



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Authorizing Limited Waiver of the Tribe's Sovereign Immunity as Contained in Sunrise Park Resort Snowcat Master Equipment Lease Agreement And Approving the Same)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation ("Constitution") provides, at Article IV, Section 1(i) that the Tribal Council ("Council") shall exercise the power "To manage all economic affairs and enterprises of the Tribe..."; and
- WHEREAS,** Sunrise Park Resort ("Sunrise") is a tribal enterprise governed by a board of directors (the "Board") under the authority of a Plan of Operation approved by the Tribal Council on October 30, 2012; and
- WHEREAS,** The Plan of Operation gives broad authority to the Board and management team to act to operate Sunrise, but requires approval from the Council for all waivers of the Tribe's sovereign immunity so that Sunrise can contractually consent to suit; and
- WHEREAS,** The Board and management team have identified a critical need for new snowcat grooming equipment for this upcoming ski season; and
- WHEREAS,** The snowcats would be acquired from International Financial Services Corporation, as lessor ("IFSC"), pursuant to a Master Equipment Lease Agreement (the "Lease") whereby Sunrise, as lessee, agrees to make lease payments in the aggregate amount of \$530,000 as provided in the Lease; and
- WHEREAS,** Sunrise has sufficient funds and cash flow for this transaction; and
- WHEREAS,** The Lease terms require that IFSC have the right to repossess the equipment and bring suit for damages in the event of a breach by Sunrise; and
- WHEREAS,** Sunrise and IFSC have negotiated Lease terms that would restrict any court action to the White Mountain Apache Tribal Court and limit any claims to Sunrise and its permitted successors and assigns only, thereby shielding the remainder of the Tribe from any obligation or liability; and

Resolution No. 10-2019-221

WHEREAS, The Board approved entering into the Lease on October 9, 2019, and in recognition of Article 8 of the Plan of Operation, requests the Tribal Council authorization as provided herein for this necessary transaction; and

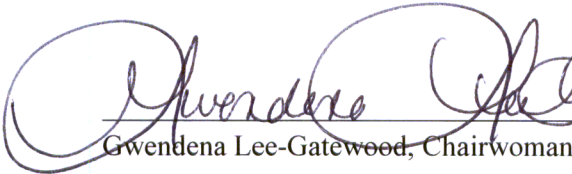
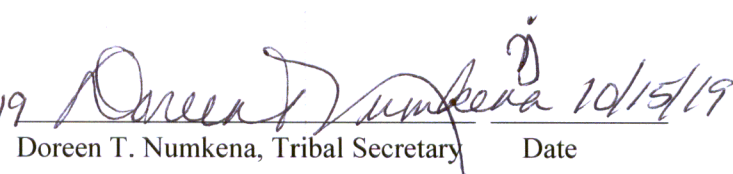
WHEREAS, The Council has reviewed the Lease and finds that approving the Lease and the waiver of the Tribe’s sovereign immunity, as provided in “Attachment A” (attached and incorporated herein), limited to repossession of the leased equipment and suit to recover contractual damages from Sunrise into the Tribe’s own courts, is in the best interests of the Tribe and its members.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby ratifies the execution, delivery, and performance of the Lease in the substantial form reviewed by the Board, including the limited waiver of sovereign immunity as provided by “Attachment A”, and with such modifications to the Lease terms other than the waiver, as may be approved by the officer of Sunrise executing the same.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that if any section, paragraph or provision of this Resolution is held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision will not affect any of the remaining provisions of this Resolution. Any previous Board actions, either oral or written, which are inconsistent with this Resolution are hereby repealed and have no further force or effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute and deliver any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **OCTOBER 10, 2019** duly adopted by a vote of **SIX** for, **ZERO** against, and **THREE** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

 10/15/2019  10/15/19
Gwendena Lee-Gatewood, Chairwoman Date Doreen T. Numkena, Tribal Secretary Date

ATTACHMENT A

LIMITED WAIVER OF SOVEREIGN IMMUNITY

The Tribal Council of the White Mountain Apache Tribe (the "Tribe"), in conformity with the laws of the Tribe, hereby expressly and unequivocally waives the sovereign immunity of Sunrise Park Ski Resort (and any defense based thereon) from any suit, action, or other legal proceedings or from any legal process, in each case of any nature whether such action be brought in or arise under law or equity, arising in contract, tort or statute (inclusive of claims and counterclaims, actions for equitable or provisional relief, and whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or otherwise) (an "Action") and, further, waives any sovereign immunity from any judgment or order related thereto, subject to and limited by the following conditions:

1. Any Action will be brought in the courts of the White Mountain Apache Tribe ("Tribal Court") and only to the extent necessary for International Financial Services Corporation, and its successors and assigns ("IFSC"), to enforce the Master Equipment Lease Agreement and related documents (collectively, the "Lease Documents"), which allow IFSC to repossess the leased property and to seek an award of damages. The Tribe expressly authorizes any tribal governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by the Tribal Court, including without limitation, entering any real property occupied by Sunrise Park Ski Resort for the purpose of executing against any property subject to the Lease or a security interest or otherwise giving effect to any judgment entered.

2. This limited waiver of sovereign immunity is limited to claims arising from the acts or omissions of Sunrise Park Ski Resort, its officers, agents, and employees, and shall be construed only to affect the property and income of the Sunrise Park Ski Resort. No claim shall be brought against the Tribe or any other tribal funds, tribal property, or tribal entities.

3. The Tribe agrees to appoint a retired or sitting Arizona state court or federal judge to serve as a visiting judge in the Tribal Court to preside over the Action.

4. The Tribe agrees to use Arizona law to interpret and enforce the rights of the parties to the Lease documents, provided that the Tribal Court shall have exclusive jurisdiction over all Actions.

5. The limited waiver of sovereign immunity and dispute resolution provisions set forth herein and in the Lease Documents are for the benefit of the parties to the Lease Documents only, and do not authorize claims by any third parties or for relief beyond the remedies specifically authorized in the Lease Documents.