

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

- WHEREAS,** the White Mountain Apache Community Development Corporation has obtained an allocation of federal tax credits to construct twenty (20) low income housing units in McNary; and
- WHEREAS,** the construction has been completed and the CDC is finalizing the selection of qualified families to occupy the housing; and
- WHEREAS,** prior to occupancy, the final terms of the sale of the tax credits to the investor must be completed; and
- WHEREAS,** the investor, Capital Edison, has requested a guarantee by the Tribe that the land on which the low income housing units are located has a clear title, free from competing claims or liens which may defeat the leasehold previously granted by the Tribe for the project; and
- WHEREAS,** in the highly unlikely event that a superior claim to the land should defeat the leasehold interest which has been created for the housing project, the investment made by Capital Edison in exchange for the allocation of tax credits would be forfeited; and
- WHEREAS,** Capital Edison, for that reason, has asked that the title guarantee, to be provided by the Tribe, also include a limited waiver of the Tribe's sovereign immunity for the sole purpose of enforcing the terms set forth and agreed to in the title guarantee agreement; and
- WHEREAS,** under the title guarantee agreement, should there be a default in the status of the land title which is beyond the control and ability of the Tribe to cure, the Tribe would return to Capital Edison the investment it has made in exchange for the credits, plus the accrued interest; and
- WHEREAS,** no other waiver of the Tribe's sovereign immunity is requested or contemplated; and
- WHEREAS,** this agreement is one of the final documents necessary to complete the financing for the housing and to permit qualifying Tribal members to begin occupancy in the housing units.
- BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribe to enter into a title guarantee agreement with Capital Edison pursuant to the terms set forth in the proposed agreement, attached herein.

**Resolution No. 10-98-238**

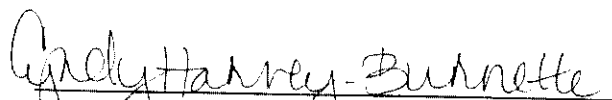
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that in order to guarantee the enforcement of the terms set forth in the agreement in the unlikely event of a default of the agreement, it hereby waives the sovereign immunity of the White Mountain Apache Tribe in the courts of the White Mountain Apache Tribe only for the limited purpose of allowing the investor, Capital Edison to seek enforcement of the title guarantee agreement, including the right of Capital Edison to obtain the award of damages set forth in the title guarantee agreement.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that no other waiver of sovereign immunity is permitted or contemplated in the waiver set forth herein, and that such waiver is for the sole benefit of the investor, Capital Edison, for the limited purpose set forth herein and strictly subject to the express terms of the agreement, and does not include any punitive, consequential, or other damages or claims, and is not for the benefit of the any other entity or third party.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it authorizes the Tribal Chairman, or in his absence the Vice-Chairman, to execute the documents needed to carry out the intent of this resolution.

The foregoing resolution was on October 8, 1998 duly adopted by a vote of six 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), (b), (e), (h), (i), (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).

  
\_\_\_\_\_  
Chairman of the Tribal Council

  
\_\_\_\_\_  
Secretary of the Tribal Council

## TITLE GUARANTY AGREEMENT

THIS TITLE GUARANTY AGREEMENT (this "Guaranty"), dated as of \_\_\_\_\_, 1998, is by the White Mountain Apache Tribe of the Fort Apache Indian Reservation ("Guarantor"), to and for the benefit of White Mountain Apache Limited Partnership, an Arizona limited partnership (the "Partnership") and Edison Capitol Housing Investments, a California corporation (the "Limited Partner").

### RECITALS

A. The Limited Partner, as limited partner, and White Mountain Apache Community Development Corporation, a tribally chartered nonprofit corporation, as general partner ("General Partner"), have entered into that certain First Amended and Restated Limited Partnership Agreement of White Mountain Apache Limited Partnership, an Arizona limited partnership (the "Partnership Agreement").

B. The Partnership was formed for the purpose of developing and managing twenty (20) residential units for low income households (the "Project") in McNary, Arizona, located upon the real property more particularly described in the attached Exhibit A (the "Property").

C. The Project is located within the boundaries of a reservation governed by Guarantor and Guarantor maintains the zoning requirements on and the placement of various land restrictions upon the reservation.

D. The Partnership has a leasehold interest in the Property pursuant to that certain Land Lease between the Partnership and Guarantor, dated as of December 18, 1997 (the "Lease").

E. To induce the Limited Partner to invest in the Partnership, Guarantor has agreed to guarantee certain title issues in connection with the Project, as more fully described in this Guaranty.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Guaranty.

(a) Priority of Lease. Guarantor confirms that (i) there are no prior encumbrances on the Property which would prevent the operation of the Project as a low-income housing project pursuant to the requirements of Section 42 of the Internal Revenue Code of 1986, as amended, and as contemplated in the Partnership Agreement and (ii) the

Partnership has a valid encumbrance upon the Property pursuant to the Lease, subject only to those prior senior encumbrances listed on Exhibit B (the "Senior Encumbrances").

(b) Indemnification. Subject to Section 1 (c), Guarantor shall indemnify the Partnership for any costs or damages it incurs in connection with any of the following claims:

- (i) The Partnership's leasehold interest in the Property is invalid because there is a prior claim upon the Property.
- (ii) There are other liens or encumbrances against the Property, other than the Senior Encumbrances, which are adverse to the operation of the Project as contemplated in the Partnership Agreement; or
- (iii) There is a lack of right of access to and from the Property.

2. Guaranty Unconditional. The obligations of Guarantor under this Guaranty shall be unconditional and absolute to the extent of its obligations under this Guaranty. Without limiting the generality of the foregoing, Guarantor shall not be released, discharged or otherwise affected by:

- (a) any change in the structure of ownership of the Partnership, any change in the Partnership Agreement or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the Partnership, General Partner or their assets;
- (b) the existence of any claim or set-off which Guarantor or General Partner have against the Partnership or the Limited Partner, whether in connection with this Guaranty or any unrelated transactions; provided, that nothing in this Guaranty shall prevent the assertion of any claim by separate suit;
- (c) any circumstance that constitutes a legal or equitable discharge of a guarantor or surety; or
- (d) any dispute between Guarantor and the Partnership, General Partner, and the Limited partner, or any of them.

3. Expenses of Enforcement. Guarantor agrees to pay or reimburse the Partnership and the Limited Partners for all reasonable costs and expenses of the Partnership and the Limited Partner (including reasonable attorneys' fees) in connection with the enforcement of this Guaranty.

4. Representations and Warranties of Guarantor. Guarantor represents and warrants that:

- (a) Guarantor has the full power and authority to execute, deliver and perform this Guaranty and any instrument or agreement required under this Guaranty,

and to perform and observe the terms and provisions of this Guaranty;

- (b) all action necessary on the part of Guarantor for the execution, delivery and performance of this Guaranty and any instrument or document required under this Guaranty has been duly taken;
- (c) Guarantor's agents and officers executing this Guaranty and any instrument or agreement required under this Guaranty are fully authorized to execute the same;
- (d) this Guaranty constitutes the valid and binding agreement enforceable against Guarantor in accordance with its terms;
- (e) Guarantor's obligations under this Guaranty do not conflict with Guarantor's obligations under any other agreement; and
- (f) neither the entry into nor the performance of, nor compliance with, this Guaranty, or other documents executed concurrently herewith, has resulted or will result in any violation of, or be in conflict with, or invalidate, cancel or make inoperative, or interfere with, or result in the creation of any lien, encumbrance or any other charge upon its property pursuant to, or constitute a default under, any charger, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, credit agreement, franchise, permit, judgment, decree, order, easement, restriction or other charge, right or interest applicable to Guarantor.

5. **Term.** Notwithstanding anything to the contrary contained herein, this Guaranty shall commence on the date set forth above and shall terminate on the earliest to occur of (a) fifteen (15) years from the first day of the compliance period, as defined in Section 42 (i) (1) of the Code, (b) the termination of the Partnership with the consent of the Limited Partner or (c) the issuance of an ALTA owner's title insurance policy to the Partnership, issued by a nationally recognized title insurance company with coverage in an amount equal to all debt secured by the Project plus all capital contributions to be made by the Limited Partner to the Partnership.

6. **Financial Reports.** Not later than thirty (30) days after receipt by Guarantor, Guarantor shall send or cause to be sent to the Limited Partner a reviewed annual financial report of Guarantor containing a balance sheet as of the end of the fiscal year prepared in accordance with generally accepted accounting principles.

7. **Defined Terms.** Except as expressly provided herein, terms used in this Guaranty with initial capital letters shall have the meanings set forth in the Partnership Agreement.

8. **Applicable Law.** This Guaranty, shall be construed and enforced in accordance with the laws of the State of Arizona applicable to agreements made and to be performed entirely therein.

a. Jurisdiction. All actions shall be initiated in the Guarantor's tribal court system and shall be conducted subject to the rules of evidence and other rules and procedures thereof; provided, however, that the Guarantor shall designate a single sitting or retired judge of the United States Federal Court System or of the Superior Courts of Pima County or Maricopa County, Arizona, as a judge pro tem of the Tribal Court to try each action as to all matters of fact and law. With respect to the trial of any action, the prevailing party shall be reimbursed for and held harmless by the non-prevailing party for all court costs, including (but not limited to) the compensation of the aforesaid judge pro tem.

b. Waiver of Trial by Jury. The Limited Partner and the Guarantor, each for itself and its authorities and instrumentalities, hereby waive all rights to trial by jury in connection with the trial of any action.

c. Appeals. All final judgments, rulings and orders of the aforesaid trial court shall be subject to appeal pursuant to the rules and procedures of the Tribal Court appellate process; provided, however, that all appellate decisions shall be rendered by an appellate panel and the Guarantor shall designate sitting or retired members of the appellate courts of the State of Arizona or the United States federal court system sufficient to constitute not less than thirty percent (30%) of the votes of each such appellate panel. Each party shall bear its costs incurred in connection with or arising out of the appeal of any action. All compensation of the designees to any appellate panel and its related court costs shall be borne equally by the parties to the appeal. The Guarantor, for itself and its authorities and instrumentalities, agrees that each shall accept and be bound by, thereby waiving sovereign immunity from, a judgment, ruling or order which is final (because either the time for appeal has expired or the judgment or order is issued by the court having final appellate jurisdiction over the matter and is not subject to collateral attack.).

d. Waiver of Administrative Remedies. The Guarantor, for itself and its instrumentalities and authorities, hereby waives any right any one of them have to require the Limited Partner to exhaust any administrative remedies before commencing an action in Tribal Court and agrees not to assert the claim or defense of failure to exhaust any administrative or other Tribal remedies in any action brought in the manner provided hereinabove.

e. Consent to Jurisdiction and Venue. Notwithstanding the foregoing, the Guarantor, for itself and its instrumentalities and authorities, hereby irrevocable consents to the jurisdiction and exclusive venue of the United States District Court for the District of Arizona, sitting in Phoenix, Arizona, for the trial of any action to determine whether, under the standards for review in federal court trials and appeals conducted in state courts of the United States, the Limited Partner has been denied procedural or substantive due process in the trial and/or appeal of any action brought in the Guarantor's Tribal Court system. The Guarantor, for itself and its instrumentalities and authorities, hereby irrevocably agrees to accept and be bound by, a judgment or order issued in such action which is final (because either the time for appeal has expired or the judgment or order is issued by the court having final appellate jurisdiction over the matter and is not subject to collateral attack).

9. **Modification.** This Guaranty may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the parties.

10. **Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties. In any event, all of the other provisions shall be deemed valid and enforceable to the greatest possible extent.

11. **Headings.** The headings used herein are for convenience of reference only and are not part of this Guaranty and do not in any way or amplify the terms and provisions hereof.

12. **Successors and Assigns.** This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. **Notices.** Any notice or other communication required or permitted to be given under this Guaranty shall be in writing and shall be personally delivered including but not limited to overnight delivery or deposited in the certified U.S. mail, return receipt requested, first class and postage prepaid, addressed to each party at the following addresses or such other address as may be designated by a notice pursuant to this Section:

Guarantor: White Mountain Apache Tribe  
P.O. Box 700  
Whiteriver, Arizona 85941  
Attn: \_\_\_\_\_

Partnership: White Mountain Apache Limited Partnership  
P.O. Box 700  
Whiteriver, Arizona 85941  
Attn: \_\_\_\_\_

Limited Partner: Edison Capital Housing Investments  
18101 Von Karman Avenue, Suite 800  
Irvine, California 92715-1046  
Attention: Asset Manager


Any notice provided in accordance with this Section 13 shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

14. **Guaranty Limited.** The obligations of Guarantor under this Guaranty shall be limited to the total capital contribution made by the Limited partner to the Partnership.

IN WITNESS WHEREOF Guarantor has executed this Guaranty as of the day first written above.

**GUARANTOR:**

WHITE MOUNTAIN APACHE TRIBE

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Exhibit A**

**Legal Descriptions**

**Exhibit B**

**Senior Encumbrances**