

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

WHEREAS, the Tribal Council was previously advised that the Whiteriver Unified School District Leases have expired; and

WHEREAS, the Tribal Council was further advised that the legal descriptions for the school premises are incorrect and new surveys are needed to be done to correct the legal descriptions; and

WHEREAS, it was the consensus of the Tribal Council that the leased premises for the Whiteriver Elementary School and Middle School, Alchesay High School and Seven Mile School should be surveyed and a new lease should be drafted that would encompass all three school sites into one lease; and

WHEREAS, the Tribal Council is advised that the surveys have been completed and the Legal Department has drafted a 25 year lease agreement which has been reviewed as to form and content by the School's Governing Board and attorney; and

WHEREAS, the Tribal Council has reviewed the proposed lease agreement and approves said lease agreement as to form and content; and

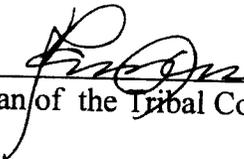
WHEREAS, the Tribal Council concurs that it would be in the best interest of the White Mountain Apache Tribe to enter into a 25 year lease for the surveyed school sites with the Whiteriver Unified School District.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the proposed school lease attached hereto and incorporated by reference herein.

BE IT FURTHER RESOLVED by the Tribal Council that it hereby directs the Tribal Chairman Ronnie Lupe to execute the school lease between the White Mountain Apache Tribe and to sign any and all documents necessary to carry out the terms of the lease agreement.

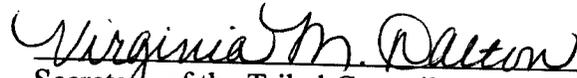
Resolution No. 07-96-144

The foregoing resolution was on July 10, 1996, duly adopted by a vote of eight for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 () of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council

JUL 10 8 31 AM '96



Secretary of the Tribal Council

**SCHOOL LEASE
WHITE MOUNTAIN APACHE TRIBE
FORT APACHE INDIAN RESERVATION
Whiteriver, Arizona**

THIS LEASE, made and entered into this ___ day of _____, 1996 by and between the White Mountain Apache Tribe, hereinafter called the Lessor, whose address is P.O. Box 700, Whiteriver, Arizona 85941, and the Governing Board of Whiteriver Unified School District No. 20, Navajo County, hereinafter called Lessee, whose address is P.O. Box 190, Whiteriver, Arizona 85941, is as follows:

1. **LEASED PREMISES**

For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee that certain parcel of land and premises located at Whiteriver, Arizona within the boundaries of the Fort Apache Indian Reservation and more particularly described as follows:

**PARCEL DESCRIPTION FOR WHITERIVER ELEMENTARY
AND MIDDLE SCHOOL**

A parcel of land within Section 13, Township 5 North, Range 22 East of the Gila and Salt River Base Meridian, Navajo County, Arizona which is described by metes and bounds as follows:

The following description is based upon the bearing from the North 1/4 Corner of said section 13 to the Northwest Corner of said Section 13 being S.89°41'31"W. From said North 1/4 Corner, thence S.58°14'15.5"E. a distance of 518.11 feet to the POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

thence S.66°22'04.7"E. a distance of 312.26 feet;
thence N.23°45'18.3"E. a distance of 440.28 feet;
thence S.76°52'40.2"E. a distance of 570.53 feet;
thence N.15°15'35.9"E. a distance of 116.78 feet;
thence S. 74°55'47.9"E. a distance of 276.78 feet;
thence S.27°47'52.6"W. a distance of 215.29 feet;
thence S.15°30'26.3"W. a distance of 121.66 feet;
thence S.75°51'12.2"E. a distance of 20.60 feet;
thence S.17° 40'09.6" W. a distance of 371.36 feet;
thence S.23°21'02"W. a distance of 332.26 feet;
thence N.66°29'32.3"W. a distance of 319.82 feet;
thence S.23°41'19.7"W. a distance of 300.43 feet;

thence N.66°40'48"W. a distance of 72.35 feet;
thence S.54°13'01.2"W. a distance of 838.01 feet;
thence N.60°06'33.9"W. a distance of 303.27 feet;
thence N.6°11'13.4"E. a distance of 445.68 feet;
thence N.23°21'06.4"E. a distance of 264.16 feet;
thence S.66°06'52.7"E. a distance of 61.25 feet;
thence N.23°43'31.1"E. a distance of 633.09 feet to
the POINT OF BEGINNING OF THE TRACT
HEREIN DESCRIBED.

Containing within said bounds 35.69 acres of land

PARCEL DESCRIPTION FOR ALCHEPAY HIGH SCHOOL

A parcel of land within Section 13, Township 5 North, Range 22 East of the Gila and Salt River Base Meridian, Navajo County, Arizona which is described by metes and bounds as follows:

The following description is based upon the bearing from the North 1/4 Corner of said Section 13 to the Northwest Corner of Section 13 being S.89°41'31"W.

From said North 1/4 Corner, thence S.5°52'04.4"E. a distance of 1735.34 feet to the POINT OF BEGINNING HEREIN DESCRIBED,

thence S.24°08'28.3" W. a distance of 1179.28 feet;
thence S.65°28'26.3"E. a distance of 78.20 feet;
thence S.50°25'41.1"W. a distance of 1223.11 feet;
thence S.47°30'24.5"W. a distance of 648.23 feet;
thence N.30°47'06.2"W. a distance of 1380.44 feet;
thence N.68°09'04" E. a distance of 1223.58 feet;
thence N.75°02'21.4"E. a distance of 539.73 feet;
thence N.22°32'17.9" E. a distance of 37.79 feet;
thence N.22°23'41.6"E. a distance of 894.42 feet;
thence S.58°56'32"E. a distance of 614.14 feet to
the POINT OF BEGINNING OF THE TRACT
HEREIN DESCRIBED.

Excluding from said parcel, the strip of land where High School Street crosses the parcel, said exclusion being a strip of land 60 feet wide, being 30 feet on either side of the centerline of the existing street.

Containing within said bounds 56.38 acres of land outside of the excluded strip.

PARCEL DESCRIPTION FOR SEVEN MILE SCHOOL

A parcel of land within Section 36, Township 5 North, Range 22 East of the Gila and Salt River Base Meridian, Navajo County, Arizona which is described by metes and bounds as follows:

The following description is based upon the bearing from the Northeast corner of said Section 36 to North 1/4 Corner of Said Section 36 being S.89°52'59.7"W.

From said Northeast Corner, thence S.37°41'45.5"W. a distance of 1161.41 feet to the POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

thence N.85°43'44.6"W. a distance of 758.85 feet;
thence S.2°55'45"E. a distance of 307.89 feet;
thence N.83°09'54.9"E. a distance of 76.70 feet;
thence S.5°08'54.7"E. a distance of 239.97 feet;
thence S.8°03'41.2"E. a distance of 126.35 feet;
thence S.81°25'46.6"E. a distance of 120.43 feet;
thence N.87°02'41.8"E. a distance of 289.24 feet;
thence S.62°15'38.9"E. a distance of 233.11 feet;
thence N.75°14'52.7"E. a distance of 196.31 feet;
thence N.85°21'20.3"E. a distance of 53.17 feet;
thence N.18°48'59.7"W. a distance of 649.68 feet;
thence N.24°27'53.2"W. a distance of 52.99 feet to
the POINT OF BEGINNING OF THE TRACT
HEREIN DESCRIBED.

Containing within said bounds 12.37 acres of land.

2. **TERM**

The term of this lease shall be twenty-five (25) years, beginning on the day it is fully executed and shall be renewable at the expiration of the original term as provided in Section 3.

3. **RENEWAL:**

The Lessee shall have the option to renew this Lease for an additional term of 25 years upon renegotiation of the lease terms and upon the mutual consent of the Lessee and Lessor.

4. **CONDITION OF LEASED PREMISES**

Lessee has examined and is familiar with the leased premises and verifies that no representations as to the physical condition thereof have been made by the Lessor or any agent of Lessor prior to or at the time of the execution of this Lease and Lessee warrants that it has not relied on any warranty or representation regarding the physical condition of the premises made by or for Lessor but solely upon Lessee's independent investigation.

5. **PURPOSE**

Lessee shall use and operate the leased premises for elementary school, middle school and high school educational instruction. If the Lessee does not use and operate the leased premises for educational instruction purposes for a period of twelve (12) consecutive months, this lease shall terminate.

6. **UNLAWFUL USES**

The Lessee agrees that it will not use or cause to be used or permit any part of the leased premises to be used for any unlawful conduct or purpose, or for any purpose unrelated to its educational activities as defined in Paragraph 5. The lawfulness of Lessee's conduct shall be defined by the existing tribal laws and applicable laws of the United States. Lessor warrants and represents that the intended use by Lessee does not at this time violate tribal law or applicable laws of the United States.

7. **LEASE FEE:**

The Lessee, as an educational institute, in consideration of the foregoing covenants, agrees to pay in lawful money of the United States of America to the White Mountain Apache Tribe, the following:

(a) A gratuitous lease fee, inclusive of tribal taxes, of One Dollar (\$1.00) due and payable on or before the execution of this lease.

(b) The Office of the Tribal Treasurer of the White Mountain Apache Tribe is hereby designated as Lessor's agent for the administration of this lease and for the receipt and collection of all proceeds due the Lessor pursuant to the terms of this lease, and for the receipt of all documents, certifications and correspondence arising out of or relating to this lease.

8. **IMPROVEMENTS**

Unless otherwise provided herein, all improvements or construction on said leased premises shall be at the expense of the Lessee. In addition to the installations and improvements,

which Lessor has already placed on the leased premises, if any, Lessee shall have the right to place on said premises at its own expense, such improvements as it may deem necessary and only as limited herein to carry on the purposes authorized by this Lease. Provided, however, that before any additional exterior structural improvements shall be placed on the premises, the consent of the Lessor in writing, which consent will not be unreasonably withheld, must first be obtained. Lessor shall not be required to make any improvements on said premises, nor shall Lessor be responsible for the upkeep of any part of said leased premises, unless provided otherwise herein.

Unless otherwise provided herein, any buildings or other improvements placed upon the leased premises become the property of the Lessor upon termination or expiration of this lease.

9. **CONSTRUCTION, MAINTENANCE, REPAIR AND ALTERATION**

The Lessee shall maintain the leased premises and all improvements thereon in good order and repair and in a neat and attractive condition which Lessor acknowledges exists as of this date at all times during the term of this lease and at Lessee's sole cost and expense. Lessee shall construct, maintain, and repair, as required by law all improvements on the leased premises and any alterations, additions, or appurtenances thereto, and shall otherwise comply with all existing laws, ordinances, and regulations of the White Mountain Apache Tribe, copies of which Lessor acknowledges are available for public inspection or will be provided upon request by Lessee, and any other laws applicable to said premises. Lessee shall indemnify and hold harmless the Lessor and the United States Government against liability for all claims arising from Lessee's construction of the improvements placed on the premises and from Lessee's failure to maintain said premises and the improvements thereon as hereinabove provided, or from Lessee's non-observance of any law, ordinance or regulations applicable thereto.

10. **UTILITIES**

The Lessee shall pay the cost of gas, electricity, water and sewage and the cost of all other utility services to the premises.

11. **COMMUNITY SERVICES**

The Lessor shall not be responsible for providing any services to the leased premises including, but not limited to, police and fire protection, medical services and garbage disposal except to the extent that said services are customarily provided on a non-discriminating basis in the community.

12. **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, which consent may be withheld in the complete discretion of Lessor and no such

sublease, assignment or transfer shall be valid or binding without such approval, and then only upon the condition that the 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. Any attempt to assign this lease without the consent of the Tribe shall be deemed a violation of this paragraph and shall be cause to terminate the lease at the option of Lessor.

13. **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.

14. **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. Any attempt to do so shall be void and shall constitute cause for immediate termination of the lease by Lessor.

15. **PUBLIC LIABILITY INSURANCE:**

At all times during the term of this Lease, Lessee shall carry a public Liability Insurance Policy or alternative suitable to the Lessor, including self-insurance, in the amount of one million dollars, (\$1,000,000) combined single limit for bodily injury to any one person; for any one accident or personal injury; and for property damage; said policy shall be written jointly to protect Lessee and Lessor. In the event Lessee fulfills this requirement by obtaining an insurance policy, a copy of said policy or a certificate thereof shall be furnished to the Lessor within 10 days of the execution of this lease. 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 any 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.

16. **FIRE AND DAMAGE INSURANCE**

Lessee shall, from the date of approval of this Lease, carry fire insurance with extended coverage endorsements and insurance covering vandalism, in the name of the Lessee or provide adequate self-insurance covering the insurable permanent improvements on the leased premises. In the event of damage to any improvements on the leased premises, the Lessee shall have

the sole option of whether or not to reconstruct said improvements; and if Lessee decides not to reconstruct the said improvements, this Lease shall terminate, and the insurance proceeds shall be paid to the Lessee. Lessee shall provide to the Lessor a Certificate of Insurance evidencing the coverage required by this Lease within 10 days of the execution of this Lease. Lessee shall clean up all debris within 90 days after loss or damage to the improvements weather permitting. If Lessee decides to reconstruct said improvements reconstruction shall commence within one year after the 90 day clean-up period and be completed within one year thereafter.

17. **EMINENT DOMAIN**

(a) Lessee's Option

The term "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, due to the small size of the leased premises, 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 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 leased premises or portions thereof which shall be so taken.

(c) Partial Taking

In the case of a 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. If the taking does not interfere with the operation of the lessees business, then there shall be no abatement of the rental payment.

(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) Compensation for Improvements

In the event of a total or partial taking, as defined herein, or other eminent domain

proceedings by the Tribe, Lessee shall have the option of moving the improvements or receiving compensation. In the event that Lessee elects to move the improvements, Lessor agrees to provide a suitable relocation site and pay the cost of moving provided that said cost does not exceed the appraised value of the improvements. If Lessee elects to be compensated for the improvements Lessor will pay to Lessee the appraised value of the improvements and a pro rata refund of any advance lease fees paid to Lessor and this lease shall terminate. The appraised value shall be determined by an independent appraiser or government appraiser agreed upon by the parties.

18. **DEFAULT**

In the event of any breach of this lease agreement by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the demised premises. The property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of the Lessee. Lessor may elect to terminate this lease agreement for such breach. Should Lessor at any time terminate this lease agreement for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the demised premises. Lessor shall notify Lessee in writing of any default pursuant to this Lease. Lessee shall have ninety (90) days from the date of receipt of written notification to correct or otherwise cure any default before Lessor may take action to terminate this Lease. Breaches of the lease which occur due to events beyond the control of either party, including acts of God, shall not be cause to terminate this lease.

19. **ATTORNEY'S FEES**

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

20. **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 or in or to the leased premises. Lessee agrees to remove all removable, personal property as defined under the terms of this Lease at 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, or to exercise the rights otherwise set forth herein.

21. **FEDERAL GOVERNMENT TRUST RELATIONSHIP - FEDERAL LAW**

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. Applicable federal law as set forth at 25 U.S.C. § 415 et. seq. and at 25 C.F.R. Part 162 et seq. are incorporated herein by reference and shall form a part of this lease agreement as if fully set forth herein, both as now stated and as may subsequently be amended.

22. **OBLIGATIONS OF LESSEE**

While the leased 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.

23. **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 certified 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:

White Mountain Apache Tribe
Office of the Tribal Treasurer
P.O. Box 700
Whiteriver, Arizona 85941

Whiteriver Unified School District
Office of the Superintendent
P.O. Box 190
Whiteriver, Arizona 85941

24. **RESERVATION LAWS AND ORDINANCES, RESOLUTION OF DISPUTES AND APPLICABLE LAW**

(a) The Lessee, Lessee's employees, agents and sublessee 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 hereafter be in force and effect, copies of which will be provided to Lessee upon specific written request.

(b) The White Mountain Apache Tribal Court shall have exclusive jurisdiction over all claims, disputes, or actions filed by the Lessee against the Lessor, and arising from or relating to this lease or breach thereof.

(c) This lease shall be construed and enforced in accordance with the specific laws of the White Mountain Apache Tribe, as applicable, and otherwise by federal and state law and

the White Mountain Apache Tribe shall have jurisdiction over the leased premises.

(d) The Lessor warrants that this lease is fully authorized and complies with all applicable laws of the White Mountain Apache Tribe and the United States, and that Lessor is empowered to execute and deliver the same; Lessor will use its best efforts and due diligence at its expense to secure further approvals, if needed.

25. **EMPLOYMENT**

The Lessee agrees to give employment preference to qualified tribal members pursuant to all Tribal Employment Rights laws of the Tribe currently or hereafter in force and effect.

26. **INSPECTION**

The Lessor and its 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 buildings and other improvements erected and placed thereon.

27. **DELIVERY OF LEASED PREMISES**

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

28. **NO PARTNERSHIP**

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

29. **UPON WHOM BINDING**

It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the parties subscribing hereto, and their heirs, assigns, successors, executors and administrators. 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.

30. **LIQUOR SALES**

The Lessee shall not offer for sale or sell alcoholic beverages to the public for consumption on or off the leased premises.

31. **INDEMNIFICATION**

To the fullest extent permitted by law, Lessee shall indemnify and hold harmless Lessor and all its agents, representatives and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the activities of Lessee in connection with Lessee's use of the leased premises; provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused in whole or in part by any negligent act or omission of Lessee or anyone directly or indirectly employed by Lessee or anyone for whose acts Lessee may be liable. Such obligation shall not be construed to abrogate any obligation of indemnity which would otherwise exist as to any party to this Contract. It is not intended by this paragraph to relieve a negligent party from liability for its conduct nor to defeat the contractual benefits to Lessor and/or Lessee of any insurance contract.

32. **SOVEREIGN IMMUNITY**

Nothing in this agreement shall be construed to constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe, its agents, employees, or attorneys, for any purpose whatsoever.

33. **ENTIRE AGREEMENT**

This instrument contains the entire Agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written agreement shall be valid or binding, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. This agreement may not be enlarged, modified, or altered except in writing signed by the parties.

EXECUTED at Whiteriver, Arizona this _____ day of _____,
1996.

LESSOR: WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

By _____
Ronnie Lupe, Tribal Chairman

ATTEST: _____
Virginia Dalton, Council Secretary

LESSEE: Whiteriver Unified School District 20

By: _____
President

APPROVED:

By _____
UNITED STATES DEPARTMENT
OF THE INTERIOR

Pursuant to the Authority delegated to the Assistant Secretary -
Indian Affairs by 209 DO redelegated to Phoenix Area Director
by Sec. Order Nos. 3150 and 3177, 10 BIAM Bulletin 13, and to
the Superintendent by Area Office Addendum to 10 BIAM,
dated 01/13/95.