

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

**WHEREAS,** the White Mountain Apache Tribe ("Tribe") is a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

**WHEREAS,** the White Mountain Apache Tribal Council ("Council") has, pursuant to Resolution No. 06-98-136, adopted on June 29, 1998, appointed the White Mountain Apache Housing Authority ("Housing Authority") as its Tribally Designated Housing Entity ("TDHE"), under and pursuant to the statutory provisions of the Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"); and

**WHEREAS,** the Housing Authority, as the TDHE for the Tribe, desires to undertake the substantial rehabilitation of its Project AZ 16-26 ("Project") through the vehicle of tax credit-assisted financing ("Tax Credit Financing"), pursuant to a tax credit allocation being made to the Housing Authority from the Arizona Department of Housing; and

**WHEREAS,** in order to consummate the Tax Credit Financing, the Housing Authority requires a restated and superseding Lease from the Tribe for the Project that will permit the Housing Authority to sublease the Project leasehold property to WMAHA Rehabilitation Limited Partnership, an Arizona limited partnership, within which the Housing Authority shall be designated, and act, as the General Partner; and

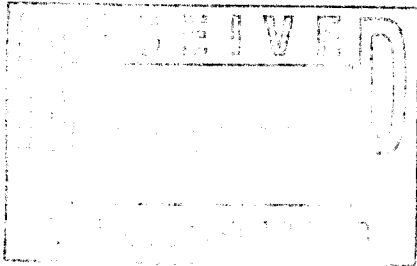
**WHEREAS,** the Tribal Council believes it to be in the best interests of the Tribe for the Housing Authority to consummate the Tax Credit Financing, in order to cause the substantial rehabilitation of the Project and its subsequent occupancy, as affordable housing for qualified Tribal member families.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the restated and superseding Lease for the Project, a copy of which is attached hereto and incorporated herein as Exhibit A, be, and it hereby is, approved and authorized by the Tribe, as Lessor.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman of the Tribe be, and he hereby is, authorized, empowered, and directed to execute the Lease for the Project, substantially in the format of Exhibit A, for and on behalf of the Tribe, as Lessor, and to take such other and further actions, and to execute such other and further documents, on behalf of the Tribe, as many be deemed required or necessary to assist the Housing Authority in its consummation of the Tax Credit Financing for the substantial rehabilitation of the Project.

**BE IT FURTHER RESOLVED** that the previous Lease No. HFA77-1626 issued to the White Mountain Apache Housing Authority, effective July 6, 1977, for the premises identified as Project AZ 16-26, is hereby cancelled.

The foregoing resolution was on SEPTEMBER 8, 2004, duly adopted by a vote of EIGHT for, ZERO against, and ONE abstention, by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1(a), (c), (i), (s), (t), and (u) 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).



**ACTING** *Frank J. Sulfield*  
Chairman of the Tribal Council

**ACTING** *Mitchell Antonio*  
Secretary of the Tribal Council

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs**

**LEASE**

Lease No. \_\_\_\_\_

**THIS LEASE** ("Lease") is made and entered into as of this \_\_\_ day of September, 2004, in Whiteriver, Arizona, by and between the WHITE MOUNTAIN APACHE TRIBE, a federally recognized tribe ("Lessor"), and the WHITE MOUNTAIN APACHE HOUSING AUTHORITY, the tribally designated housing entity of the Lessor ("Lessee"). This Lease shall be subject to the approval of the SECRETARY OF THE INTERIOR, or his authorized representative ("Secretary").

**RECITALS**

With respect to that certain rental housing Project owned and operated by the Lessee, and known and identified as Project AZ 16-26 ("Project AZ 16-26"), the Lessee desires to undertake its substantial rehabilitation through the vehicle of tax credit-assisted financing, pursuant to a tax credit allocation being made to the Lessee from the Arizona Department of Housing ("Project AZ 16-26 Tax Credit Financing"). In order to consummate the Project AZ 16-26 Tax Credit Financing, the Lessee will be required to sub-lease Project AZ 16-26, and the lots comprising same ("Leased Premises"), to WMAHA Rehabilitation Limited Partnership, an Arizona limited partnership ("WMAHA Partnership"), within which the Lessee shall be designated, and act, as the General Partner. Upon completion of its substantial rehabilitation of Project AZ 16-26, the WMAHA Partnership desires to sub-lease the lots comprising the Leased Premises to qualified members of the White Mountain Apache Tribe.

By that certain Lease dated May 10, 2004, ("Prior Lease") the Lessor and the Lessee restated, ratified, confirmed, adopted, memorialized, and otherwise evidenced their prior leasehold arrangement for Project AZ 16-26, comprising the Leased Premises, and further provided for the substantial rehabilitation of Project AZ 16-26, pursuant to the Project AZ 16-26 Tax Credit Financing. However, subsequent to the execution by the Lessor and the Lessee of the Prior Lease, the parties have been made aware that additional provisions, including the extension of the term of the Prior Lease, are required in order for the Lessee to undertake the Project AZ 16-26 Tax Credit Financing.

Therefore, it is the present desire and intent of the parties to enter into this Lease, which (a) shall be deemed to restate, and supersede in its entirety, the terms and conditions of the Prior Lease, as well as any other previous leasehold arrangements that may have been in effect, from time to time, by and between the Lessor and the Lessee with respect to the Leased Premises, and (b) shall set forth the required additional provisions referenced above, in order to enable the Lessee to undertake the Project AZ 16-26 Tax Credit Financing.

### **WITNESSETH:**

The parties hereto, for the consideration hereinafter mentioned, do covenant and agree as follows:

1. **LEASED PREMISES.** The Lessor hereby leases to the Lessee the following real property for Project AZ 16-26, situated within the Fort Apache Indian Reservation ("Leased Premises") and described as follows:

**See Exhibit A attached hereto  
and incorporated herein ("Legal Description")**

The above property, upon which Project AZ 16-26 has been developed by the Lessee, is comprised of rental dwellings for housing for qualified members of the White Mountain Apache Tribe.

2. **EFFECTIVE DATE OF LEASE FOR THE PREVIOUS PROJECTS.** Notwithstanding any term or condition of the Prior Lease, or any previous leasehold arrangements that may have been in effect, from time to time, by and between the Lessor and the Lessee with respect to the Leased Premises, the effective date of this Lease shall be the date upon which this Lease is fully executed by the parties and approved by the Secretary ("Effective Date").
3. **PURPOSE AND USE OF PREMISES.** Lessee shall use the Leased Premises for the sole purpose of owning, operating, and maintaining single unit residential rental housing for qualified members of the White Mountain Apache Tribe ("Occupants"), and for such other purposes, not inconsistent with the foregoing, as may be approved by the Lessor. Such housing units shall be located upon individual lots that, in the aggregate, constitute Project AZ 16-26 comprising the Leased Premises. It is further agreed by the parties that the Lessee may enter, or has entered, into Residential Rental Lease Agreements for Project AZ 16-26 with occupants who shall rent, or have rented the lots, and residential improvements constructed thereon, from the Lessee. Because the Lessee desires to undertake the substantial rehabilitation of Project AZ 16-26 through the

vehicle of tax credit-assisted financing, the Lessee is hereby further authorized and permitted to sub-lease the Leased Premises constituting Project AZ 16-26, and the lots comprising same, to the WMAHA Partnership. Thereafter, the WMAHA Partnership is hereby authorized and permitted to sub-lease the lots comprising Project AZ 16-26 to qualified members of the White Mountain Apache Tribe.

4. **TERM.** Lessee shall have and hold the Leased Premises with its appurtenances for a term of 25 years commencing on the Effective Date. This Lease shall automatically and without notice renew for an additional term of 25 years on the same terms and conditions contained herein. So long as the Lessee remains obligated in any extent under the terms and conditions of the Amended and Restated Limited Partnership Agreement ("Partnership Agreement") for the WMAHA Partnership, and so long as any other obligation of the Lessee remains outstanding with respect to the Tax Credit-Assisted Financing, this Lease may not be terminated by either or both parties, during the initial or renewal term of the Lease, without the prior written consent and approval of the WMAHA Partnership, its lender or tax credit investor limited partners, or any other financing entity which has provided or facilitated such tax credit financing (collectively, "Project AZ 16-26 Tax Credit Entity").
5. **CONSIDERATION FOR LEASE.** In consideration of the Lessor entering into this Lease, the Lessee shall pay the Lessor for use of the premises rent at the rate of One Dollar (\$1.00) for each 25-year term, payment to be made for each term in advance. It is agreed that there shall be no adjustment of these payments in the event that any part of the Leased Premises is taken by condemnation for highway or other public purposes. It is further agreed that this Lease or any part thereof including this paragraph shall not be construed to prejudice the rights or impair the prosecution of any claim of the Lessee arising out of such condemnation proceeding.
6. **ASSIGNMENT.** Except as otherwise provided herein, the Lessee shall not encumber or assign this Lease without the prior written approval of the Lessor. The Lessee shall not execute a mortgage, declaration of trust or other security instrument pledging any portion of the Lessee's interest in this Lease or any Improvements on the Leased Premises ("Lessee's Interest") without the prior written consent of the Lessor and the approval of the Secretary; except that, with the Lessor's and the Secretary's approval, the Lessee or the WMAHA Partnership may execute and record mortgages, declarations of trust and/or other security instruments encumbering Lessee's Interest or the interest of the WMAHA Partnership, as may be necessary to obtain and secure the Project AZ 16-26 Tax Credit Financing. The Project AZ 16-26 Tax Credit Financing may permit any

Project AZ 16-26 Tax Credit Entity to foreclose or institute other appropriate proceedings under law in the event of default on any leasehold mortgage or other loan agreement by the Lessee or the WMAHA Partnership.

With respect to any leasehold mortgage or other loan agreement that secures the Project AZ 16-26 Tax Credit Financing, the following additional requirements shall be applicable:

- (a) The Lessee or the WMAHA Partnership shall not sell or otherwise assign this Lease without the prior written consent of the Lessor.
- (b) In the event the Project AZ 16-26 Tax Credit Entity acquires any leasehold mortgage and subsequently acquires any portion of the Lessee's Interest or the interest of the WMAHA Partnership by foreclosure, or by the assignment of any portion of the Lessee's Interest or the interest of the WMAHA Partnership, for which the approval of the Lessor is not required, then: (1) the Project AZ 16-26 Tax Credit Entity will notify the Lessor of the availability of such Lessee's Interest, or the interest of the WMAHA Partnership, for sale, the sales price and other terms of sale; (2) the Project AZ 16-26 Tax Credit Entity may sell and/or transfer such portion of the Lessee's Interest, or the interest of the WMAHA Partnership, held by it to the Lessor, the Lessee, or an enrolled member of the White Mountain Apache Tribe; (3) if a purchaser cannot be found, the Project AZ 16-26 Tax Credit Entity shall be entitled to sublease such portion of the Lessee's Interest, or the interest of the WMAHA Partnership, held by it to the Lessor, the Lessee, or an enrolled member of the White Mountain Apache Tribe, in which event the term of the initial sublease period and any succeeding periods shall not exceed one (1) year each, and any purchaser must wait (where such portion of the Leased Premises are sublet) until the expiration of any current sublease, before occupying the same; (4) the Project AZ 16-26 Tax Credit Entity may not sell and/or transfer any portion of the Lessee's Interest, or the interest of the WMAHA Partnership, to any person or entity other than to the Lessor, the Lessee, or an enrolled member of the White Mountain Apache Tribe; and (5) no mortgagee, including any Project AZ 16-26 Tax Credit Entity, as assignee of any leasehold mortgage, may obtain title to any interest created by this Lease without the prior written consent of the Lessor.

**7. LESSOR COVENANTS AND AGREEMENTS.** So long as the Lessee remains

obligated in any extent under the terms and conditions of the Partnership Agreement for the Partnership, and so long as any other obligation of the Lessee remains outstanding with respect to the Project AZ 16-26 Tax Credit Financing, the Lessor agrees:

- (a) that it will not schedule a referendum or initiative to the Tribe's qualified voters for consideration of, or otherwise present or introduce to its Tribal Council, any statute, law, ordinance or rule, the effect of which, or the compliance with which, would cause the dissolution or disincorporation of the Lessee, or otherwise cause the termination or suspension of the activities of the Lessee, as General Partner of the WMAHA Partnership.
- (b) that it will not schedule a referendum or initiative to the Tribe's qualified voters for consideration of, or otherwise present or introduce to its Tribal Council, any statute, law, ordinance or rule, the effect of which, or the compliance with which, would have a material adverse effect upon the rights of the Limited Partner of the WMAHA Partnership under the Partnership Agreement, or under any other document by which the Lessee remains bound, with respect to the Project AZ 16-26 Tax Credit Financing.
- (c) that it, and any of its representatives, political sub-units, agencies, instrumentalities, and councils, will not attempt to exercise, nor carry out, any power of eminent domain over the Leased Premises or any other property of the WMAHA Partnership.

8. **LEASEHOLD IMPROVEMENTS.** All improvements or construction on the Leased Premises shall be at the expense of the Lessee or its sublessee including the WMAHA Partnership. During the term of this Lease, all improvements on the Leased Premises shall be the property of the Lessee or for so long the WMAHA Partnership is the Lessee's sublessee, the WMAHA Partnership. In addition to the installations and improvements, which Lessor has already placed on the Leased Premises, if any, the Lessee or its sublessee, the WMAHA Partnership, shall have the right to place on the Leased Premises at their own expense, such improvements as they may deem necessary to carry on the purposes authorized by this Lease or any sublease. Upon termination of this Lease, the Lessee and any Sublessee, shall have ninety (90) days to remove the improvements from the Leased Premises. Lessor agrees to give Lessee and its sublessees, reasonable access to the Leased Premises for such removal. If Lessee or its sublessees, does not remove the improvements within such ninety (90) day period, the improvements shall become the property of the Lessor.

9. **INSURANCE.** Lessee or its sublessee, shall obtain and pay for Owners', Landlords', and Tenants' Insurance adequate to cover public liability, excluding property damage, in amounts acceptable to the Lessor; and, as appropriate, to the Project AZ 16-26 Tax Credit Entity. It is understood and agreed that the term "Owners" includes both the United States and the Lessor. The Lessee and its assigns shall hold the Lessor and the United States harmless from any claim of whatsoever nature arising out of use or occupancy of the Leased Premises.
10. **RELINQUISHMENT OF SUPERVISION BY THE SECRETARY OF THE INTERIOR.** Nothing contained in this Lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of this Lease; however, such termination shall not serve to abrogate this Lease. The owners of the land and the Lessee shall be notified by the Secretary of any such change in the status of the land.
11. **SHARE BENEFIT FROM LEASE.** No member of Congress or any delegate thereto or any resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise from this Lease.
12. **VIOLATIONS OF LEASE.** It is understood and agreed that violation of this Lease shall be acted upon in accordance with the Regulation in 25 CFR 162, Leasing and Permitting.
13. **QUIET ENJOYMENT.** Lessor agrees to defend the title to the Leased Premises and also especially agrees that Lessee and its tenants shall peaceably and quietly hold, enjoy and occupy the Leased Premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons whomsoever.
14. **SURRENDER OF POSSESSION.** If, upon expiration or other termination of this Lease, further use rights are not granted to the Lessee or its assigns by the Lessor, said Lessee or its assigns shall, upon demand, surrender to the Lessor complete and peaceable possession of the Leased Premises.
15. **UNLAWFUL CONDUCT.** The Lessee agrees not to use or cause to be used any part of said Leased Premises for any unlawful conduct or purposes.
16. **ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS.** No assent, express or implied, to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of any covenants.



- 17. **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 of this 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 Lessor.
- 18. **APPROVAL.** It is further understood and agreed between the parties hereto that this Lease shall be valid and binding only after approval by the Secretary of the Interior, or his authorized representative.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the date first above written.

**WHITE MOUNTAIN APACHE TRIBE  
("Lessor")**

**Attest:**

**By:** \_\_\_\_\_  
Its Chairman

\_\_\_\_\_  
**Secretary**

**WHITE MOUNTAIN APACHE  
HOUSING AUTHORITY ("Lessee")**

**By:** \_\_\_\_\_  
Gladys Bencomo, Executive Director

**Approved: SECRETARY OF THE INTERIOR**

**By:** \_\_\_\_\_  
Superintendent Fort Apache Agency

**Date:** September \_\_, 2004

**UNITED STATES DEPARTMENT OF THE INTERIOR**  
Pursuant to the Authority delegated to the Assistant Secretary-Indian Affairs by 209 DM8, 230 DM1, and to the Western Regional Director by 3 IAM 4 (Release No. 99-03), and to the Superintendent/Field Representative by 10 BIA M 11, as amended by Western Regional Release No. 97-1.

**EXHIBIT A**

**Description of Leased Premises (Project AZ 16-26)**