

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

WHEREAS, the Tribal Council understands that kidney failure, primarily as a result of a diabetes condition, is an increasing problem among the tribal population that generally requires renal dialysis treatment at least as an interim measure; and

WHEREAS, renal dialysis is an inconvenient and time consuming medical procedure that has required tribal members to travel long distances to a dialysis center to receive such treatment; and

WHEREAS, the Tribal Council has previously indicated a preference for the provision of dialysis treatment services on the reservation and the Tribal Chairman has directed the Dialysis Coordinating Committee to facilitate the development of a dialysis center on the reservation at the earliest possible time in order to minimize the discomfort being experienced by tribal members affected by kidney failure; and

WHEREAS, after a thorough review of proposals from several dialysis treatment providers to establish a dialysis center on the reservation, the Dialysis Coordinating Committee has selected Renalwest L.C. as the preferred provider; and

WHEREAS, the development of a dialysis center will required the White Mountain Apache Tribe to enter into a lease agreement with Renalwest for the provision of dialysis services and construction of the treatment center.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby endorses the Dialysis Coordinating Committee's recommendation that Renalwest L.C. be the dialysis treatment provider on the reservation and that a lease agreement with Renalwest L.C. for the establishment of a kidney dialysis center be developed incorporating the terms delineated in the attached Letter of Agreement.

BE IT FURTHER RESOLVED by the Tribal Council that the Tribal Chairman is hereby authorized to negotiate the final terms of a lease agreement with Renalwest L.C. incorporating the terms outlined in the attached Letter of Agreement, incorporated by reference herein.

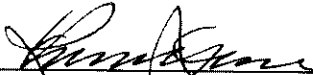
BE IT FURTHER RESOLVED by the Tribal Council that after final terms of the lease are negotiated by the Tribal Chairman, the Tribal Chairman or in his absence, the Vice Chairman, is hereby authorized to execute said lease on behalf of the White Mountain Apache Tribe.

The foregoing resolution was on February 10, 1994, duly adopted by a vote of ten 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 (a) 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).

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FEB 18 1994

FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA



Chairman of the Tribal Council



Secretary of the Tribal Council

DRAFT LETTER OF AGREEMENT

Introduction

Letter of Agreement between the White Mountain Apache Tribe (hereinafter, "Lessor") and RENALWEST, L.C. (hereinafter, "Lessee") concerning the proposed kidney dialysis facility in Whiteriver, Arizona.

General Purpose of the Agreement

Purpose of agreement is to permit RENALWEST, an Arizona limited liability company, to construct and operate a kidney dialysis facility (hereinafter, "Facility") adjacent to the Indian Health Service Hospital (hereinafter, "Hospital") in Whiteriver. Dialysis services will be made available to area residents, including, but not limited to, residents and members of the White Mountain Apache Tribe of the Fort Apache Indian Reservation.

This letter of agreement is not a formal offer to contract, but rather a preliminary expression of general terms which the two parties will agree to in greater detail in a subsequent lease agreement. This letter of agreement, upon approval by resolution of the members of RENALWEST, authorizes the C.E.O. or the C.O.O., and upon resolution of the Tribal Council, authorizes the Tribal Chairman, if he deems it in the Tribe's best interest, to negotiate the final terms of the lease in accordance with the terms of this letter and to execute all necessary papers. Completion of the lease agreement will require approval by the Chairman of the White Mountain Apache Tribe, RENALWEST and the Secretary of the Interior, or his or her delegate (hereinafter, "Secretary").

Specific Provisions of the Agreement

1. Lease of Premises

Lessor shall lease to Lessee the following premises (hereinafter, "Premises"): A plot of land of approximately one acre adjacent to the Hospital.

2. Improvements

The building and its contents which Lessee shall construct on the Premises shall be considered as removable personal property of Lessee (hereinafter, "Improvements"), and must be removed upon termination or cancellation of the lease, unless agreed otherwise by the parties, and except as otherwise stated in this agreement.

3. Term of lease

The term of the lease shall be for a term of five years. At the end of five years the

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lease shall not automatically renew, but may be renewed for additional five year terms, not to exceed an aggregate of 25 years, upon agreement of both the Lessee and Lessor. Holding over by Lessee after expiration of the lease term shall not constitute a renewal or extension of said lease.

After any term of five years if Lessee is not in default and Lessor does not consent to a renewal of the lease, Lessor shall, with Lessee's consent, purchase the building and permanent improvements to the Premises which Lessee installed. The price Lessor shall pay for building and permanent improvements will be the fair market value calculated by taking the average of two independent appraisals, one chosen by each of the parties. In addition, if the parties are in agreement, the Lessor may purchase all or part of the contents of the building, including equipment, supplies and other proprietary rights at fair market value calculated as above.

Upon the termination or cancellation of the lease by reason of default on the part of the Lessee, or if Lessee chooses not to renew the lease, Lessor or a delegate of the Lessor may, at its option, purchase the Improvements, or a portion thereof, at a price which is acceptable to the parties. Any portion of the Improvements on the Premises at the termination of the lease which is not purchased by the Lessor shall be removed by the Lessee and the Premises returned to its original state within 90 days of the termination of the lease. If Lessor terminates or cancels the lease prior to the term of the lease, Lessee shall be relieved from its obligation to make further payments and shall be granted 90 days to remove its Improvements from the Premises.

4. Rental

Lessee shall pay to Lessor the following amounts for rental of the Premises:

- A. Land Rental: Lessee shall yearly pay to Lessor the sum of \$6,000 per year for rental of Premises.
- B. Percentage Rental Payment: Lessee shall quarterly pay to Lessor the pro-rata portion of the following percentage of its annual cash receipts, not billings, at the Facility which are actually received by Lessee:

<u>ANNUAL CASH RECEIPTS</u>	<u>PERCENT OF RECEIPTS PAYABLE TO LESSOR</u>
Less than \$825,000.00	0.0
\$825,000.00 - \$850,000.00	1.0
\$850,000.01 - \$875,000.00	1.5
\$875,000.01 - \$900,000.00	2.0
Over \$900,000.00	2.5

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Payment of the Land Rental fee shall be credited towards the payment of the Percentage Rental Payment. During years in which no Percentage Rental Payment is owed under the above formula, the amount of the Land Rental Payment made by Lessee shall be carried over and credited towards subsequent Percentage Rental Payments until used.

5. Support Services by Lessee

Lessee shall, at least once per month and more often if necessary, provide an on-site visit by a nephrologist from Lessee's home office to visit dialysis patients at the Facility and to see patients who are expected to become enrolled in the dialysis program. In addition, Lessee shall make a nephrologist available on a 24 hour a day basis for telephone consultation with the Facility or Hospital and to receive patients from Facility or Hospital.

6. Education

On at least a bi-monthly basis as requested, Lessee shall provide education by its nephrologists to the physicians at the Hospital and to the Facility staff. On a bi-monthly basis as requested, Facility nurses and other mandated support staff shall provide education to patients in the dialysis program and to non-physician staff at the Hospital.

On an ongoing basis as requested, Facility nurses and other mandated support staff shall provide education to the Tribal Diabetes Project, the Tribal Health Education Office and to the community at large.

7. Performance

Lessee shall comply with all applicable tribal regulations as set forth in the White Mountain Apache Tribal Code, and all federal regulations, including those established by OSHA and HCFA.

8. Plan Design and Maintenance

Lessee shall submit plans of the building it proposes to construct to the Lessor for approval. No construction shall commence until Lessor approves, or fails to disapprove of the plans in a timely manner. Within six weeks following the latter of (1) approval or failure to timely disapprove of the plans by Lessor, or (2) approval of the lease by Secretary, Lessee shall begin construction of the building. Lessee shall complete construction within the time designated in the general building plans. Value of the constructed building and land improvements shall not be less than \$300,000.

Lessee shall be responsible for maintenance of the building and Lessee shall make no

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material alterations to the building without the approval of Lessor. Lessee shall negotiate with the Hospital for necessary housekeeping services and access to incineration facilities.

9. Community Services

Lessor shall make available community services such as police and fire protection to Lessee. Lessor, however, assumes no duty to Lessee to provide such services and shall not be liable to Lessee or to any other person, firm, company, corporation or political subdivision for the failure to provide adequate police and fire protection.

10. Security

Lessee shall deposit funds in a restricted bank account as security satisfactory to Lessor which will guarantee completion of the improvements and payment in full of valid claims of all persons for work performed or materials furnished for construction or assembly of the Improvements. Lessee shall provide additional security to guarantee clean-up of Premises upon the termination or cancellation of the lease.

11. Subleases

Lessee shall not sublease the Premises without the prior written approval of Lessor and Secretary. Consent by Lessor shall not be withheld unreasonably.

12. Encumbrances

Lessee may not encumber its right or interest in the lease or any Improvements upon Premises without written approval of Lessor and Secretary. Consent by Lessor shall not be withheld unreasonably. Encumbrances shall only be for the purpose of borrowing capital for the development of Improvements on Premises.

If Lessee defaults under the terms of an approved encumbrance, Lessor may cure the default by payment of (1) the unpaid principle and interest, or (2) the amount of uncured defaults, with costs and expenses. If Lessor cures Lessee's default, Lessor shall acquire all of Lessee's right and title under the lease.

13. Liens, taxes, assessments and utility charges

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 other obligations incurred by Lessee. Lessee shall pay before delinquent all taxes, assessments, licenses, fees and other like charges levied against Lessee during the term of the lease or against the leased land or against

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Lessee's interest therein or against any Improvements or other property thereon which Lessee may acquire.

14. Insurance

At all times during the lease, Lessee shall carry a public liability insurance policy in the amount of not less than \$3,000,000/\$1,000,000 for personal injury or death and \$500,000 for property damage. Lessee shall carry professional liability and malpractice insurance for all doctors and other medical professionals providing services at the Facility. Lessee shall carry fire and vandalism insurance covering the full insurable value of the Improvements on the Premises.

15. Default

Lessee shall pay all rents within 15 days of the due date. If Lessee fails to pay any rent within 15 days of written notice by Lessor or Secretary that rent is past due, or if Lessee fails to make any other payment, including the posting of a security deposit, within 30 days of written notice by Lessor or Secretary, or fails to correct any other breach of the lease within 60 days of written notice by Lessor or Secretary, then Lessor may either (1) collect by any lawful means any monies due, or (2) re-enter the Premises and remove all Improvements and relet the Premises, and/or terminate the lease without further notice to Lessee.

16. No Partnership

Regardless of the fact that the rental terms will be based in part on a percentage basis, Lessor and Lessee are not and will not be in partnership.

17. Indemnification

Each party agrees to indemnify and hold harmless the other party for acts of negligence by the indemnifying party. Such indemnity shall include not only any ultimate judgment, but any and all expenses incurred by the indemnified party in conjunction with any threatened or actual proceeding or legal proceeding resulting from acts of the other party.

18. Tribal trust land

In the formation and execution of the lease agreement Lessee and Lessor agree to abide by all applicable tribal and federal law governing leases of tribal trust land.

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19. Employment

Lessee agrees to comply with all applicable provisions of the Tribal Labor Code, including preference requirements in the hiring, training, promotion and retention of members of the White Mountain Apache Tribe.

20. Arbitration

The parties agree that should a dispute arise between them concerning the terms or performance of the lease agreement the parties will submit the matter to binding arbitration and an Arbitration Board shall be established. Said Arbitration Board shall consist of one (1) member to be selected by Lessee, one (1) member to be selected by Lessor, and a third (3rd) member to be selected by the two prior selected members. If the two members cannot agree on the third member, such member shall be appointed by the Chief Judge of the White Mountain Apache Tribal Court. The decision of the majority of the members of the Arbitration Board shall be binding on the parties. Costs and expenses of such Arbitration Board shall be assessed against the parties in such a manner as the Arbitration Board deems just.