

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

WHEREAS, the Tribal Council is advised that the Cibecue Community School lease has expired; and

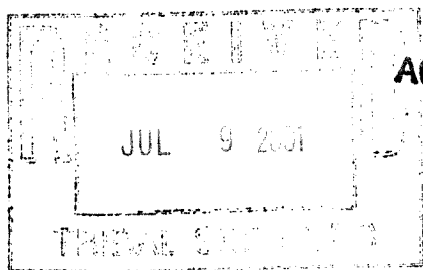
WHEREAS, the Tribal Council is advised that an updated survey has been completed by the Tribal Land Office, and the Legal Department has drafted a 25 year land lease agreement which has been reviewed as to form and content by the School's Governing Board and attorney; and

WHEREAS, the Tribal Council concurs that it would be in the best interest of the White Mountain Apache Tribe to enter into a 25 year land lease for the surveyed school site with the Cibecue Community Education Board, Inc.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the proposed land lease with the Cibecue Community Education Board, Inc., for the Cibecue Community School site, attached hereto and incorporated by reference herein.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, or in his absence the Vice Chairman or other duly authorized representative, to execute any and all documents necessary to carry out the intent of this resolution.

The foregoing resolution was on JUNE 20, 2001 duly adopted by a vote of FIVE 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), (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).



ACTING Chairman of the Tribal Council

Secretary of the Tribal Council

DRAFT

ES/BL/1

**SCHOOL LEASE
WHITE MOUNTAIN APACHE TRIBE
FORT APACHE INDIAN RESERVATION
Whiteriver, Arizona**

THIS LEASE, made and entered into this _____ day of _____, 2001 by and between the WHITE MOUNTAIN APACHE TRIBE, hereinafter called the Lessor, whose address is P.O. Box 700, Whiteriver, Arizona 85941, and the CIBECUE COMMUNITY EDUCATION BOARD, INC., Navajo County, hereinafter called Lessee, whose address is P.O. Box 80068, Cibecue, Arizona 85911, is as follows:

1. **LEASED LAND.** For and in consideration of the rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee that certain parcel of land located at Cibecue, Arizona within the boundaries of the Fort Apache Indian Reservation and more particularly described as follows:

PARCEL DESCRIPTION FOR CIBECUE COMMUNITY SCHOOL

A certain parcel of land situated in the Community of Cibecue, within the NW Quarter of Section 01, Township 07 North, Range 17 East, Gila and Salt River Basin and Meridian, Fort Apache Indian Reservation, Navajo County, Arizona, being more particularly described as follows:

Commencing from an X Chisel on the Northeast abutment of the bridge over Cibecue Creek in Cibecue, Arizona.

Thence N 47° 16' 54" E for a distance of 3414.84 Feet;
Thence S 42° 11' 17" W for a distance of 21.39 feet
to the POINT OF BEGINNING.

Thence S.04° 43' 43" E. for a distance of 991.66 feet;
Thence N.85° 16' 17"E. for a distance of 113.02 feet;
Thence S.04° 43' 43"E. for a distance of 887.28 feet;
Thence N.85° 16' 17"E. for a distance of 415.33 feet;
Thence S.17° 33' 43"E. for a distance of 768.52 feet;
Thence S.82° 56' 22"W. for a distance of 1209.77 feet;
Thence N.78° 07' 48"W. for a distance of 714.05 feet;
Thence N.20° 22' 47"W. for a distance of 1619.25 feet;
Thence N.58° 54' 08" E. for a distance of 911.66 feet;
Thence N.53° 12' 43"E. for a distance of 956.87 feet;
To THE POINT OF BEGINNING.

Containing within said bounds 83.56 acres of land

2. **TERM.** The term of this lease shall be twenty-five (25) years, beginning on the day it is fully executed and shall be renewable at the expiration of the original term as provided in Section 3.
3. **RENEWAL.** The Lessee shall have the option to renew this Lease for an additional term of 25 years upon renegotiation of the lease terms and upon the mutual consent of the Lessee and Lessor.
4. **CONDITION OF LEASED LAND.** Lessee has examined and is familiar with the leased land and verifies that no representations as to the physical condition thereof have been made by the Lessor or any agent of Lessor prior to or at the time of the execution of this Lease and Lessee warrants that it has not relied on any warranty or representation regarding the physical condition of the premises made by or for Lessor but solely upon Lessee's independent investigation.
5. **PURPOSE.** Lessee shall use and operate the leased land for elementary school, middle school and high school educational instruction. This Lease will immediately expire if the Cibecue Community School Board is dissolved or the 638 Contract is terminated. Additionally, if the Lessee does not use and operate the leased land for educational instruction purposes for a period of twelve (12) consecutive months, this lease shall terminate.
6. **UNLAWFUL USES.** The Lessee agrees that it will not use or cause to be used or permit any part of the leased land to be used for any unlawful conduct or purpose, or for any purpose unrelated to its educational activities as defined in Paragraph 5. The lawfulness of Lessee's conduct shall be defined by the existing tribal laws and applicable laws of the United States. Lessor warrants and represents that the intended use by Lessee does not at this time violate tribal law or applicable laws of the United States.
7. **LEASE FEE.** The Lessee, as an educational institute, in consideration of the foregoing covenants, agrees to pay in lawful money of the United States of America to the White Mountain Apache Tribe, the following:
 - (a) A gratuitous lease fee, inclusive of tribal taxes, of One Dollar (\$1.00) due and payable on or before the execution of this lease.
 - (b) The Office of the Tribal Treasurer of the White Mountain Apache Tribe is hereby designated as Lessor's agent for the administration of this lease and for the receipt and collection of all proceeds due the Lessor pursuant to the terms of this lease, and for the receipt of all documents, certifications and correspondence arising out of or relating to this lease.
8. **IMPROVEMENTS.** Unless otherwise provided herein, all improvements or construction on said leased land shall be at the expense of the Lessee. In addition to the installations and improvements, which Lessor has already placed on the leased land, if any, Lessee shall have the right to place on said premises at its own expense, such improvements as it may deem necessary and only as limited herein to carry on the purposes authorized by this Lease.

Provided, however, that before any additional exterior structural improvements shall be placed on the premises, the consent of the Lessor in writing, which consent will not be unreasonably withheld, must first be obtained. Lessor shall not be required to make any improvements on said premises, nor shall Lessor be responsible for the upkeep of any part of said premises, unless provided otherwise herein.

Unless otherwise provided herein, subject to applicable federal law and the Self-determination grant between the Lessee and the BIA, any buildings or other improvements placed upon the leased premises become the property of the Lessor upon termination or expiration of this lease.

9. **CONSTRUCTION, MAINTENANCE, REPAIR AND ALTERATION**

The Lessee shall maintain the leased land and all improvements thereon in good order and repair and in a neat and attractive condition which Lessor acknowledges exists as of this date at all times during the term of this lease and at Lessee's sole cost and expense. Lessee shall construct, maintain, and repair, as required by law all improvements on the leased land and any alterations, additions, or appurtenances thereto, and shall otherwise comply with all existing laws, ordinances, and regulations of the White Mountain Apache Tribe, copies of which Lessor acknowledges are available for public inspection or will be provided upon request by Lessee, and any other laws applicable to said land. Lessee shall indemnify and hold harmless the Lessor and the United States Government against liability for all claims arising from Lessee's construction of the improvements placed on the premises and from Lessee's failure to maintain said premises and the improvements thereon as hereinabove provided, or from Lessee's non-observance of any law, ordinance or regulations applicable thereto.

10. **UTILITIES.** The Lessee shall pay the cost of gas, electricity, water and sewage and the cost of all other utility services to the land.

11. **COMMUNITY SERVICES.** The Lessor shall not be responsible for providing any services to the leased land including, but not limited to, police and fire protection, medical services and garbage disposal except to the extent that said services are customarily provided on a non-discriminating basis in the community.

12. **SUBLEASE, ASSIGNMENT, TRANSFER.** The Lessee shall not sublease, assign or transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased land without the prior written approval of the Lessor, which consent may be withheld in the complete discretion of Lessor and no such sublease, assignment or transfer shall be valid or binding without such approval, and then only upon the condition that the sublessee, assignee or other successor in interest shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Any attempt to assign this lease without the consent of the Tribe shall be deemed a violation of this paragraph and shall be cause to terminate the lease at the option of Lessor.

13. **STATUS OF SUBLEASE.** Termination of this Lease, by cancellation or otherwise, shall not serve to cancel approved subleases or subtenancies, but shall operate as an assignment to Lessor of any and all such subleases or subtenancies.

14. **ENCUMBRANCE.** This Lease, or any right to or interest in this Lease or any of the improvements on the leased land may not be encumbered by the Lessee. Any attempt to do so shall be void and shall constitute cause for immediate termination of the lease by Lessor.

15. **PUBLIC LIABILITY INSURANCE.** At all times during the term of this Lease, Lessee shall carry a public Liability Insurance Policy or alternative suitable to the Lessor, including self-insurance, in the amount of one million dollars, (\$1,000,0000) combined single limit for bodily injury to any one person; for any one accident or personal injury; and for property damage; said policy shall be written jointly to protect Lessee and Lessor. In the event Lessee fulfills this requirement by obtaining an insurance policy, a copy of said policy or a certificate thereof shall be furnished to the Lessor within 10 days of the execution of this lease. Neither the Lessor nor the United States Government, nor their officers, agents and employees shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of the Lessee or sublessee, or of any other person whomsoever, caused by any use of the leased land, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on said premises or from any other cause whatsoever; and Lessee, as a material part of the consideration of this Lease, hereby waives on Lessee's behalf all claims against Lessor and the United States Government and agrees to hold Lessor and the United States Government, and their officers, agents, and employees, free and harmless from liability for all claims for any loss, injury or death arising from the use of the land by Lessee, together with all costs and expenses in connection therewith.

16. **FIRE AND DAMAGE INSURANCE.** Lessee shall, from the date of approval of this Lease, carry fire insurance with extended coverage endorsements and insurance covering vandalism, in the name of the Lessee or provide adequate self-insurance covering the insurable permanent improvements on the leased premises. In the event of damage to any improvements on the leased land, the Lessee shall have the sole option of whether or not to reconstruct said improvements; and if Lessee decides not to reconstruct the said improvements, this Lease shall terminate, and the insurance proceeds shall be paid to the Lessee. Lessee shall provide to the Lessor a Certificate of Insurance evidencing the coverage required by this Lease within 10 days of the execution of this Lease. Lessee shall clean up all debris within 90 days after loss or damage to the improvements weather permitting. If Lessee decides to reconstruct said improvements reconstruction shall commence within one year after the 90 day clean-up period and be completed within one year thereafter.

17. **EMINENT DOMAIN.**

(a) **Lessee's Option.** The term "total taking" as used in this Article means the taking of the entire leased land in fee under the power of eminent domain. The term "partial taking" means any other taking in fee under the power of eminent domain, except, due to the small size of the leased premises, that if [fifty] percent (50%) or more by area but

not all of the leased land is so taken, the Lessee shall have the option within sixty (60) days of the date of such taking by notice in writing to the Lessor to have such taking deemed a "total taking."

(b) Total Taking. In case of a total taking, the leasehold estate of Lessee and his liability for future installments of rental (except accrued percentage rental, if any) shall cease and terminate as of the date of actual physical possession of the leased land or portions thereof which shall be so taken.

(c) Partial Taking. In the case of a partial taking, this Lease shall terminate as to the portion taken upon the date on which actual possession of said portion is taken, but this Lease shall continue in full force and effect as to the remainder of the leased land; and each ensuring installment of minimum rental only shall be abated in the ratio that the ground area of the leased land taken bears to the total area of said land prior to the taking. If the taking does not interfere with the operation of the lessee's business, then there shall be no abatement of the rental payment.

(d) Refund of Advance Rentals. There shall be no refund of minimum rental paid in advance because of total or partial taking of the leased land.

(e) Compensation for Improvements. In the event of a total or partial taking, as defined herein, or other eminent domain proceedings by the Tribe, Lessee shall have the option of moving the improvements or receiving compensation. In the event that Lessee elects to move the improvements, Lessor agrees to provide a suitable relocation site and pay the cost of moving provided that said cost does not exceed the appraised value of the improvements. If Lessee elects to be compensated for the improvements Lessor will pay to Lessee the appraised value of the improvements and a pro rata refund of any advance lease fees paid to Lessor and this lease shall terminate. The appraised value shall be determined by an independent appraiser or government appraiser agreed upon by the parties.

18. DEFAULT. In the event of any breach of this lease agreement by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the demised land. The property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of the Lessee. Lessor may elect to terminate this lease agreement for such breach. Should Lessor at any time terminate this lease agreement for any breach, in addition to any other remedy it may have, Lessor may recover from Lessee all damages incurred by reason of the breach, including the cost of recovering the demised premises. Lessor shall notify Lessee in writing of any default pursuant to this Lease. Lessee shall have ninety (90) days from the date of receipt of written notification to correct or otherwise cure any default before Lessor may take action to terminate this Lease. Breaches of the lease which occur due to events beyond the control of either party, including acts of God, shall not be cause to terminate this lease.

19. **ATTORNEY'S FEES.** If action be brought by either party in unlawful detainer for rent or any other sums of money due under this Lease, or to enforce the performance of any of the covenants and conditions of this Lease, the losing party shall pay the reasonable attorney's fees of the prevailing party, said fees to be fixed by the Court as a part of the costs in any such action.

20. **HOLDING OVER.** Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder or in or to the leased land. Subject to applicable federal law pertaining to the Self-determination Contract between Lessee and the BIA, Lessee agrees to remove all removable, personal property as defined under the terms of this Lease at the termination of this Lease, and if Lessee fails to do so, Lessor shall have the right to cause Lessee's personal property to be removed from the premises and have it stored at Lessee's expense, or to exercise the rights otherwise set forth herein.

21. **FEDERAL GOVERNMENT TRUST RELATIONSHIP - FEDERAL LAW**

This Lease shall remain in full force and effect regardless of the existence of Federal Trust responsibilities with respect to the Lessor during the term of this Lease. Applicable federal law as set forth at 25 U.S.C. § 415 et. seq. and at 25 C.F.R. Part 162 et seq. are incorporated herein by reference and shall form a part of this lease agreement as if fully set forth herein, both as now stated and as may subsequently be amended.

22. **OBLIGATIONS OF LESSEE.** While the leased land are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligations of their sureties, are to the United States as well as to the Lessor.

23. **PAYMENTS AND NOTICES.** All notices, payments and demands, shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified mail. Service of any notice or demand shall be deemed complete five (5) days after mailing or the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the parties at the following addresses:

White Mountain Apache Tribe
Office of the Tribal Treasurer
P.O. Box 700
Whiteriver, Arizona 85941

Cibecue Community School
Office of the Superintendent
P.O. Box 80068
Cibecue, Arizona 85911

24. RESERVATION LAWS AND ORDINANCES, RESOLUTION OF DISPUTES AND APPLICABLE LAW

(a) The Lessee, Lessee's employees, agents and sublessee and their employees and agents agree to abide by all laws, regulations and ordinances of the White Mountain Apache Tribe now in force and effect or that may hereafter be in force and effect, copies of which will be provided to Lessee upon specific written request.

(b) The White Mountain Apache Tribal Court shall have exclusive jurisdiction over all claims, disputes, or actions filed by the Lessee against the Lessor, and arising from or relating to this lease or breach thereof.

(c) This lease shall be construed and enforced in accordance with the specific laws of the White Mountain Apache Tribe, as applicable, and otherwise by federal and state law and the White Mountain Apache Tribe shall have jurisdiction over the leased land.

(d) The Lessor warrants that this lease is fully authorized and complies with all applicable laws of the White Mountain Apache Tribe and the United States, and that Lessor is empowered to execute and deliver the same; Lessor will use its best efforts and due diligence at its expense to secure further approvals, if needed.

25. EMPLOYMENT. The Lessee agrees to give employment preference to qualified tribal members pursuant to all Tribal Employment Rights laws of the Tribe currently or hereafter in force and effect.

26. INSPECTION. The Lessor and its authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased land, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

27. DELIVERY OF LEASED PREMISES. At the termination of this Lease, Lessee will peaceably and without legal process deliver up the possession of the leased land to the Lessor in good condition.

28. NO PARTNERSHIP. Lessee and Lessor are not in partnership, even if the terms of rental hereunder are in whole or in part on a percentage basis.

29. UPON WHOM BINDING. It is understood and agreed that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the parties subscribing hereto, and their heirs, assigns, successors, executors and administrators. While the leased land 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 owner of the land.

30. LIQUOR SALES. The Lessee shall not offer for sale or sell alcoholic beverages to the public for consumption on or off the leased land.

31. **INDEMNIFICATION.** To the fullest extent permitted by law, Lessee shall indemnify and hold harmless Lessor and all its agents, representatives and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the activities of Lessee in connection with Lessee's use of the leased land; provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, to the extent caused in whole or in part by any negligent act or omission of Lessee or anyone directly or indirectly employed by Lessee or anyone for whose acts Lessee may be liable. Such obligation shall not be construed to abrogate any obligation of indemnity which would otherwise exist as to any party to this Contract. It is not intended by this paragraph to relieve a negligent party from liability for its conduct nor to defeat the contractual benefits to Lessor and/or Lessee of any insurance contract.

32. **SOVEREIGN IMMUNITY.** Nothing in this agreement shall be construed to constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe, its agents, employees, or attorneys, for any purpose whatsoever.

33. **ENTIRE AGREEMENT.** This instrument contains the entire Agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written agreement shall be valid or binding, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. This agreement may not be enlarged, modified, or altered except in writing signed by the parties.

DRAFT

EXECUTED at Whiteriver, Arizona this _____ day of _____, 2001.

LESSOR: WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

By _____
Tribal Chairman

ATTEST: _____
Tribal Council Secretary

LESSEE: CIBECUE COMMUNITY SCHOOL

By: _____
President, Cibecue Community Education
Board, Inc.

APPROVED:
SECRETARY OF THE INTERIOR

By _____
Superintendent, Fort Apache Agency

Date: _____

UNITED STATES DEPARTMENT OF THE INTERIOR
Pursuant to the Authority delegated to the Assistant
Secretary-Indian Affairs by 209 DM 8, 230 DM 1, and
to the Western Regional Director by 3 IAM 4
(Release No. 99-03), and to the Superintendent/
Field Representative by 10 BIAM 11, as amended
by Western Regional Release No. 97-1.

LAND OFFICE

NOVEMBER 01, 02 2000

LEGAL DESCRIPTION: CIBECUE COMMUNITY SCHOOL CIBECUE

A CERTAIN PARCEL OF LAND SITUATED IN THE COMMUNITY OF CIBECUE, WITHIN THE NW QUARTER OF SECTION 01, TOWNSHIP 07 NORTH, RANGE 17 EAST, GILA AND SALT RIVER BASIN AND MERIDIAN, ON THE FORT APACHE INDIAN RESERVATION, NAVAJO COUNTY, STATE OF ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM AN X CHISEL ON THE NORTHEAST ABUTEMENT OF THE BRIDGE OVER CIBECUE CREEK IN CIBECUE ARIZONA.

**THENCE N 47°16'54" E FOR A DISTANCE OF 3414.84 FEET;
THENCE S 42°11'17" W FOR A DISTANCE OF 21.39 FEET
TO THE POINT OF BEGINNING.**

**THENCE S 04°43'43" E FOR A DISTANCE OF 991.66 FEET;
THENCE N 85°16'17" E FOR A DISTANCE OF 113.02 FEET;
THENCE S 04°43'43" E FOR A DISTANCE OF 887.28 FEET;
THENCE N 85°16'17" E FOR A DISTANCE OF 415.33 FEET;
THENCE S 17°33'43" E FOR A DISTANCE OF 768.52 FEET;
THENCE S 82°56'22" W FOR A DISTANCE OF 1209.77 FEET;
THENCE N 78°07'48" W FOR A DISTANCE OF 714.05 FEET;
THENCE N 20°22'47" W FOR A DISTANCE OF 1619.25 FEET;
THENCE N 58°54'08" E FOR A DISTANCE OF 911.66 FEET;
THENCE N 53°12'43" E FOR A DISTANCE OF 956.87 FEET
TO THE POINT OF BEGINNING.**

CONTAINING 83.56 ACRES MORE OR LESS.