

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

WHEREAS, there continues to be an extreme shortage of safe, adequate housing to meet the needs of families residing on the Fort Apache Indian Reservation; and

WHEREAS, by prior Resolution No. 02-2003-47, the Tribal Council has authorized the White Mountain Apache Community Development Corporation to participate in the development of a 22 unit low income townhome complex which will be funded by USDA Rural Development Section 515, federal low income housing tax credits, HOME funds and FHLB-AHP direct subsidy; and

WHEREAS, by Resolution No. 02-2003-47, the Council also committed to dedicate land determined necessary for the development of the townhome project, which is identified in the attachment to this Resolution located in Whiteriver, Arizona; and

WHEREAS, at this time the CDC, as the general partner of Apache Ridge II Limited Partnership, requests execution of the land lease between the Tribe and the partnership for the reasons set forth in the prior resolution; and

WHEREAS, the intended use of the premises is consistent with Tribal law, and will require approval to encumber the leasehold interest in order to secure the financing for this project.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the lease, in form substantially similar to that attached herein, of land identified in the attachment hereto between the Tribe and the Apache Ridge II Limited Partnership, the general partner of which is White Mountain Apache Community Development Corporation, for construction of a 22 unit low income rental townhome complex.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it authorizes the limited waiver of sovereign immunity, as provided in the lease document for enforcement of the lease terms only, and only in the courts of the White Mountain Apache Tribe.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby grants authority to the Apache Ridge II Limited Partnership to encumber the premises for the purposes of securing the financing for this townhome complex.

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

THIS LEASE, made and entered into this _____ day of October, 2003 by and between the **WHITE MOUNTAIN APACHE TRIBE OF THE FORT APACHE INDIAN RESERVATION**, hereinafter called "**Lessor**" whose address is P.O. Box 700, Whiteriver, Arizona 85941, and the **APACHE RIDGE II, LIMITED PARTNERSHIP**, hereinafter called "**Lessee**", whose address is P.O. Box 550, McNary, Arizona 85930, is as follows:

1. LEASED PREMISES

For and in consideration of the rents, covenants, and agreements hereinafter set out, Lessor hereby leases to Lessee those certain parcels of land and premises located within the boundaries of the Fort Apache Indian Reservation and legally described in **Exhibit A** attached hereto and made a part hereof.

2. TERM

The term of this Lease is twenty-five (25) years. This Lease is renewable at the expiration of the original term as provided in Section 3.

3. RENEWAL

This Lease shall be automatically renewed for an additional term of 25 years unless the Lessee shall give written notice of termination to the Lessor and the Secretary of the Interior or his authorized representative, delegate, or successor (hereinafter referred to as the "Secretary") at least three months prior to the expiration of the original term.

4. CONDITION OF LEASED PREMISES

Lessee has examined and is familiar with the Leased Premises and verifies that no representations as to the physical condition thereof have been made by 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 Leased Premises made by or for Lessor but solely upon Lessee's independent investigation.

5. PURPOSE

Lessee shall use the Leased Premises solely to develop, construct and lease a 22-unit multifamily project, consisting of 5 four-plexes and 1 duplex for rental to low income persons ("Apache Ridge II"). One unit may be used for occupancy by an on-site resident manager, which unit shall not be income restricted as long as it is so used. Lessee may sublease the

individual townhomes to individuals or families. Lessee shall at all times maintain a waiting list that conforms to the rules and regulations of USDA-Rural Housing Services. Preference in leasing shall be given to enrolled members of the White Mountain Apache Tribe and other Native Americans provided that such preferences are consistent with U.S. Department of Agriculture -Rural Housing Services and U.S. Department of Housing and Urban Development rules and regulations regarding non-discrimination. In addition to its own waiting list, Lessee shall, within sixty (60) days, establish an agreement with the White Mountain Apache Housing Authority to accept referrals of applicants who are on the WMAHA waiting list and shall add such referred applicants to Lessee's waiting list, prioritized according to the order in which received.

6. UNLAWFUL USES

Lessee agrees that it will not use or cause to be used or permit any part of the Leased Premises to be used for any unlawful conduct or purpose, or for any purpose not permitted 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

In consideration of the foregoing covenants, Lessee agrees to pay to Lessor the following:

(a) A lease fee, inclusive of Tribal taxes, of One Dollar (\$1.00) per year due and payable on or before the effective date of the Lease and at the beginning of each year thereafter.

(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 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 Premises shall be at the expense of Lessee. Lessee shall have all of the burdens and benefits of ownership of the improvements and will be treated as the owner of the improvements for federal income tax purposes. In addition to the installations and improvements which Lessor has already placed on the Leased Premises, if any, Lessee shall have the right to place on the Leased 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. Upon termination of this Lease, Lessee shall have ninety (90) days to remove the improvements from the Leased Premises. Landlord

agrees to give Lessee reasonable access to the Leased Premises for such removal. If not removed within ninety (90) days, the improvements shall become the property of Lessor.

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

Lessee shall maintain the Leased Premises 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 Premises 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 the Leased Premises. Lessee shall indemnify and hold harmless Lessor and the United States Government against liability for all claims arising from Lessee's construction of the improvements placed on the Leased Premises and from Lessee's failure to maintain the Leased Premises and the improvements thereon as hereinabove provided, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto.

10. **UTILITIES**

Lessee shall pay the cost of gas, electricity, water and sewage and the cost of all other utility services to the Leased Premises.

11. **COMMUNITY SERVICES**

Lessor shall not be responsible for providing any services to the Leased Premises 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-discriminatory basis in the community.

12. **SUBLEASE, ASSIGNMENT, TRANSFER**

Except as provided in Sections 5 and 15, Lessee shall not sublease, assign or transfer this Lease in whole or in part, or any right to or interest in this Lease or any of the improvements on the Leased Premises without the prior written approval of 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 except as provided in Paragraph 5 shall be deemed a violation of this paragraph and shall be cause to terminate the Lease at the option of the Lessor.

13. **TRANSFER OF TITLE**

If Lessor shall sell or otherwise transfer title to the Leased Premises, such sale or transfer will be done subject to the provisions of this Lease.

14. 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.

15. ENCUMBRANCES

(a) It is mutually agreed by the Lessor and Lessee that the express purpose of this Lease is to enable Lessee to obtain loans and other funds to finance the development and construction of Apache Ridge II upon the Leased Premises. Lessor, in consideration of the granting of the following loans, hereby consents thereto and grants permission to Lessee to execute and deliver, upon review and approval of the Lessor, the following real estate mortgages covering Lessee's leasehold interest in and to the Leased Premises including improvements now existing thereon or which may be constructed thereon:

- (i) Mortgage in favor of the United States of America, acting through the United States Department of Agriculture, Rural Housing Services, 3003 N. Central Avenue, Suite 900, Phoenix, Arizona 85012-2906, to secure the permanent loan in the original principal amount of \$1,000,000.
- (ii) Mortgage in favor of Arizona Department of Commerce, 3800 N. Central Avenue, Suite 1200, Phoenix, AZ 85012, to secure the State Housing Fund loan ("State Housing Fund Loan") in the original principal amount not to exceed \$399,500.
- (iii) In addition, Lessee may execute and file on the Leased Premises an extended low-income housing commitment as required by Section 42(h) of the Internal Revenue Code and an extended low-income housing commitment as required by the Arizona Department of Housing, State Housing Fund Program.

Each of the lenders referenced in subparagraphs (i) through (iii) shall hereinafter be collectively referred to as "Mortgagee." If Lessee fails to obtain all of the loans referred to herein, or other suitable substitute financing, Lessor may, at its option, terminate this Lease by giving Lessee sixty (60) days written notice of termination; but no such termination shall be effective as against the Mortgagee unless the Lessor gives the Mortgagee written notice of such termination at the addresses set forth above, and such notice is received by the Mortgagee not later than 20 days before a loan by the Mortgagee to the Lessee is closed.

(b) Lessor shall be provided with written notice by Mortgagee in case of any default of any mortgage listed in Section 15(a) above. Lessor reserves to itself the right to purchase the leasehold in case of default and proposed transfer of the leasehold interest by Lessee provided it shall exercise such right in writing within thirty (30) days from the receipt of written notice of such default or proposed transfer. In the event Lessor exercises such right, Lessor shall pay the mortgage indebtedness in full at the time of its purchase of the leasehold interest.

(c) Failure of Lessor to exercise its option as provided in paragraph (b) of this section will constitute the consent of Lessor for Lessee, with the approval of the Mortgagee, to assign and transfer the leasehold interest and all improvements thereon either directly or through the Mortgagee to any individual who as successor in interest to Lessee shall assume all the obligations of the Mortgagee's loans and mortgages and also assume all the obligations of Lessee under this Lease. Preference for such an assignment will be given to eligible members of the White Mountain Apache Tribe, who qualify for a loan under the standards prescribed by the Mortgagee. In the event the assignee is non-Native American, the rental as provided in Section 7 of this Lease will be adjusted to an annual rate equal to the then current fair rental value exclusive of improvements and development by Lessee and of the contribution value to the real estate because of such improvements. The non-Native American assignee will increase the stipulated mortgage payments in an amount equal to the fair annual rental of the land until the mortgage is satisfied in full. Lessor agrees to suspend the collection of such rentals pending the liquidation of the Mortgage. Upon liquidation of the Mortgage said assignee will thereafter pay to Lessor the fair annual ground rental for the remainder of the term of this Lease. In addition to such payments, said assignee will pay in equal installments, amounts sufficient to liquidate all suspended rental payments, which were applied to the Mortgage, on or before the termination date of the Lease.

(d) In the event of default under the terms of any mortgage on the leasehold interest, and in the event Lessor waives or fails to exercise its option provided under paragraph (b) of this section, Mortgagee shall have the right to take possession of and rent the property for the account of Lessee upon such terms and conditions as the Mortgagee deems reasonable, subject to the terms and conditions of this Lease, including Section 5, pending foreclosure of the mortgage or the acquisition or disposal of the leasehold.

(e) In the event it becomes necessary for the Mortgagee to take possession of the leasehold in order to protect its interests under any real estate mortgage covering the leasehold interest of Lessee, the Mortgagee shall not incur any liability to Lessor under the terms of this Lease, except as otherwise provided herein.

(f) If it should be necessary for the Mortgagee to foreclose its real estate mortgage covering the leasehold interest of Lessee, Lessor agrees to accept the successful purchaser of the leasehold interest as the Lessee and said purchaser shall be entitled to the possession of the premises and shall be liable for the performance of the obligations

imposed by the Lease. The term "purchaser" means the successful bidder, which may be Mortgagee, at foreclosure sale or the purchaser from the Mortgagee if the Mortgagee should acquire and sell the leasehold interest in liquidation of its mortgage. The Mortgagee, as well as Lessor, is specifically permitted to bid at a foreclosure sale or to accept a voluntary conveyance of the security in lieu of foreclosure.

(g) Lessor agrees that Lessee may assign and transfer the Lease to the Mortgagee upon such terms as may be agreed upon by Lessee and the Mortgagee but only upon the occurrence of mortgage default by the Lessee. If the Mortgagee acquires the Lease by such an assignment or through foreclosure sale, judicial or otherwise, the Mortgagee may assign the Lease or sell the leasehold interest, and all improvements thereon, or may sublet said premises in whole or part. In the event the Mortgagee in the liquidation of its mortgage should acquire and sell the leasehold interest and take a mortgage to secure part or all of such sale price, the provisions of this Lease shall apply to the same extent as if such mortgage were the initial mortgage securing the loan(s). For the purposes of this Lease, its provisions regarding assignment by Lessee or a successor lessee of the leasehold interest shall be deemed to include transfer of the leasehold by operation of the law or by inheritance in the event of the death of Lessee or any successor lessee while the leasehold interest remains subject to a mortgage in favor of the Mortgagee.

(h) Lessor agrees that this Lease may not be terminated for any reason without the written consent of the Mortgagee as long as the Mortgagee is the owner and holder of a real estate mortgage covering the leasehold interest of Lessee created by this Lease. This provision shall apply to any attempted termination by surrender of the leasehold interest or otherwise.

16. DEFAULT

In the event of any breach of this Agreement by Lessee, Lessor shall notify Lessee, and each of the entities listed in Paragraph 21 below, in writing of any default pursuant to this Lease. Lessee shall have sixty (60) 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. In the event that Lessee does not correct or otherwise cure the default within sixty (60) days, Lessor shall have the immediate right of re-entry and may remove all persons and property from the demised premises. The property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of 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. In the event of a re-entry or termination under this Paragraph 16, Lessor shall assume all obligations of Lessee, including all covenants and approved encumbrances or mortgages referenced in Paragraph 15 above. Breaches of the Lease that occur due to events beyond the control of either party, including acts of God, shall not be cause to terminate this Lease.

17. **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 the 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.

18. **HOLDING OVER**

Holding over by Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give Lessee any rights hereunder or in or to the Leased Premises.

19. **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 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.

20. **OBLIGATIONS OF LESSEE**

While the Leased Premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the obligations of their sureties, are to the United States as well as to Lessor.

21. **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

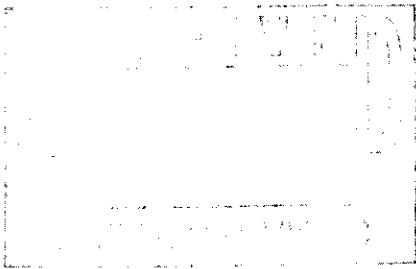
White Mountain Apache Community Development Corporation
P.O. Box 550
McNary, Arizona 85930

USDA – Rural Housing Services
3003 N. Central Avenue, Suite 900

Resolution No. 01-2004-15

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 or other duly authorized representatives, to execute any and all documents necessary to carry out the intent of this resolution.

The foregoing resolution was on **JANUARY 16, 2004** 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 (), (), and () 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

ACTING

Secretary of the Tribal Council

Phoenix, Arizona 85012

Arizona Department of Housing
Attention: Housing Compliance Officer
1700 W. Washington Street, Suite 210
Phoenix, Arizona 85007

22. RESERVATION LAWS AND ORDINANCES; RESOLUTION OF DISPUTES; AND APPLICABLE LAW

(a) Lessee, Lessee's employees, agents and sublessees 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 Lessee against 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 Premises.

(d) 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.

23. EMPLOYMENT

Subject to the provisions of the Tri-Party Agreement dated February 17, 2003, between the White Mountain Apache Tribe on behalf of Tribal Council and Tribal TERO, White Mountain Apache Community Development Corporation and Cordes Development I, Inc., and only after the housing units to be constructed on the Leased Premises have been completed and placed in service, 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.

24. INSPECTION

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

25. DELIVERY OF LEASED PREMISES

At the termination of this Lease, Lessee will peaceably and without legal process deliver up the possession of the Leased Premises to Lessor in good condition.

26. 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 Premises are in trust or restricted status all of 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.

27. LIQUOR SALES

Lessee shall not offer for sale or sell alcoholic beverages to the public for consumption on or off the Leased Premises.

28. 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 Premises; 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, regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to abrogate any obligation of indemnity which would otherwise exist as to any party to this Agreement. 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.

29. SOVEREIGN IMMUNITY

Except as provided in this section, 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. The White Mountain Apache Tribe consents to limited waiver of its sovereign immunity for the limited purposes of enforcement of the provisions of this Lease. Such waiver shall be limited to enforcement within the courts of the White Mountain Apache Tribe and shall be strictly limited to an action brought by the parties to this Lease for specific performance of the lease terms. No other remedy or third party claim is permitted under this waiver.

30. 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.

EXECUTED at Whiteriver, Arizona this _____ day of _____, 2003.

LESSOR:

WHITE MOUNTAIN APACHE TRIBE
OF THE FORT APACHE INDIAN
RESERVATION

By 
Tribal Chairman

ATTEST: _____
Tribal Council Secretary

APPROVED
SECRETARY OF THE INTERIOR

By _____
Superintendent, Fort Apache Agency
UNITED STATES DEPARTMENT OF
THE INTERIOR
Pursuant to the Authority delegated to the Assistant
Secretary - Indian Affairs by 209 DO redelegated to
Phoenix Area Director by Sec. Order No. 3150 and
3177, 10 BIAM Bulletin 13, and to the
Superintendent by Area Office Addendum to 10
BIAM, dated 01/13/95.

LESSEE:

APACHE RIDGE II LIMITED
PARTNERSHIP

By White Mountain Apache Community
Development Corporation, General Partner

By _____
President

Date: _____