leased premises for the purpose of Video Tape Rental/Video Equipment Sales. Lessee shall restrict its use to such purpose and shall not use or permit the use of the premises for any other purpose without the written consent of Lessor or Lessor's authorized agent.

6. Unlawful Uses:

The Lessee agrees that it will not use or cause to be used or permit any part of the leased premises for any unlawful conduct or purpose.

7. Rental:

The Lessee in consideration of the foregoing, covenants and agrees to pay lawful money of the United States of America to Cibecue Athletic Department, as the authorized agent of the Lessor, payable as follows:

\$500.00 by the first of each month, commencing July 1, 1985, and on the first day of each month thereafter for the term of the lease.

8. Improvements and Additions:

As further consideration for the lease, Lessee may make improvements on the demised premises and shall present the Lessor or his designated agent with a description of said improvements. All improvements, alterations and additions shall be performed in a workmanlike manner, and to the satisfaction of the Lessor.

In addition to the above improvements, Lessee shall have the right to place on the leased premises, at his own expense, such additional equipment as may be deemed necessary to better conduct and improve the business authorized by this lease. Provided, however, that before any such improvements shall be placed thereon, the consent of the Lessor or its authorized agent must first be obtained. Lessee shall provide Lessor with serial numbers of all additional equipment installed. All such additional equipment installed on the leased premises shall remain the property of the Lessee and be considered removable trade fixtures. It is further understood that in the event a second six-month lease is not executed, the Lessee shall remove all removable trade fixtures within sixty (60) days from the termination date of this lease, otherwise said improvements shall become the property of the Lessor. Lessee shall repair and restore to original condition the premises as they were prior to installation of improvements and fixtures unless the lessor waives in writing this requirement.

9. Construction, Maintenance, Repair and Alterations:

The Lessee shall maintain the interior of the leased premises and all improvements thereon in good order and repair and in a neat, sanitary and attractive condition, at all times during the term of this Lease and at Lessee's sole cost and expense. Lessee shall construct, maintain and repair all improvements on the leased premises and any alterations, additions, or appurtenances thereto, and shall otherwise comply with all public laws, tribal and federal, ordinances and regulations applicable to said premises. Lessee shall indemnify and hold harmless the Lessor and the United States Government against all claims arising from Lessee's failure to maintain said premises and the improvements thereon as hereinabove provided or from Lessee's nonobservance of any law, ordinance or regulation applicable thereto.

10. Utility Services:

Utilities will be paid by the Lessor.

11. Sublease, Assignment, Transfer:

The Lessee shall not sublease, assign or transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises without the prior written approval of the Lessor, the Secretary, and the sureties; any such sublessee, assignee or other successor in interest shall agree, in writing, to be bound by each and all of the covenants and conditions of this Lease.

12. Status of Sublease:

Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases or subtenancies, but shall operate as an assignment to Lessor of any and all such subleases or subtenancies.

13. Encumbrance:

This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises may not be encumbered by the Lessee.

14. Liens, Taxes and Assessments:

Lessee shall not permit to be enforced against the leased premises, or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee, but Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before delinquent, all tax assessments, license fees and other like charges levied during the term of this lease upon or against the leased premises and all interest therein and property thereon for which either the Lessee or Lessor may furnish the Lessor and the Secretary written evidence duly certified that any and all taxes required to be paid by Lessee have been paid satisfied or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the property by posting bond to prevent the enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless the Lessor, the Secretary, and the leased

premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges from any lien or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of land, when requested by Lessee.

15. Lessor's Paying Claims:

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from Lessor or Secretary fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing, shall be paid to Lessor by Lessee upon demand, with interest at the rate of fifteen percent (15%) per annum from date of payment by Lessor until repaid. Default on such repayment demand shall constitute a breach of the covenants of this Lease and act to terminate said lease. Lessor shall have a lien upon any improvements or property of Lessee on the leased premises to the extent of any unpaid claims.

16. Public Liability Insurance:

At all times during the term of this Lease, Lessee shall carry a Public Liability Insurance Policy in the amount of \$500,000.00 for bodily injury to any one person for any one accident or personal injury and for property damage; said policy to be written jointly to protect Lessee and Lessor. Copy of said policy shall be furnished to the Lessor and the Secretary. Neither the Lessor nor the United States Government, nor their officers, agents and employees shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of the Lessee or sublessee, or of any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration of this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to hold Lessor and the United States Government, and their officers, agents, and employees, free and harmless from liability for all claims for any loss, injury or death arising from the use of the premises by Lessee, together with all costs and expenses in connection therewith.

Lessee, together with all costs and expenses in connection therewith. Lessee shall provide a certificate of insurance evidencing the purchase of the afore-described public liability insurance within ten (10) days after the execution of this contract and lease agreement. Thirty (30) days advance notice shall be given to the Lessor in the event of cancellation or material change in coverage of the afore-described insurance.

17. Fire and Damage Insurance:

Lessor shall, from the date of approval of this Lease, carry at its option fire insurance with extended coverage endorsements and insurance covering vandalism, jointly in the name of Lessee and Lessor, covering the insurable value of all insurable permanent improvements on the leased premises. In the event of damages to any improvements on the leased premises, the Lessor shall have the option whether or not to reconstruct said improvements; and if it decides not to reconstruct the said improvements, the Lease shall terminate.

18. Eminent Domain:

(a) Lessee's Option:

The term total "total taking" as used in this Article means the taking of the entire leased land in fee under the power of eminent domain. The term "partial taking" means any other taking in fee under the power of eminent domain, except that if fifty percent (50%) or more by area but not all of the leased land is so taken, the Lessee shall have the option within sixty (60) days of the date of such taking by notice in writing to the Lessor and Secretary to have such taking deemed a "total taking".

(b) Total Taking:

In case of a total taking, the leasehold estate of Lessee and his liability for future installments of rental (except accrued percentage rental, if any) shall cease and terminate as of the date of actual physical possession of the premises or portions thereof shall be so taken.

(c) Partial Taking:

In the case of partial taking, this Lease shall terminate as to the portion taken upon the date on which actual possession of said portion is taken, but this Lease shall continue in full force and effect as to the remainder of the leased land; and each ensuing installment of minimum rental only shall be abated in the ratio that the ground area of the leased land taken bears to the total area of said land prior to the taking.

(d) Refund of Advance Rentals:

There shall be no refund of minimum rental paid in advance, because of total or partial taking of the leased premises.

(e) Allocation of Award:

All compensation and damages for the taking of the leased land or any portion thereof shall, except as otherwise herein provided, belong to and be the sole property of the Lessor.

(f) Voluntary Conveyance:

A voluntary conveyance by Lessor to a public utility, agency or authority under threat of taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Section.

19. Default:

Time is declared to be of the essence of this Lease. Should Lessee default in any payment of monies, as required by the terms of this Lease, and if such default shall continue uncured for the period of five (5) days after written notice thereof by the Lessor or the Secretary to Lessee, during which five-day period Lessee shall have the privilege of curing such default, or should Lessee breach any other covenant of this Lease, and if such breach shall continue uncured for a period of ten (10) days after written notice thereof by Lessor or the Secretary to Lessee, during which ten-day period Lessee shall have the privilege of curing such breach, then Lessor and/or Secretary may either:



A. Collect by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with any other provisions of this Lease; or

B. Re-enter the premises and remove all persons and property therefrom excluding the personal property belonging to authorized sublessees, and either;

(1) Re-let the premises without terminating this Lease, as the agent and for the account of Lessee, but without prejudice to the right to terminate the Secretary or any obligation of Lessee hereunder. Terms and conditions of such re-letting shall be at the discretion of Lessor and the Secretary, who shall have the right to alter and repair the premises as they deem advisable, and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting, collecting, altering, and repairing, including attorney's fees and any real estate commission actually paid, insurance, taxes and assessments and thereafter toward the payment to liquidate the total due, Lessee shall pay to Lessor monthly, when due, any deficiency, and Lessor and the Secretary may sue thereafter as each monthly deficiency shall arise; or;

(2) Terminate this Lease at any time even though Lessor and the Secretary have exercised rights as outlined in (1) above. Exercise of this remedy shall exclude recourse to any other remedy, but shall not preclude recovery of amount due to Lessor for the period prior to termination.

C. Take any other action deemed necessary to protect any interest of Lessor including the imposition of a Lessor's lien or distraint on the property of Lessee. No waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

Any action taken or suffered by Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this Lease. In such event, the Lessor and the Secretary shall have the options set forth in subsections (1) and (2) herein, and furthermore, the Lessor is hereby declared to be a first preferred creditor.

20. Attorney's Fees:

\* If action is brought by either party in unlawful detainer for rent or any other sums of money due under this Lease, or to enforce performance of any of the covenants and conditions of this Lease, the losing party shall pay reasonable attorney's fees of the prevailing party, to be fixed by the Court as a part of the costs in any such action.

21. Holding Over:

Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder in or to the leased premises.

Lessee agrees to remove all removable personal property under the terms of this Lease the termination of this Lease, and if Lessee fails to do so, Lessor shall have the right to cause Lessee's personal property to be removed from the premises and have it stored at Lessee's expense.

22. Federal Government Trust Relationship:

This Lease shall remain in full force and effect regardless of the existence of Federal Trust responsibilities with respect to the Lessor during the term of this Lease.

23. Obligations of Lessee:

While the lease premises are in trust or restricted status all of the Lessee's obligations under this Lease, and the obligations of their sureties, are to the United States as well as to the Lessor.

24. Payments and Notices:

All notices, payments and demands, shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by registered mail. Service of any notice or demand shall be deemed complete five (5) days after mailing or the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the parties at the following addresses:

Tribal Administrative Manager  
c/o Tribal Treasurer  
White Mountain Apache Tribe  
P.O. Box 700  
Whiteriver, Arizona 85941

Secretary of the Interior  
Bureau of Indian Affairs  
c/o Superintendent  
Fort Apache Agency  
P.O. Box 560  
Whiteriver, Arizona 85941

Keith M. and Lynda K. Flake  
DBA Rent-A-Flick  
P.O. Box 296  
Snowflake, Arizona 85937

25. Reservation Laws and Ordinances:

The Lessee, Lessee's employees, agents and sublessees and their employees and agents agree to abide by all laws, regulations and ordinances of the White Mountain Apache Tribe now in force and effect or that may be hereafter in force and effect. The White Mountain Apache Tribal Court shall have jurisdiction of any litigation resulting from this lease.

26. Employment:

The lessee agrees to give employment preference to tribal members of the White Mountain Apache Tribe pursuant to all Tribal Employment Rights Laws of the Tribe currently or hereinafter in force and effect.

27. Inspection:

The Secretary and the Lessor and their authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all building and other improvements erected and place thereon.

28. Delivery of Premises:

At the termination of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased premises in good condition.

29. No Partnership; Operation of Business:

Lessee and Lessor are not in partnership, even if the terms of the rental hereunder are in whole or in part on a percentage basis.

All business on the leased premises shall be conducted on the regular and customary hours of such business as enumerated above and on all such customary business days.

30. Upon Whom Binding:

It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, successors, executors and administrators of the parties to the Lease. While the leased premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligations of its sureties are to the United States as well as to the owner of the land.

EXECUTED at Cibecue, Arizona, within the exterior boundaries of the Fort Apache Indian Reservation, this \_\_\_\_\_ day of \_\_\_\_\_, 1985.

LESSOR:  
WHITE MOUNTAIN APACHE TRIBE

By   
Ronnie Lupe, Chairman  
White Mountain Apache Tribal Council

\_\_\_\_\_  
Lorin D. Henry, Director  
Cibecue Athletic Department

LESSEE(S) :

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Keith M. Flake

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Lynda K. Flake

APPROVED:

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Superintendent  
Fort Apache Agency