



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Reaffirming and Authorizing a Limited Waiver of the Tribe’s Sovereign Immunity for the WMATCO New Market Tax Credit Financing Indemnification Agreement with U.S. Bank)

WHEREAS, The Constitution of the White Mountain Apache Tribe (“Tribe”) of the Fort Apache Indian Reservation provides, at Article IV, Section 1(b) that the Tribal Council (“Council”) shall exercise the power, “To negotiate, make, and perform contracts and agreements of every description, not inconsistent with Federal law or [the Tribe’s] constitution, with any person, association, or corporation...”; and

WHEREAS, Today, the Council authorized the unwind of the federal New Market Tax Credit (“NMTC”) financing for the White Mountain Apache Timber Company, LLC (“WMATCO”) upon completion of the seven-year compliance period; and

WHEREAS, US Bank, which is a party to the NMTC transaction has requested a reaffirmation of the Tribe’s limited waiver of sovereign immunity for documents it requires for closure and unwind of the transaction; and

WHEREAS, The terms for the limited waiver match the conditions the Tribe agreed to when it authorized the financing transaction in 2013; and

WHEREAS, The Tribal Council recognizes the value in bringing the tax credit compliance terms to a close and agrees to the requested waiver and reaffirmation thereof, for the purposes stated.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes and reaffirms the limited waiver of sovereign immunity for enforcement of the Confirmation and Reaffirmation of New Markets Tax Credit Indemnification Agreement with US Bank, and the Membership Purchase Agreement with US Bank, subject to the understanding that such limited waiver mirrors the limited waiver of sovereign immunity authorized by the Tribe in Council Resolution 09-2013-184, dated September 4, 2013, and is in conformity with the terms for the limited waiver shown in Exhibit A to this Resolution (attached and incorporated herein).

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

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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 any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on AUGUST 10, 2020 duly adopted by a vote of NINE for, ZERO against, and ZERO 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).



Gwendena Lee-Gatewood
Tribal Chairwoman

8/12/2020
Date



Doreen T. Numkena
Tribal Secretary

8-12-2020
Date

EXHIBIT A

Waiver of Sovereign Immunity; Jurisdiction and Venue.

The parties hereto acknowledge and agree that this Reaffirmation of Guaranty and the duties and obligations of the parties hereto shall be enforceable against Guarantor in any of the following forums: the United States District Court for the District of Arizona, the Superior Court of Navajo County, Arizona, and all courts to which appeal may be taken from such federal and state courts, or, if and only if elected or consented to in writing by Beneficiary in its sole discretion, the courts of the White Mountain Apache Tribe and all courts to which appeal may be taken from such tribal court ("**Permitted Courts**"), and if and only if elected or consented to in writing by Beneficiary in its sole discretion, arbitration pursuant to and in accordance with arbitration procedures referred to below.

(a) Permitted Courts. If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

(i) Actions filed in any of the Permitted Courts shall be governed by the laws of the forum in which they are initiated;

(ii) Each of the Guarantors and Beneficiary hereby submits to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which either may have or hereafter have to the bringing of any action or proceeding in any court except the Permitted Courts, and agrees that all claims in respect of this Reaffirmation of Guaranty may only be heard and determined in the Permitted Courts; and

(iii) Each of the Guarantors irrevocably consent to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Guarantor at its address provided herein. Nothing contained in this Section 8(a) shall affect the right of Beneficiary to serve process in any other manner permitted by law. The parties hereby explicitly consent to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section 8.

(b) Arbitration. If Beneficiary seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, or if Beneficiary shall consent (in its sole discretion) to Guarantors' enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, Arbitration shall be conducted in accordance with the United States Arbitration Act, except to the extent such rules are modified by the following:

(i) unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Phoenix, Arizona;

(ii) the arbitration shall be conducted by an arbitration panel consisting of three (3) available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;

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(iii) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the United States Arbitration Act;

(iv) the result of any arbitration award provided for herein shall be in strict conformance with the provisions, of the United States Arbitration Act;

(v) notwithstanding the provisions of Section 17 of the Guaranty, the United States Arbitration Act shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Reaffirmation of Guaranty pursuant to a waiver of sovereign immunity described in Section 8 and to actions to compel arbitration and enforce awards resulting from arbitration as provided in subparagraph (b)(vi) shall be subject to Section 17 of the Guaranty);

(vi) Guarantors expressly consent to submit to the jurisdiction of the Permitted Courts with regard to actions to compel the Guarantors' participation in an arbitration proceeding and to enforce an award resulting from such arbitration. Such actions shall be governed by laws of the forum in which they are initiated; and

(vii) Commencement of arbitration in accordance with the foregoing provisions of this section shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Reaffirmation of Guaranty that is arbitrated as set forth herein.