



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

(Approving Charter, Articles Of Incorporation And Bylaws of the Apache Behavioral Health Services, Inc.)

WHEREAS, Apache Behavioral Services did this day present a Charter, Articles of Incorporation and Bylaws, attached herein, which it has submitted to the Tribal Council for approval; and

WHEREAS, the Tribal Council has reviewed the proposed to the Articles and Bylaws and is in agreement with the creation of the legal entity, Apache Behavioral Services, Inc.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the attached Charter, Articles of Incorporation and Bylaws for the Apache Behavioral Health Services, Inc.

The foregoing resolution was of MAY 2, 2007 duly adopted by a vote of NINE 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), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

Margaret Baker-Walk
ACTING Chairman of the Tribal Council

Cindy B. Harney
Secretary of the Tribal Council

**AMENDED
ARTICLES OF INCORPORATION
OF
FORT APACHE HERITAGE FOUNDATION, INC.**

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned incorporators, whose mailing address appears beneath their names, have this day associated themselves for the purpose of forming a nonprofit corporation under the laws of the White Mountain Apache Tribe ("Tribe") and the United States where pecuniary profit is not our object, do hereby certify:

ARTICLE I

The name of the Corporation is and shall be:

FORT APACHE HERITAGE FOUNDATION, INC. ("CORPORATION")

ARTICLE II

The principal place of business shall be the Fort Apache Indian Reservation, Arizona, but offices may be maintained, meetings held and business of the Corporation carried on in such other places within or without the Fort Apache Indian Reservation as the Board of Directors may designate.

ARTICLE III

The Corporation is organized under Section 501(c)(3) of the Internal Revenue Code and shall be operated as a non-profit corporation solely and exclusively for charitable, educational and research purposes, and specifically to support and assist in the preservation, maintenance, revitalization and perpetuation of the art, history, culture, traditions, and language of the White Mountain Apache people and their communities, including the buildings and improvements within the Fort Apache Historic District.

Without limiting the generality of the foregoing or the character of the affairs to be conducted by the Corporation in the future, the Corporation initially shall conduct the following business in close collaboration with the Tribe's Treasurer, Culture Center and Museum, Historic Preservation Office, Office of Tourism, and other Tribal offices and programs sharing the Corporation's goals and mandates:

?)Support the restoration, rehabilitation, preservation and maintenance of the Fort Apache

National Historic District and the buildings and other improvements therein to further White Mountain Apache interests in community and economic development through agreements with the Tribal Council of the White Mountain Apache Tribe, including implementation of the Use Plan for the Fort Apache Settlement Funds in White Mountain Apache Tribe v. United States, Court of Federal Claims No. 99-148 L;

Coordinate all activities related to the management of the Fort Apache Preservation Fund, as specified in the PLAN FOR THE USE AND DISTRIBUTION OF THE WHITE MOUNTAIN APACHE TRIBE JUDGMENT FUNDS IN DOCKET NO. 99-148L, WHITE MOUNTAIN APACHE TRIBE v. UNITED STATES OF AMERICA, IN THE UNITED STATES COURT OF FEDERAL CLAIMS (*Use Plan*), except for selection and appointment of an S.E.C. registered Investment Advisor for the Fund which shall be done by the Tribal Council.

- (4) Appoint and supervise, pursuant to the terms of the Use Plan, a Fort Apache Property Projects Coordinator (Coordinator or Executive Director) to assure the performance of all duties and activities related to expenditures of the judgment funds. Said Coordinator shall act as a Liaison between the FAHF, the Tribal Chairman, Tribal Council, and the Tribe's Historic Preservation Officer.
- (5) Develop, implement, and amend, as appropriate, the *Master Plan for the Fort Apache Historic Park* and other subsidiary and supporting plans, as necessary.
- (6) Provide financial and technical assistance to the Tribe's Nohwike' Bagowa Cultural Center and Museum, Historic Preservation Office, and other Tribal offices, programs and individuals as appropriate;

Solicit, develop, and accept by subscription, gift, grant, donation, bequest, devise or otherwise, money and property of any kind from any member of the general public and from any firm, association, trust, foundation, or corporation, including any municipal, state, county, tribal or national government unit, enterprise, or instrumentality thereof to support the purposes of the Corporation, including funds appropriated by the Tribal Council of the White Mountain Apache Tribe from the Fort Apache Settlement Funds pursuant to the Congressionally approved Use Plan for said funds;

- (8) Promote public interest, as appropriate, in White Mountain Apache Historic Park preservation and cultural preservation programs, as well as in the Apache language, arts, history, dance, music, oral traditions, culture, heritage, and ways of life through publications, meetings seminars, research, workshops, and other appropriate topics and means;
- (9) Develop and provide educational programs and technical training to Tribal programs, Tribal officials, community groups, and individual Tribal

members in relevant and useful aspects of historic preservation and cultural heritage preservation, maintenance, and revitalization;

Consistent with the foregoing purposes, to do all and every thing necessary, suitable and proper for the accomplishment of the purposes or attainment of the objects herein able set forth either alone or in association with other individuals', corporations or authorities; and, in general, to do and perform such acts and transact such business in connection with the foregoing objects not inconsistent with law; provided, however, that the Corporation shall not perform any act or transact any business that will jeopardize the tax exempt status of the corporation under Section 501(c)(3) of the Internal Revenue Code and its regulations as such Section and regulations now exist or may hereafter be amended or under corresponding laws and regulations hereafter adopted;

- (11) Undertake an annual fiscal and management audit of the Corporation's operations through the services of an independent and certified public accounting firm;
- (12) The Chairperson of the Board of Directors or the Executive Director of the Corporation, after the completion of an annual fiscal and management audit, shall make a formal oral and written report to the Tribal Chairman, to the Tribal Council, and to the Foundation Board of Directors, which shall contain information comparable to that required by IRS Form 990, not less often than annually and within 120 days of the close of the Corporation's fiscal year, and include a summary of the budget which the Board has approved for the coming fiscal year, program details of the Corporation's major activities for the year just completed and projections for the succeeding year.
- (13) Make such other audit or financial reports available to the Tribal Council as reasonably requested by the Tribal Chairman or as directed by resolution of the Tribal Council, including a comparison audit of the prior fiscal year;
- (14) Establish such policies and procedures as are necessary for accounting, employment and operations of the Corporation;
- (15) Establish long-term, institutional development for the Corporation through marketing and fundraising from donors, foundations, businesses, corporations, trusts, governments or other entities; and
- (16) Make an annual written and oral report regarding the Foundation's operations to the Tribal Council within 120 days after the close of the Foundation's fiscal year

ARTICLE IV

The Corporation is not organized for profit. No part of the net earnings, property, or assets of the Corporation, including donations or gifts of any kind whatsoever, shall inure to the benefit of or be distributable to, any private shareholder or individual or any officer, Director, or Executive Director of the Corporation, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payment and distributions in furtherance of the purposes set forth in the Articles of Incorporation and Bylaws. No substantial part of the activities of the Corporation shall be involved in carrying on propaganda or otherwise attempting to influence Tribal, Federal, State or local legislation; nor shall the Corporation participate in, or intervene in, including publishing or distributing statements, any political campaign on behalf of, or in opposition to, any candidate for Tribal, Federal, State or local public office.

ARTICLE V

Under Section 7871 of the Indian Tribal Governmental Tax Status Act, Tribes are treated as states and under Sections 170, 2055, 2106(a)(2), and 2522 of the Internal Revenue Code, certain contributions or property transfers made to Tribes are tax deductible, regardless of any specific 501(c)(3) non-profit corporation status.

ARTICLE VI

The Corporation shall be operated in a manner that prevents it from being a private foundation within the meaning of Section 509 of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted; provided, however, that in the event the mission, goals and mandates of the Corporation cannot be accomplished unless the Corporation is operated as a private foundation, it shall not be operated in violation of the following limitations, restrictions and prohibitions:

- (1) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted;

The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted.

The Corporation shall not make any investments in such manner as to subject it to tax

under Section 4944 of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted; and

The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted.

ARTICLE VII

According to Revenue Ruling 67-284, 1967-2 C.B.55, 58, as modified by Revenue Ruling 74-13, 1974-1 C.B. 14, federally recognized Indian Tribes are not taxable entities. In addition, as indicated by Revenue Ruling 81-295, 1981-2 C.B. 15, Tribal entities incorporating under Tribal law share the same tax status as that of the Tribe; as such, they are exempt from federal income taxation. Consequently, regardless of its 501(c)(3) status, because it is a Tribal organization incorporating under Tribal law, the Fort Apache Heritage Foundation is not subject to federal income taxation.

ARTICLE VIII

The time for the commencement of this Corporation shall be the date of the filing of these Articles of Incorporation and the issuance of a Charter by the White Mountain Apache Tribal Council. The Corporation shall continue in existence until dissolved by resolution of the Tribal Council of the White Mountain Apache Tribe.

ARTICLE IX

This Corporation shall be a nonprofit corporation and shall have no stock, and no dividends or pecuniary profits shall be declared or paid to the Directors hereof or to any other private individual. All of the earnings and property of the Corporation shall be used to further the mission, goals and mandates of the Corporation as set forth in Article III. Nothing contained herein, however, shall prohibit payments by the Corporation to Directors or to the Executive Director of the Corporation, as reasonable compensation for administrative costs and expenses in accordance with established industry standards for like nonprofit corporations; provided, that such compensation is paid pursuant to an annual budget approved by the Board. The Corporation shall not lend money to or use its credit to assist its Directors, Executive Director, Officers, or employees. Any Director, Executive Director, Officer or employee who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until the repayment of the loan and any such Director, Executive Director, Officer, or employee shall also be subject to termination from office or employment in accordance with the Bylaws governing removal.

ARTICLE X

The Directors and Officers of the Corporation shall not be individually liable for the Corporation's debts or other liabilities. The private property of such individuals shall be exempt from any corporate debts or liabilities. A Director of the Corporation shall not be personally liable to the Corporation or its members, if any, for monetary damages for breach of fiduciary duty as a Director, except for liability:

- (1) for any breach of the Director's duty of loyalty to the Corporation;
- (2) for acts of omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
- (3) from any transaction from which the Director derived any improper personal benefit.

Any repeal or modification of this Article shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

ARTICLE XI

The Corporation shall maintain appropriate liability, property and error and omissions insurance for its operations and facilities sufficient to protect the interests of the Corporation, its Incorporators, the Board of Directors, and the White Mountain Apache Tribe. Such insurance policies shall designate the Tribe as an additional named insured. The Corporation shall maintain, as required: workers' compensation insurance; unemployment compensation insurance; fidelity bond or employee theft and dishonesty insurance covering the Directors, Officers, and employees who handle funds or property; and such other forms of insurance as the Board deems appropriate.

ARTICLE XII

The Corporation shall indemnify any Incorporator, Director, Officer, Executive Director or employee of the Corporation or any former Incorporator, Director, Officer, Executive Director or employee, for reasonable expenses actually and necessarily incurred in connection with the defense of any civil action, suit or proceeding in which said person is made a party by a reason of being, or having been such Incorporator, Director, Officer or employee except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct in the performance of duty, or otherwise acting beyond the scope of his or her duties. The Corporation shall also indemnify any such Incorporator, Director, Officer, Executive Director, or employee for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Board, other than the Directors involved in the matter or controversy (whether or not a quorum exists), that it

is in the best interests of the Corporation and the White Mountain Apache Tribe that such settlement be made and that such Incorporator, Director, Officer, Executive Director or employee was not guilty of gross negligence, willful misconduct or other conduct beyond the scope of his or her duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such Incorporator, Director, Officer, Executive Director or employee may have.

Any repeal or modification of this Article shall not adversely affect any right or protection of a Incorporator, Director, Officer, Executive Director, or employee of the Corporation existing at the time of such repeal or modification.

ARTICLE XIII

The control and management of the affairs of the Corporation shall be vested in a Board of Directors, appointed by the Tribal Council of the White Mountain Apache Tribe, of not less than three (3) nor more than fifteen (15) persons. The Directors shall represent a cross-section of Tribal members and non-members possessing individual experience and knowledge that are relevant to the goals of the Corporation. A certain number of "ex officio" Directors shall also be appointed but their positions will be non-voting. The names of those selected to serve as Directors, beginning with the Charter of this Corporation and until the second annual meeting of the Corporation or until their successors shall be appointed and qualified, are:

Rose Mofford, former Governor of the State of Arizona

Eddie Basha, businessman

Kareen Abdul-Jabber, a retired NBA player and author

Tribal member Theodore Declay, Sr.

Tribal member Marilyn Endfield-Lovato

Tribal member Paul Ethelbah

Tribal member Mary Patterson

The Bylaws shall prescribe the terms of office and the manner of appointment and filling of vacancies on the Directors.

ARTICLE XIV

The Corporation shall not have a membership.

ARTICLE XV

(1) No person shall possess any property right in, or to, the property or assets of the Corporation. Upon dissolution of this Corporation as provided in the Bylaws, all assets remaining after payment of any outstanding liabilities shall be distributed exclusively to the White Mountain Apache Tribe or, if designated by the Tribal Council, to the Tribe's charitable, religious, educational or scientific organizations which would then qualify under the provisions of Section 501(c)(3) of the Internal Revenue Code, and its regulations, as such Section and regulations now exist, or may hereafter be amended, or under other corresponding laws and regulations hereafter adopted or under Section 7871 of the Indian Tribal Governmental Tax Status Act, as referenced in Article V of these Articles, all determined in accordance with the Bylaws.

ARTICLE XVI

The Articles of Incorporation and Bylaws of this Corporation may be amended by an affirmative vote of the majority of the Board of Directors at a meeting noticed for that purpose, provided that such amendments shall not become effective until approved by a majority vote of the White Mountain Apache Tribal Council. Nothing contained in these Articles shall constitute a waiver of sovereign immunity by the White Mountain Apache Tribe in any manner whatsoever or for any purpose and any such waiver by implication or otherwise is expressly denied.

ARTICLE XVII

This Corporation hereby appoints the Tribal Attorney of the White Mountain Apache Tribe as its initial statutory agent. All notices and processes, including service of summons, may be served upon said statutory agent and, when so served, shall be lawful, personal service upon the Corporation. The Board of Directors may, at any time, appoint another agent for such purpose and the filing of such other appointment shall revoke this or any other previous appointment of such agent.

IN WITNESS WHEREOF, these Amended Articles of Incorporation executed this _____ day of _____, 2006, in Whiteriver, Arizona, on the Fort Apache Indian Reservation, pursuant to Resolution No. _____.

Dallas Massey, Sr., Tribal Chairman

ATTEST:

Cyndy Harvey-Burnette

Tribal Council Secretary

Mailing Address:

White Mountain Apache Tribe
PO Box 700
Whiteriver, Arizona 85841

APACHE BEHAVIORAL HEALTH SERVICES, Inc.
CHARTER and BYLAWS

PREAMBLE

The Apache Behavioral Health Services, Inc. ("ABHS") is a 501(c)(3), nonprofit ABHS chartered by the Tribal Council of the White Mountain Apache Tribe (Tribe) pursuant to Resolution No. . ABHS is organized exclusively for the purpose of providing non-profit behavioral health services, including, for such purposes, the receiving of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, the Indian Tribal Governmental Tax Status Act of 1982, (Title II of Pub. L. No. 97-473, 966 Stat. 2605, 2607-11, as amended), or the corresponding section of any future federal tax code

ARTICLE I
OFFICE

Principal Office. The Principal Office of the ABHS for the transaction of its business is located at Whiteriver, Fort Apache Indian Reservation ("FAIR," also known as White Mountain Apache Tribe trust lands), Arizona, but offices may be maintained, meetings held, and business of the ABHS carried on in such other places within or without the FAIR as the Board of Directors may designate.

ARTICLE II
BOARD OF DIRECTORS

2.1 **Authority of the Board of Directors.** The business of the ABHS, as specified in the Articles of Incorporation, shall be conducted by the ABHS's Board of Directors ("Board").

2.2 **Members.** The Board shall be made up of the following: The Board shall include no fewer than five (5) and no more than fifteen (15) voting members ("Director"). Each Director shall be entitled to one vote at Board meetings. Membership on the Board shall be by recommendation of the ABHS to the Chair of the Tribal Council, who may in turn submit the recommendation to the Tribal Council. The Tribal Council has the power to make appointments to the Board, subject to the qualifications set forth in Section 2.10 below.

2.3 **Term.** Board appointments shall be for three years. Directors shall be eligible for reappointment for an additional two years. Thereafter, Directors shall rotate to a non-voting position on the Board for an additional two years. At any time during a Director's non-voting term, said Director will be eligible to be nominated for any open voting Board position.

2.4 **Elective and Executive Termination.** The Tribal Council may remove a Director or cause based upon the Tribal Council's good faith determination that the Director has



failed in a material and serious degree to observe the Articles of Incorporation, these Bylaws, the policies of the ABHS, or has engaged in conduct materially and seriously prejudicial to the mission, goals, and mandate of the ABHS, as stated in the Articles of Incorporation and these Bylaws. The Board of Directors may, by majority vote, also remove a Director for the same reasons, but only after providing the Director an opportunity to be heard.

2.5 Resignation. Any Director may resign at any time by giving written notice of such resignation to the Chairperson of the Board and to the Tribal Chairperson. Any such resignation shall take effect at the time specified therein, or, if no time is stated, it shall be effective when received. Any Director who fails to attend, physically or via telecommunications, three (3) consecutive properly called and noticed meetings of the Board or who fails to attend two-thirds (2/3) of all Board Meetings properly noticed in any fiscal year shall, unless excused from attendance for justifiable cause, as determined by the Board, be considered to have resigned as a Director and may be removed accordingly by the Board through majority vote. The Chairperson of the Board shall promptly notify the Tribal Chairperson of any such resignation and removal.

2.6 Vacancies. Any vacancy on the Board of Directors arising from death, resignation, removal, an increase in the number of Directors or any other cause, shall be filled for the unexpired portion of the term in the manner prescribed in Article II (2).

2.7 Ex-Officio Directors. The Tribal Chairperson, one juvenile, and the Executive Director of the ABHS shall be Ex Officio members of the Board of Directors. Ex Officio members shall not be entitled to vote on matters before the Board, and shall not be counted in computing the quorum or the maximum number of Directors allowable. The term of office of each such Ex Officio Director shall continue until a successor takes office.

2.8 Life Members. The Tribal Council or the Board may, on the basis of unanimous endorsement, recommend that certain persons be invited to become Life Members on the Board. The invitation shall come from the Chairperson of the Tribe. Invitations to become Life Member nominees must be confirmed by the Tribal Council. Life Members on the Board shall not vote or be counted in computing the quorum at meetings or the maximum number of Directors allowable. Life Membership shall be reserved for those individuals who have demonstrated extraordinary support for the mission, goals, and mandates of the ABHS, either by outstanding service as a Director or by some other significant contribution to the ABHS's mission, goals, and mandates.

2.9 Compensation. Board Members shall serve with compensation, as provided in 3.1(R) of these Bylaws and Article IV of the Articles of Incorporation.

2.10 Qualifications. Qualifications for Board Members should include, but not be limited to, the following:

- A. Past employment or affiliation with a behavioral health organization in a

management capacity with recognized accomplishments; or

or
B. Cultural sensitivity or membership in a federally recognized Indian Tribe;

C. Substantial profit or non-profit management experience; or

D. Management experience in the field of behavioral health with no less than a Masters Degree.

ARTICLE III
POWERS AND DUTIES OF THE BOARD, OPERATIONS

3.1 Powers and Duties. The Board shall act only as a Board of Directors and individual Directors shall have no power as such except at a duly called meeting of the Board. The Board shall exercise all powers and responsibilities in accordance with applicable law, consistent with the best interests of the ABHS, and within the limits of responsible business judgment. Subject to the foregoing, the Board may exercise the following powers and duties:

- A. Engage in any lawful business consistent with the purposes of the ABHS.
- B. Exercise authority and responsibility for the management and operation of the ABHS, including operations both within and without the lands of the Fort Apache Indian Reservation and exercise the powers set forth herein without previous authorization or subsequent approval except as provided herein.
- C. Establish policies for the organization, management and operation of the ABHS.
- D. Establish and maintain effective operating and fiscal policies for the ABHS.
- E. Adopt rules for the orderly conduct of the business of the Board.
- F. Adopt the use of a seal.
- G. Select, supervise and direct the Executive Director and/or the Project Coordinator, as appropriate.
- H. Utilize, improve, maintain, operate and manage all interests in real property that may be held by the ABHS, plan for and construct improvements thereon, negotiate and hold leases or subleases of the real property, subject to the approval of the Tribal Council; provided that nothing in these By-Laws shall be construed as authorizing the ABHS to

purchase, mortgage or encumber trust or restricted real property of the Tribe without the prior consent of the Tribal Council.

- I. Acquire, hold, own, manage, operate, exchange, deal in and dispose of all ABHS personal property in the ordinary course of business, subject to the requirements set forth in Article XIV of these Bylaws.**
- J. Subject to limitations on waivers of immunity in Article XII, pledge or grant security interests in the ABHS's personal property, cash, accounts receivables and other assets (exclusive of any leasehold interests) as collateral for any contractual obligation.**
- K. Acquire, hold, own, use, license, and lease any interest in and to inventions, patents, licenses, formulas, processes, copyrights, trade names, trademarks and all applications therefore, provided that title of all such acquisitions shall be taken in the name of the Tribe and such interests may be sold only with the prior consent of the Tribal Council.**
- L. Enter into, make, perform and carry out or cancel and rescind contracts for any lawful purpose pertaining to the ABHS's business; provided that no contract or other transaction between the ABHS and any one of the Directors, officers or employees of the ABHS or an elected officer or employee of the Tribe or enterprise thereof, or between the ABHS and any ABHS, partnership, firm or other legal entity in which one or more of the foregoing persons has a financial interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of such persons is fully disclosed to the Board and the proposed contract or transaction is approved, ratified or confirmed by the affirmative vote of at least a majority of the entire Board who have no interest in transaction.**
- M. Borrow funds, subject to the express limitation that the ABHS shall not incur obligations in excess of its ability to pay as required and that the Tribe shall not be liable for the debts or obligations of the ABHS.**
- N. Apply for grants consistent with the mission of the ABHS.**
- O. Designate and approve all depositories used for the deposit of funds of the ABHS.**
- P. Elect officers, establish standing committees, task groups, and advisory groups, appoint agents and select independent auditors, independent legal counsel, management companies and other consultants as may be needed from time to time by the ABHS, define their duties and fix their compensation.**
- Q. Set a reasonable per diem rate to be paid Directors for attendance at meetings of the Board, and to authorize the payment to Directors of a**

reasonable stipend, travel allowance or reimbursement for authorized expenditures.

- R. Approve an annual work plan and budget prior to the commencement of the subsequent fiscal year and provide a copy of the approved budget to the Chairman of the Tribe, the applicable oversight Committee and the Tribal Council.
- S. Make an annual written and oral report regarding the ABHS's operations to the Tribal Council within 120 days after the close of the ABHS's fiscal year. The report shall include an annual financial audit report and program detail of the ABHS's major activities for the year just completed with projections for the succeeding year.
- T. Confer fully and freely with the Tribal Council in the performance of its duties and continue to provide information regarding the ABHS to the Tribal Council.
- U. Recommend amendment or revision of the Articles of Incorporation and these Bylaws to the Tribal Council whenever deemed necessary.
- V. Have and exercise all other powers necessary, proper, advisable or incidental to affect any or all of the powers and responsibilities of the ABHS.
- W. The Board may establish membership organizations and programs, as appropriate to the objectives of the ABHS expressed herein.

3.2 Fiscal Year. The fiscal year of the ABHS shall commence January 1 and end December 31 of the same year.

3.3 Contracts. Except as otherwise provided herein, the Board may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the ABHS, and such authorization may be general or confined to specific instances. No person shall be authorized to bind the ABHS through contract or otherwise absent prior formal consent, recorded in writing, by the Board.

3.4 Checks, Drafts, Orders. The Board will establish by resolution a policy for the payment of money by check, draft, or other order, and for the issuance of notes, bonds, or other evidences of indebtedness issued in the name of the ABHS; any such policy shall include the requirement of two signatories who may, by approved policy, be officer(s), agent(s), or employee(s) of the ABHS.

3.5 Deposits. All funds, except cash on hand, shall be deposited from time to time to the credit of the ABHS in such financial institutions as the Board may select.

3.6 Accounting. An appropriate accounting system shall be established and installed

in conformity with generally accepted accounting principles. The accounting system shall insure the availability of information as may be necessary to comply with all applicable operational requirements of the ABHS.

3.7 Records and Inspections. The books and records of the ABHS, including current financial and operating statements, shall be kept on file in the principal place of business of the ABHS and shall be available for inspection at all reasonable times by Directors and officers of the ABHS and their designated agents, and, with prior written notice to the Chair of the Board, by the Chairman of the Tribe and members of the Tribal Council, or their employees and agents, with appropriate authorization.

3.8 Budgets. A budget of the ABHS for each year shall be prepared for approval by the Board prior to the end of the fiscal year. The budget shall include an overrun or underrun projection, a cash flow projection and a budget for capital expenditures. The draft budget shall be presented to the Board not later than October 15 of each year. The Executive Director shall be responsible for preparation of the budget and for business operations in accordance with the budget and will provide the Board with comparison of actual results against the budget for each month.

ARTICLE IV MEETINGS, VOTING

4.1 Meetings. The Board shall convene a minimum of two meetings each year at times and places to be set at the beginning of each fiscal year, as set forth in Article 3.2 of these Bylaws. Special meetings may be called at any time by the Board Chairperson, or any two members of the Executive Committee, or upon written notification of any five (5) Directors to the Board Chairperson, who shall provide written notification to the Board. Special meetings may be held at such places as the Board shall direct. Conference calls may be used for special meetings including voting at such meetings.

4.2 Notice. Written notice of all regularly scheduled meetings shall be by first class mail, personal delivery, electronic mail, or by telecopier with confirmation by first class mail, mailed no later than the date following such electronic, personal or telecopier notice, to each Director at the mailing address appearing on the records of the ABHS at least twenty one (21) calendar days before the time of such meeting. Notice of meetings shall specify in reasonable detail the matters to be considered.

4.3 Quorum. Fifty-one percent (51%) of the Directors in office, present in person, or through a telecommunications link shall constitute a quorum for the transaction of business at any meeting of the Board.

4.4 Action by Consent. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or of said committee, as the case may be, have been sent notice of the action to be taken by consent and a two-thirds majority of all voting Directors consents in writing to the action to be taken, and the writing or writings are filed with the minutes of the

proceedings of the Board or such committee, as the case may be.

4.5 Action by Majority Vote. The act of a simple majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. The Board Chairperson has full voting rights on all Board matters. Each Director shall be entitled to one vote at Board meetings.

4.6 Conflicts of Interest, Standard of Care, Accountability. If an immediate family member (grandparents, parents, uncles and aunts, first cousins, brother and sisters) of a Director applies for a Board or staff position or for any other consideration by the Board, the Director must not participate in the deliberation or vote on the selection of such relative. The voting on the selection shall be by secret ballot. In the administration of the ABHS, Directors shall exercise ordinary business care, ethics, and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing, they shall consider long and short term needs of the ABHS in carrying out its mission, goals, and mandates and are accountable to the Tribal Council, the general public, and appropriate Tribal, National and local government agencies. In addition to not engaging in fund raising activities that directly compete with the ABHS's mission, goals, and mandate, Directors, Officers, staff and their families are prohibited from profiting financially from any philanthropic, grant activity, or fund raising effort by the ABHS. Directors shall weigh carefully all circumstances in which there exists the possibility or appearance of conflicts of interest.

4.7 Proxy Voting Not Allowed. The Board of Directors shall not permit proxy voting, and no one other than the Directors shall be allowed to vote on issues at the Board meeting.

ARTICLE V MOTIONS, MINUTES AND RECORDS

5.1 Minutes. Board discussion and all formal action of the Board shall be maintained in the form of written minutes.

5.2 Inspection. Copies of the written minutes of each meeting of the Board of Directors shall be kept on file by the Executive Director in the Principal Office of the ABHS and shall be available upon request of the Tribal Chairperson, the Tribal Council, and the Historic Preservation Officer of the Tribe.

5.3 Motions. Motions passed by a majority of the Board at a duly constituted meeting and duly recorded in the minutes shall constitute the legal action and record of the Board.

ARTICLE VI PRINCIPAL OFFICERS OF THE BOARD

6.1 Officers of the Board. The Officers of the Board shall be a Chairperson, a Vice-Chairperson, Secretary and Treasurer. No two offices may be held by the same

person. All Officers must be Directors of the Board. *Ex Officio* Board Members may serve as Vice-Chairperson, Secretary, and Treasurer of the Board; *Ex Officio* Board Members may not serve as Board Chairperson

6.2 General Duties. Officers of the Board shall have the specific duties defined in the Articles of Incorporation, these Bylaws, and such other duties as may be determined by Board action. Officers shall assume their official duties at the meeting at which they are elected and shall serve for a term of twenty-four (24) months or until the election and qualification of their successors.

6.3 Chairperson of the Board. The Chairperson of the Board shall preside at all meetings of the Board, and shall perform all duties associated with the office of the Chairperson and such other duties as from time to time may be assigned by the Board. The Chairperson and the Secretary shall sign any instruments which have been authorized by the Board to be executed on behalf of the ABHS, except in cases in which the signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of the ABHS, or shall be required by law to be otherwise signed or executed.

6.4 Vice-Chairperson. The Vice-Chairperson shall perform the duties of Chairperson in the event the Chairperson is unable to act because of absence, vacancy, disability, or in the event of inability or refusal of the Chairperson to act, and shall perform such other duties as the Board of Directors or the Chairperson shall direct.

6.5 Secretary. The Secretary shall attend and keep written minutes of all meetings and all action taken by the Board of Directors and the Executive Committee, including all actions taken by unanimous written consent without a meeting, and shall perform such other duties as usually pertains to the Office of Secretary. The minutes shall be prepared and distributed to Board members and the Executive Director within ten (10) working days following a meeting, or before the next meeting of the Board of Directors or the Executive Committee, whichever comes first. In addition, the Secretary shall perform the duties of Chairperson in the event the Chairperson and Vice-Chairperson are unable to act in such capacity, because of absence, vacancy, disability or in the event of inability or refusal to act, and shall perform such other duties as the Board of Directors or the Chairperson shall direct.

6.6 Treasurer. The Treasurer shall:

- A. Be the financial officer of the ABHS and shall be responsible for all of the ABHS's funds and securities, shall deposit the same in such bank or depository as the Board of Directors shall, by resolution, direct, and shall keep full and accurate books and accounts of all property and transactions of the ABHS. All checks, drafts, withdrawals, and other orders for payment of ABHS funds shall require the Treasurer's signature and the signature of one other person designated by the Board, for a total of two signatures;

- B. Account for all monies received and paid on account of the ABHS;
- C. Recommend sound financial management policies to the Board of Directors;
- D. Prepare a proposed annual budget at least once per year for distribution to the Tribal Chairperson, the Tribal Council, and to the Board of Directors of the ABHS;
- E. Cause an annual financial report to be distributed to the Tribal Chairperson, the Tribal Council, and to the Board prior to the annual meeting of the Board of Directors;
- F. Transfer to the ABHS's accounts, in accordance with Board policies and procedures, and with any and all conditions attached thereto, all subscriptions, gifts, grants, donations, bequests, devises or otherwise, of any money and property of any kind as described in the Articles of Incorporation;
- G. Exercise such other duties as usually pertain to the Office of Treasurer and such other duties as shall be required from time to time by the Board.
- H. Perform the duties of Chairperson in the event the Chairperson, Vice-Chairperson, and Secretary are unable to act in such capacity, because of absence, vacancy, disability, or inability or refusal to act, and shall perform such other duties as the Board of Directors or the Chairperson shall direct.

6.7 Selection. Officers shall be nominated by and selected by majority vote of the Board of Directors from current Board Members.

6.8 Election, Term of Office and Qualification of Officers of the Board. The Officers of the Board shall be chosen every two years by a majority vote of the Directors at a duly noticed meeting. The term shall be twenty-four (24) months from the date of election. Each Officer shall hold office until a successor is chosen, or until death, or until said Officer shall have resigned, or shall have been removed from office. Officers may be elected for additional terms in the manner prescribed herein for choosing Board Officers.

6.9 Removal of Officers of the Board. Any Officer appointed by the Board may be removed by the Board with or without cause.

6.10 Resignations of Officers of the Board. Any Officer may resign at any time by giving written notice to the Board Chairperson or the Secretary; such resignation shall take effect at the time specified therein or if no time is specified, when received.

6.11 Vacancies of Officers of the Board. Any vacancy in any office, because of death,

resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office. A vacancy in the office of Chairperson shall be temporarily filled by the Vice-Chairperson, Secretary, or Treasurer in that order as provided herein.

6.12 Other Officers and Agents. The Board may appoint such other officers and agents as it deems necessary or expedient and may determine their duties and terms.

ARTICLE VII EXECUTIVE COMMITTEE

7.1 Membership. The Executive Committee shall consist of the elected officers of the ABHS, the immediate past Chairperson of the Board, the Executive Director, and such other members of the Board as the Board may designate.

7.2 Meetings. The Executive Committee shall meet on a regular basis for the purpose of making recommendations to the Board, and to exercise such power and authority as may be delegated to it by the Board.

7.3 Procedures. Notices, the conduct of meetings, and voting of the Executive Committee shall be governed by those rules applicable to Board meetings, as set forth in these Bylaws, and all decisions shall be made at meetings duly noticed, except:

- A. The notice period may be reduced with the approval of three (3) members of the Executive Committee, at least two (2) of whom are Officers;
- B. Meetings may be by telephone conference call or by physical presence at the meetings; or
- C. Three (3) members of the Executive Committee, present in person (or by telephone), shall constitute a quorum for the transaction of business. All meetings and actions of the Executive Committee shall be recorded in writing and minutes thereof shall be circulated in accordance with Article V .

7.4 Responsibilities.

- A. Supervise the Executive Director, other personnel as appropriate, and overall management of the Corporation;
- B. oversee the administration of funds; and
- C. review and recommend an audit of the endowment and the Corporation to be made at least annually.

ARTICLE VIII

EXECUTIVE DIRECTOR

8.1 Executive Director. An Executive Director shall be appointed and removed by at least 51% of all of the Board of Directors at a meeting of the Board. The Executive Director shall be an Ex Officio member of the Board and shall not be entitled to vote or to be counted in a quorum in those matters requiring a vote of the Board of Directors, the Executive Committee, or the Officers.

8.2 Duties. The Executive Director shall be responsible for the day-to-day administration of the ABHS and shall execute the policies and programs established by the Board of Directors in accordance with directives received from the Board of Directors and the incumbent's approved position description.

ARTICLE IX COMMITTEES

9.1 Standing Committees. The Board Chairperson, with the approval of the Board, may appoint the following Standing Committees:

- A. Institutional Development and Endowment
- B. Community Outreach

9.2 Procedure. The Board may designate one or more Directors as alternate members of any committee, or may replace any absent or disqualified member at any meeting of the committee. Each such committee shall serve at the pleasure of the Board and have such name as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular written minutes of its meetings and report the same to the Board. The committees shall prepare recommendations for final approval of the entire Board.

9.3 Committee Chairs. The Chairperson of each Standing Committee shall be a Director. Other committee members, to be selected by the Board, may be drawn from within or without the membership of the Board. The Committee Chairperson shall cause written minutes of meetings and records of actions of the committee to be kept.

9.4 Other Committees. The Board Chairperson may establish such other general or special committees as deemed necessary or appropriate.

9.5 Duties of Standing Committees:

- A. Institutional Development and Endowment. The Treasurer shall be the Chairperson of the Institutional Development and Endowment Committee,

which shall:

- (1) recommend financial and management policy and direct ways and means of obtaining funds;
- (2) recommend ways and means to market services;
- (3) recommend an annual budget;
- (4) formulate and recommend strategies to identify and develop prospective individual, corporate, and ABHS contributors to the ABHS.

B. **Community Outreach.** The Community Outreach Committee shall recommend a vision statement, policies and objectives to promote the ABHS's programs and services to regional, national and international audiences through, but not limited to, public relations, paid advertising, world wide web, direct mail, and income-generating projects. The Committee may oversee establishment and expansion of a public membership program, if any, and shall monitor the development, production, and marketing of publications sponsored by the ABHS.

ARTICLE X AUXILIARY MEMBERSHIP ORGANIZATIONS

Other membership organizations may be established and maintained within the corporate structure of the ABHS by persons sympathetic to the aims of the ABHS for the purpose of furthering the objectives of the ABHS, promoting interest in and support for the ABHS, and assisting the program staff.

ARTICLE XI

LIABILITY OF DIRECTORS, OFFICERS, AND EXECUTIVE DIRECTOR

The ABHS is chartered by the White Mountain Apache Tribe as a 501(c)(3) non-profit ABHS. It is closely affiliated with the Tribe and is established for the benefit of the Tribe. As such, it has the same immunity from suit as the Tribe. Therefore, the personal liability of every Director, Officer, Executive Director, and every former Director, Officer, Executive Director of the ABHS is, and shall be eliminated or limited to the fullest extent permitted or authorized by the Laws of the Tribe, the United States of America, the State of Arizona, all amendments thereto, and revisions and replacement thereof. Directors, Officers, the Executive Director and other employees allowed or provided for under these Bylaws, shall be deemed Tribal employees for purposes of coverage and application of the Tribe's sovereign immunity from suit or otherwise.

ARTICLE XII

SOVEREIGN IMMUNITY

12.1 Immunity from Suit. Nothing in these Bylaws, the ABHS's Articles of Incorporation, or other documents of the ABHS, and no act of the ABHS shall cause or is intended to, or shall be interpreted as, a waiver of the sovereign rights or immunities of the White Mountain Apache Tribe, or that of its elected officials, Officers, Directors, members, agents, or representatives, of any rights or privileges secured thereto by any treaty, executive order, or any other laws of the United States of America, any tribal laws, any state law, or any law of Tribes, and all rights privileges and immunities of the ABHS and all its Officers, Directors, Executive Directors, members, agents or representatives are hereby reserved.

12.2 Limited Waiver of Immunity. The ABHS may be sued in the courts of the Tribe and in other courts of competent jurisdiction, and only in the following limited circumstances:

A. **Claims Within Insurance Coverage.** With respect to claims against the ABHS for any personal injury or property damage, the amount and nature, of which are within the express coverage of a policy of insurance procured and maintained by the ABHS, as acknowledged by the insurer under such policy, the ABHS's immunity is waived to the lesser of the extent of such coverage or One Million Dollars (\$1,000,000), provided that any judgment, order or award may only be satisfied pursuant to:

(1) the express provisions of the policy or policies of insurance which are in effect at the time of each such judgment, order or award; and

(2) an action, if necessary, brought by the prevailing party against the insurer under such policy.

B. **Contract Claims.**

(1) With respect to claims against the ABHS (i) arising out of any written contract to which the ABHS is a party, and (ii) the amount and nature of which are not within the express coverage of a policy of insurance, as acknowledged by the insurer under such policy, the ABHS's immunity is waved for an amount not to exceed the amount the ABHS's obligation under the contract, the value of the assets of the ABHS as specified in subsection (B)(2) below, or Five Hundred Thousand Dollars (\$500,000), which ever is the smallest sum.

(2) The ABHS's immunity from execution on any judgment, award or order is hereby waived only with respect to a pledge of, or security interest in, the ABHS's personal property, cash, accounts receivable and other assets (exclusive of any leasehold interests) granted by the ABHS as collateral for any

payment obligations under such contract, provided that:

- (a) Execution on any such collateral shall be limited to the assets of the ABHS and shall not extend to the assets of the Tribe.
- (b) Execution on any such collateral shall be solely by judicial process pursuant to a judgment, order or award of a court of competent jurisdiction.
- C. **Claims Tried to Court.** Any claims for which the ABHS's immunity is waived shall be tried to the court. Nothing herein shall be construed as a consent to trial by jury.
- D. **Suits Brought in ABHS's Name.** All claims arising out of ABHS operations shall be brought against the ABHS directly and in the name of the ABHS. Directors, officers, agents and employees of the ABHS, when acting within the scope of their ABHS, are immune from suit.

12.3 Section Strictly Construed. Except as otherwise expressly provided in this Article XII, nothing contained in this Charter shall be interpreted or construed as:

- A. A waiver of the sovereign immunity of the ABHS beyond the limits set forth in this Article XII;
- B. A waiver of the sovereign immunity of the ABHS from the imposition in any judgment, order or award of punitive, double, treble, incidental or consequential damages;
- C. A waiver of the sovereign immunity of the ABHS from a levy on any judgment, or a lien, attachment, execution or other judicial or non-judicial process upon the real property assets of the ABHS; or
- D. Creating any liability for the Tribe with respect to any claims or other obligations asserted against the ABHS or arising out of its operations.

12.4 Modifications. The Tribal Council retains the power to prospectively modify this limited waiver of the ABHS's immunity at any time either generally or with respect to particular circumstances.

ARTICLE XIII **INSURANCE, INDEMNIFICATION**

13.1 Insurance. The ABHS shall maintain appropriate liability and property insurance for its operations and facilities sufficient to protect the interests of the ABHS and the Tribe. Such policies shall designate the Tribe as an additional named insured. The ABHS shall maintain workers' compensation insurance, unemployment compensation

insurance, fidelity bond or employee theft and dishonesty insurance covering the Board, Executive Directors, officers, and employees who handle funds or property, and such other forms of insurance as the Board deems appropriate.

13.2 Indemnification. The ABHS shall indemnify any person who, by reason of the fact that he or she is or was a Director, Officer, Executive Director, employee, or agent of the ABHS, incurs financial loss due to judgments, fines or amounts paid or agreed to be paid in settlement of any claim against the ABHS, and, in addition, necessary and reasonable expenses, including attorney's fees, incurred in connection therewith.

ARTICLE XIV DISSOLUTION AND LIQUIDATION

14.1 Dissolution by Tribal Council. The ABHS can only be dissolved by Tribal Council Resolution pursuant to a Plan of Dissolution approved by the Tribal Council. Ten (10) calendar days written notice of intent to adopt a Resolution dissolving the ABHS for cause shall be delivered to the ABHS's Board of Directors by the Tribal Chairperson. Thereafter, dissolution proceedings shall be initiated by the Tribal Council by adoption of a Resolution expressing its intent to dissolve the ABHS. The ABHS shall continue in existence during dissolution proceedings to permit proper closure of the ABHS's affairs by a Dissolution Management Board appointed by the Tribal Council.

14.2 Powers and Duties of the Dissolution Management Board. The Dissolution Management Board to dissolve the ABHS shall proceed as follows:

- A. Within 60 days after the effective date of the Tribal Council Resolution of Dissolution, or such other period of time as may be fixed in such Resolution, the Dissolution Management Board shall submit a Plan of Dissolution for review and approval by the Tribal Council. The Plan of Dissolution shall include an anticipated time frame for execution of the Plan and provide the following:
 - (1) The form and procedure for giving notice of intent to dissolve to every known creditor of the ABHS;
 - (2) An identification of ABHS cash and accounts receivable and steps for collecting such assets;
 - (3) An inventory of the ABHS's personal property and other assets identifying which, if any, of the ABHS's personal property is to be distributed in kind, and the methods for disposition of all other assets;
 - (4) An identification of the ABHS's liabilities and obligations and steps for satisfying or discharging such debts and obligation;

(5) An identification of uncollected or unasserted claims and liabilities of the ABHS and steps for making adequate provisions of such claims;

(6) Steps for identifying and distributing the remainder of the ABHS's assets, both in cash or in kind, after all claims have been satisfied or otherwise provided for;

(7) Any other acts required to liquidate the ABHS's assets and wind up the ABHS's business; and

(8) Close-out audit.

B. The ABHS, during dissolution proceedings, shall have only those powers and duties which are authorized in the approved Plan of Dissolution necessary to wind up the ABHS's business.

14.3 Notice of Completion of Dissolution. The Management Board shall notify the Tribal Chairperson and the Tribal Council in writing when, in accordance with an approved Plan of Dissolution, all debts, liabilities and obligations of the ABHS have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the ABHS have been distributed.

14.4 Dissolution and Repeal of Charter. The ABHS shall be dissolved and its Charter repealed upon formal acceptance of the Notice of Completion of Dissolution by Resolution of the Tribal Council.

ARTICLE XV **AMENDMENTS**

15.1 Majority Vote Required. So far as is consistent with the Articles of Incorporation, these Bylaws may be amended by a majority vote of the Board of Directors. A Bylaws Committee shall be created to prepare and submit proposed amendments or revisions to these Bylaws upon a majority vote of the Board of Directors present and voting at any regular meeting of the Board of Directors. Notice of any proposed amendment shall be mailed to each Board member at least twenty (20) calendar days before the time of such meeting.

15.2 Amendments Require Approval by Tribal Council. Amendments to these Bylaws shall not become effective until approved by Tribal Council Resolution.

IN WITNESS WHEREOF, these Amended Bylaws of the ABHS, Inc. approved and adopted this _____ day of _____, 2006, in Whiteriver, Arizona, on the Fort Apache Indian Reservation, pursuant to Resolution _____.

Ronnie Lupe, Tribal Chairman

ATTEST:

Cyndy Harvey
Tribal Council Secretary