

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

**(Approving Employee Agreement between White Mountain Apache Tribe  
and Brent Kurth)**

**WHEREAS,** the Tribe, by and through the Hon-Dah Resort Casino, is in need of an employee for the continued development and operation of its gaming enterprise on the Reservation, including but not limited to the design of any expansion of exterior and interior of the gaming casino, procurement and placement of gaming devices, development and amendment of policies and procedures including internal control and accounting procedures, marketing, establishment and operation of Class II poker tables and keno games, planning for lighting, security systems and all equipment necessary to operate a gaming casino including the training of necessary key and primary management personnel to operate said casino and future expansion thereof; and

**WHEREAS,** the current Acting General Manager, Brent Kurth, has represented to the White Mountain Apache Tribe that, based upon his prior experience, he possesses the necessary experience and qualifications to act as the General Manager of the Hon-Dah Resort Casino, and for purposes of the State Gaming Compact as the Primary Management Official, for the Tribe in the operation and development of gaming facilities on the Reservation and all aspects of gaming casino operations as that term is generally used in the gaming industry, and is willing and able to oversee, assist to develop, and market the convention center and resort hotel; and

**WHEREAS,** Mr. Kurth and the Tribe wish to enter into an employment agreement, as attached and incorporated by this reference, for a term of three (3) years in order to achieve expansion goals and to continue ongoing mentorship of tribal members for management positions.

**WHEREAS,** Mr. Kurth has requested that the Tribal Council provide a limited waiver of the Tribe's sovereign immunity for the purposes of entering into an employment agreement with the White Mountain Apache Tribe and effecting binding arbitration in the event that a dispute arises; and

**WHEREAS,** a limited waiver of defense of sovereign immunity for binding arbitration may be provided by the Tribal Council for the purposes of a contractual agreement with Mr. Kurth if and only if the following conditions exist:

1. A dispute between Mr. Kurth and the White Mountain Apache Tribe arises directly from the Agreement.
2. Any claim submitted by Mr. Kurth alleges a breach by the Tribe of one or more specific obligations or duties which the Tribe expressly assumes under the terms of the Agreement.

3. The claim seeks either (1) specific performance by the Tribe; (2) payment of all amounts due under the Agreement and reasonable costs incurred by Mr. Kurth in collection of such amounts.
4. The scope of arbitration is solely limited to breach of contract actions brought pursuant to the Agreement referenced herein for the benefit of Brent Kurth only.
5. The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.


**WHEREAS,** the Tribal Council finds that after review of the required limited waiver of defense of sovereign immunity, entering into an Agreement with Brent Kurth remains in the best interests of the White Mountain Apache Tribe.


**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe, that:

1. The Employment Agreement between Brent Kurth and the White Mountain Apache Tribe, as attached and incorporated by this reference, is hereby approved.
2. The Chairman, or in his absence the Vice-Chairman, is hereby authorized to execute the Employment Agreement.
3. A limited waiver of sovereign immunity is hereby granted for any Agreement between the White Mountain Apache Tribe and Brent Kurth and for the purpose of effecting dispute resolution in the form of binding arbitration; and
4. This limited waiver of sovereign immunity is conditionally provided upon the following terms and conditions being included within said Agreement:
  - A. A dispute between Brent Kurth and the White Mountain Apache Tribe arises directly from the Agreement.
  - B. Any claim submitted by Mr. Kurth alleges a breach by the Tribe of one or more specific obligations or duties which the Tribe expressly assumes under the terms of the Agreement.
  - C. The claim seeks either (1) specific performance by the Tribe; (2) payment of all amounts due under the Agreement and reasonable costs incurred by Mr. Kurth in collection of such amounts.
  - D. The scope of arbitration is solely limited to breach of contract actions brought pursuant to the Agreement referenced herein for the benefit of Brent Kurth only.

- E. The Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortuous conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.

The foregoing resolution was on JUNE 1, 2005 duly adopted by a vote of SEVEN for and ONE against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (i), (k), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe on 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

# EMPLOYMENT AGREEMENT

between

**THE WHITE MOUNTAIN APACHE TRIBE**

and

**BRENT KURTH**

The Employment Agreement made between the White Mountain Apache Tribe (hereinafter "Tribe") and Brent Kurth (hereinafter "Employee") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, for the purposes set forth herein. The parties agree as follows:

## **1. Employee Duties**

A. Employee shall act as the Primary Management Official, as defined under the Arizona Tribal-State Gaming Compact (A.R.S. §5-601, *et seq.*)(the "Compact") and provide on-site advice and planning for the continued development and expansion of the Hon-Dah Casino Resort Complex (the "Hon-Dah") on the Fort Apache Indian Reservation and at such other sites as selected by the Tribal Council.

B. Employee shall advise the Tribe regarding necessary modifications to Hon-Dah for its operation or expansion as a Gaming Facility as defined under the Compact, management of the convention center and hotel, operation of the RV park, restaurant, lounge and other future developments at the complex, and as the Tribal Council otherwise directs or to establish any other such sites within the Fort Apache Indian Reservation as a gaming facility.

C. Employee will negotiate the procurement or leasing of Gaming Devices, as defined under the Compact, for any Gaming Facility, and shall recruit necessary personnel for Hon-Dah and its expansion or at such other sites as selected by the Tribal Council. The Assistant Gaming Manager or Slot Manager shall take the place of Employee when Employee is absent.

D. Employee will be on site or devote to the gaming operation not less than forty (40) hours per seven (7) day week.

E. Employee will mentor tribal member managers for the facility with information, knowledge and training in the area of gaming operations.

F. Employee will coordinate with the Tribal Gaming Office for the licensing of all gaming employee applicants and will cooperate with the Tribal Gaming Office on the implementation of tribal gaming regulations.

G. Employee will be responsible for assisting in developing and implementing a marketing and promotion plan for the gaming enterprise at Hondah or any other site in order to ensure the maximum potential of the enterprise.

H. Employee will make such decisions as to the substitution or replacement of the slot machines and the addition or deletion of table games in such a way as to maximize performance and profitability of the gaming devices.

I. In consultation with the Tribal Chairman's Office/Planning Staff, Employee will develop a line-item budget for all aspects of the gaming operation, subject to final approval by the Tribal Council.

J. Employee shall assist Tribe in developing, implementing, and maintaining a security system and internal operation controls in conformity with the Tribal-State Compact and Tribal Gaming Ordinance.

## **2. Compensation**

A. Salary. Tribe agrees to pay Employee the salary of One Hundred and Twenty Thousand (\$120,000.00) annually for services rendered by Employee. Employee shall be paid this salary rate on a bi-weekly basis. After the first year, Employee shall be eligible for an annual salary review by the Tribal Council that shall include a five percent increase for Employee only if Hon-dah meets the budget goals expressed in the annual budget for Hon-Dah revenues as submitted to the Council in each fiscal year that occurs during the duration of this Agreement.

B. Expenses. Tribe shall reimburse Employee for necessary expenses that he may incur in the performance of this Agreement, which are legitimate business expenses as defined under all applicable policies, procedures, statutes and resolutions. Employee shall present to Tribe an itemized account of such expenses in such form as Tribe may require.

C. Taxes. The Tribe shall be responsible for deducting Employee's federal and other applicable withholding taxes, FICA and workman's compensation and any health benefits.

D. Benefits. Employee shall accrue sick leave and be eligible for tribal medical benefits and retirement plan to the same extent as other Gaming Facility employees, except that Employee shall initially receive six hours per pay period and be eligible for an increase in leave based upon longevity.

E. Retirement Plan. Employee shall be eligible to participate in any supplemental executive retirement plan if offered by the Tribe.

## **3. General Conditions**

A. Employee's employment under this Agreement shall be subject to provisions set forth in the Tribe's or the Gaming Facility's Personnel Policies, as applicable and as may be amended.

B. Employee is a tribal employee, not an independent contractor and no partnership, joint venture or sharing of profits is created by this Employee Agreement.

C. This Agreement shall be for a term of three (3) years, but may be terminated earlier by either party without cause by providing thirty (30) days written notice to the other party.

D. Employee shall be eligible to participate in any supplemental executive retirement plan if offered by the Tribe.

E. Employee shall be subject to all Drug Free Workplace policies, including pre-employment drug testing and employment random drug testing to the same extent as other tribal Gaming Facility employees.

#### **4. Background Investigation**

In the event that Employee's license or certification is suspended or terminated by the Tribal Gaming Office or by the State of Arizona or if a background investigation indicates any unsuitability to work in the tribal gaming operation as an employee based upon requirements of the Tribal-State Compact, state certification procedures, National Indian Gaming Act requirements or a finding of unsuitability by the Tribal Gaming Office, this Agreement shall automatically terminate. This Agreement may be restored by the Tribe if the Tribal Gaming Office or State Gaming Office is able to establish that Employee is suitable to be involved in the tribal gaming operation as an employee.

#### **5. Hiring of Gaming Employees**

A. Employee may hire and shall refer to the Tribal Gaming Office those tribal gaming employee applicants that are eligible and suitable for hire subject to licensing and certification requirements of the Compact and Tribal Gaming Ordinance. Employment of qualified tribal members will be made to the extent possible. Employee shall make good faith attempts to implement programs for the advancement of tribal member employees at the Gaming Facility.

B. Employee or his designee shall be authorized to discharge, suspend or terminate any employee of the gaming facility, convention center, RV center, hotel or any employee of the Gaming Facility and shall report such action to the Tribal Gaming Office.

#### **6. Good Faith Performance**

A. Employee agrees to perform all services under this Agreement in good faith and to conduct himself as an employee on and off site in such a way as to enhance the best interests of the Tribe. If Employee during the term of this Agreement is arrested and convicted of any criminal offense related to gaming, then this Agreement shall terminate immediately without notice.

B. Employee, by his signature affixed below, hereby represents that he has never been convicted of a felony or ever been denied a gaming license in any jurisdiction and that he satisfies all requirements of the National Indian Gaming Act in respect to suitability of primary management

officials or key employees as that term is used in the Indian Gaming Regulatory Act and is otherwise suitable and qualified under the Tribal Gaming Office and Tribal-State Compact to enter into this Agreement as an employee.

**7. Termination of Employment.**

**A. Termination for Cause.** Tribe may terminate Employee's employment under this Agreement immediately for commission of fraud in rendering services on behalf of Tribe or in the event that Employee's license or certification is suspended or terminated by the Tribal Gaming Office or by the State of Arizona or if a background investigation indicates any unsuitability to work in the tribal gaming operation as an employee based upon requirements of the Tribal-State Compact, state certification procedures, National Indian Gaming Act requirements or a finding of unsuitability by the Tribal Gaming Office. Such acts shall be defined by the laws of the Tribe, Arizona and federal law.

**B. Notice With or Without Cause.** Notwithstanding any other provision of this Agreement, either party may terminate Employee's employment under this Agreement for any reason or for no reason on the submission of thirty (30) days written notice to the other party.

**C. Compensation Upon Termination for Cause by Tribe.** If this Agreement shall be terminated by the Tribe for cause, the Employee shall receive payment of any unpaid salary and unpaid annual leave accrued to and including the date of termination.

**D. Compensation Upon Termination Without Cause by Tribe.** If this Agreement shall be terminated by the Tribe without cause, the Employee shall receive payment by the Tribe of any unpaid salary accrued to and including the date of termination, plus payment of any unpaid annual leave, plus a payment of the sum of three months of Employee's annual salary. By executing this Agreement and upon acceptance of the severance payment and benefits specified above, Employee agrees to release and forever discharge Tribe and its directors, officers, employees and agents (the "Released Parties") from, and Employee waives, any and all claims, controversies, liabilities, demands, lawsuits, causes of action, debts, obligations, promises, acts, agreements, rights of contribution and/or indemnification, and damages of whatever kind or nature, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or contingent, actual or potential, that Employee may have at that time against any of the Released Parties, provided such release, discharge and waiver shall not apply to actions by the Tribe, its directors, officers, employees and agents that are negligent or a result of intentional acts or misconduct.

**E. Compensation Upon Termination by Employee.** If, after 120 days of the date of this Agreement, Employee terminates this Agreement, the Employee shall, if qualified, receive payment of any unpaid salary and unpaid annual leave accrued to and including the date of termination.

**8. Disputes.**

The parties agree that any and all claims, controversies, disputes, damages of whatever kind or nature, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or contingent, actual or potential, shall be submitted for binding arbitration to a court of competent jurisdiction according to the following terms and conditions:

A. In the event of a dispute between Employee and the Tribe arises directly from this Agreement, any claim submitted by Employee shall allege a breach by the Tribe of one or more specific obligations or duties which the Tribe expressly assumes under the terms of this Agreement.

B. The claim shall seek either (1) specific performance by the Tribe, or (2) payment of all amounts due under this Agreement and reasonable costs incurred by Employee for collection of such amounts.

C. The scope of arbitration is solely limited to breach of contract actions brought pursuant to this Agreement referenced herein for the benefit of Brent Kurth only.

D. Tribe does not agree to any arbitration by persons or parties or their assignees which are not a party to the Agreement nor to any arbitration proceeding or other proceeding based on alleged tortious conduct, or for the imposition of incidental, consequential, exemplary or punitive damages or lost profits.

E. Any claim against which arbitration may be demanded must be made in writing to the Tribe by the Employee and the Tribe shall have thirty (30) days to act on such claim before arbitration proceedings may be instituted.

**9. Entire Agreement.**

This Agreement contains all of the agreements between the parties relating to the matters set forth in this Agreement. The parties have no other agreements relating to those matters, written or oral. No modification or waiver of this Agreement will be valid unless the modification or waiver is in writing and signed by both of the parties.

**10. No Rule of Strict Construction.**

The language of this Agreement has been approved by both parties, and no rule of strict construction will be applied against either party.

**11. Duration of Agreement.**

This Agreement shall be in effect for a period of three (3) years commencing January 1, 2005 and shall continue until December 31, 2007, and may be renewed by the parties for one additional three-year term.



Entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, at Whiteriver, Arizona within the exterior boundaries of the Fort Apache Indian Reservation.

\_\_\_\_\_  
BRENT KURTH, Employee

For and on behalf of the  
**WHITE MOUNTAIN APACHE TRIBE**

By: \_\_\_\_\_  
Dallas Massey, Sr., Tribal Chairman