



WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance
Over the Fort Apache Indian Reservation*

Resolution No. 07-2012-98

(Enactment of Ordinance No. 254, Amending Chapters Thirteen and Fourteen of the Health & Safety Code)

WHEREAS, the Tribal Council of the White Mountain Apache Tribe (“Tribe”) is entrusted by the Tribe’s Constitution to act in all matters that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and

WHEREAS, Chapter Thirteen of the Health & Safety Code, which pertains to Sunrise Park Trespass Regulations, was created by Ordinance No. 132 enacted November 16, 1990 and amended by Ordinance No. 160 enacted January 9, 1991; and

WHEREAS, Chapter Fourteen of the Health & Safety Code, which pertains to Ski Safety and Liability, was created by Ordinance No. 162, enacted January 9, 1991 and subsequently amended by Ordinance No. 172, enacted July 25, 1991 and Ordinance No. 197, enacted March 8, 1995; and

WHEREAS, on May 30, 2012 the Tribal Council authorized the posting of Ordinance No. 254, which contained proposed amendments to Chapters Thirteen and Fourteen of the Tribal Health & Safety Code, as attached hereto and incorporated by reference; and

WHEREAS, on June 5, 2012 Ordinance No. 254 was posted pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, and since that time the Office of the Tribal Council Secretary has received no comments regarding the proposed changes; and

WHEREAS, the Tribal Council has reviewed Ordinance No. 254 carefully, and considered the recommendations and implications thereof in great detail and finds the adoption of amendments to Chapters Thirteen and Fourteen of the Tribal Health & Safety Code, as set forth in Ordinance No. 254, to be in the best interest of the White Mountain Apache Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that Ordinance No. 254, attached hereto and incorporated by reference, which amends Chapters Thirteen and Fourteen of the Health & Safety Code of the White Mountain Apache Tribe, is hereby adopted.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect. This Resolution shall not be subject to Judicial Interpretation, only the Tribal Attorney, with the assistance of the Tribal Council Secretary, may opine on Tribal Council intent and the meaning of the language as used herein.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign provided that the Tribal Secretary and a Tribal Attorney attest to the veracity of the subject matter of this Resolution.

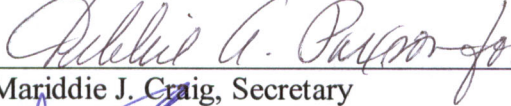
The foregoing resolution was on JULY 11, 2012 duly adopted by a vote of SIX for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (q), (s), (t) and (u) of the Tribal Constitution, ratified by the Tribe September 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).



Ronnie Lupe, Chairman

7-23-12

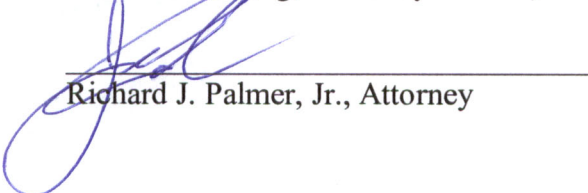
Date



Mariddie J. Craig, Secretary

7-23-12

Date



Richard J. Palmer, Jr., Attorney

7/24/12

Date

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

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 254, amending White Mountain Apache Health & Safety Code to revise Chapters Thirteen, Sunrise Park Trespass Regulations and Fourteen, Ski Safety and Liability, as follows:

**CHAPTER THIRTEEN
SUNRISE PARK TRESPASS REGULATIONS**

[NOTE: Chapter Thirteen was derived from Ordinance 132, enacted November 16, 1990, which was rescinded and amended by Ordinance 160, enacted January 9, 1991; Ordinance 254, enacted May ____, 2012, rescinded and amended Ordinance 160.]

SECTION 13.1 SHORT TITLE

This act may be cited as “The Sunrise Park Trespass Ordinance” or “The Sunrise Park Trespass Regulations”.

SECTION 13.2 PURPOSE

The purposes of this act are to ~~restrict snowskiers and other visitors on the reservation at Sunrise Park from going beyond the area open for skiing, and to impose civil restitution fees and liability for expenses incurred in locating, aiding and returning the violators of this ordinance to the unrestricted ski areas.~~ **promote safety and protect the public by limiting and restricting persons including snow skiers, snowboarders, cyclists, hikers, archery competitors and other visitors on the Fort Apache Indian Reservation at Sunrise Park from entering Sunrise Park when Sunrise Park is not open for business to the public, when that person has not purchased a ski pass, a lift pass, or other permit for admission to Sunrise Park, when a person does not leave Sunrise Park after the person has been told to leave Sunrise Park by Sunrise Park employees or other Tribal official, and when a person goes out of bounds, beyond the area open for skiing, snowboarding, cycling, hiking, archery and other activities at Sunrise Park; and to impose civil restitution fees and liability for expenses incurred in enforcing this Chapter and in finding, locating, aiding and transporting persons who go out of bounds and beyond the Sunrise Park area boundaries.**

SECTION 13.3 LIBERAL CONSTRUCTION SCOPE

~~This act shall be liberally construed to effect its purpose.~~ **This Chapter shall apply to all persons including snow skiers, snowboarders, cyclists, hikers, archery competitors and other visitors to the Fort Apache Indian Reservation at or within five (5) miles of the Sunrise Park boundaries.**

SECTION 13.4 DEFINITIONS

A. **Emergency Assistance:** Any and all assistance rendered by the Tribe, or non-Indian **search and** rescue and medical teams which enter the Fort Apache Indian Reservation and render ~~services to locate and aid a violator of this act.~~ **rescue, medical and other services to persons who become lost outside the boundaries of Sunrise Park.**

B. **Open Ski Areas:** The area delineated by **trail maps**, boundary signs, **ropes, tape or other delineation** at Sunrise Park **Resort** for the purpose of snow skiing, ~~and visiting by guests.~~ **snowboarding, cycling, hiking, archery and other uses by visitors to Sunrise Park.**

C. **Out of Bounds; Prohibited Areas:** Any and all areas outside of the **Open Ski Area or the Sunrise Park boundary boundaries.** ~~which encompasses the open ski area.~~ These prohibited areas are not for snow skiing, **snowboarding, hiking, cycling, archery, exploring or any other activities.** Skiers and visitors of Sunrise Park may ~~not use these areas for skiing or any other unauthorized purpose.~~ **snowboarders and other persons may not use these areas for skiing, snowboarding, hiking, exploring or any other purpose unless expressly authorized by the Tribe in writing. Persons found Out of Bounds or in Prohibited Areas will be considered trespassers and subject to arrest, fines and penalties, and other sanctions as permitted by Tribal Law.**

D. **Reservation:** The Fort Apache Indian Reservation also known as the White Mountain Apache Reservation.

E. **Sunrise Park Resort:** This includes the Sunrise Park **Resort**, its skiing and snowboarding areas, **areas open for cycling, archery competitions, other recreational activities,** lodges, and any additional ~~facility~~ **facilities** provided for the purposes of snowskiing or a Sunrise Park related activity **recreation or otherwise.**

F. **Trespassing:** ~~In accordance with the Tribal Game and Fish Code, Trespassing is the unauthorized entry of a person or any part thereof into an area of the reservation which is not open for the purpose of that entry by that individual or part thereof. "Part thereof" shall include any extension of a person as long as it touches or belongs to that person.~~ **Trespassing means:**

(1) The unauthorized entry of any person onto the Sunrise Park resort for any purpose when Sunrise Park Resort is not open for business to the public;

(2) Entering the Sunrise Park Resort and using Sunrise Park Resort facilities (e.g. skiing, snowboarding, cycling, using any ski lift or other use of Sunrise Park facilities) without purchasing a ski pass, a lift pass, or other permit to use the Sunrise Park facilities;

(3) The failure of any person to leave the Sunrise Park Resort when told to do so by Sunrise Park employees, by White Mountain Apache police, or by other Tribal officials; and

(4) The unauthorized entry of a person into Out of Bounds areas or Prohibited Areas of the Reservation without a permit or other authorization to do so by the Sunrise Park Resort Manager or the Tribe.

G. **Tribe:** The White Mountain Apache Tribe of the Fort Apache Indian Reservation.

H. **Trespasser or Violator:** Any person who violates the provisions of this act or the White Mountain Apache Tribal Game and Fish Code Chapter.

SECTION 13.5 SAVING CLAUSE
SUNRISE PARK USE RESTRICTED TO OPEN AREAS

~~This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.~~ All snow skiing, snowboarding, cycling, hiking, archery competition, ski lift scenic rides and other uses on the Fort Apache Indian Reservation at Sunrise Park Resort and the use of Sunrise Park Resort facilities is restricted to Open Areas. The use of Tribal lands in Out of Bounds areas or Prohibited Areas is strictly forbidden and punishable by arrest, fines and penalties, recovery of the costs of search and rescue operations, recovery or arrest operations, and medical treatment by Sunrise and other Tribal personnel.

SECTION 13.6 SCOPE
CONCURRENT ENFORCEMENT OF GAME AND FISH CODE

~~This act shall apply to all snow skiers and other visitors who enter upon the Fort Apache Indian Reservation for the purpose of snow skiing or otherwise using the facilities or premises of the Sunrise Park or any area or annex thereof.~~ This act is to be enforced in addition to and in conjunction with the White Mountain Apache Game and Fish Code, as amended.

SECTION 13.7 PARK USE RESTRICTED TO OPEN AREAS
LIBERAL CONSTRUCTION

~~All snow skiing and use of Park facilities is restricted to open areas which are clearly within the boundary signs surrounding the ski area.~~ This act shall be liberally construed to effect its purposes which are to protect the public from going beyond the boundaries of the Sunrise Park Resort into areas which are not controlled or patrolled by personnel at Sunrise. This Chapter is also to help conserve Tribal resources by expressly providing for reimbursement for the costs of search and rescue operations, recovery or arrest operations, medical treatment furnished by Tribal personnel or by personnel from other federal, state, county, municipal or other governmental agency when persons violate this Chapter and when persons go beyond the boundaries of the Sunrise Park Resort and trespass onto other Tribal or State lands.

SECTION 13.8 NO DUTY; VIOLATIONS; CIVIL LIABILITY

A. ~~Any person violating Section 13.7 of these trespass regulations by trespassing beyond the open ski areas shall be cited and required to pay an amount equaling a civil restitution fee not greater than One Hundred Dollars (\$100.00) and an amount equal to any expenses incurred by the Tribe or its agents in locating and removing the violator from the prohibited area.~~ **Neither the Tribe nor Sunrise Park Resort owes any duty to a person trespassing on the Fort Apache Indian Reservation at Sunrise Park Resort including persons who go into Out of Bounds areas or Prohibited Areas or beyond the Open Areas as delineated from time to time by Sunrise Park Resort or the Tribe.**

B. ~~Any violator of this act requiring emergency assistance from a tribal search and rescue team, or any other agent of the Tribe, including but not limited to any rescue or medical team coming onto the Fort Apache Indian Reservation to provide emergency services to that violator, shall be held liable to the full amount of the costs incurred to provide such services. These costs will be assessed in addition to the civil restitution fee imposed by this Act in Section 13.8A.~~ **Any person violating this Chapter by trespassing or by going into Out of Bounds areas or Prohibited Areas or beyond the Open Areas as delineated from time to time by Sunrise Park Resort or the Tribe shall be cited and required to pay a civil restitution fee not greater than One Thousand Dollars (\$1,000.00) in addition to restitution amounts equal to the costs and expenses incurred by the Tribe, its employees or other federal, state, county, municipal or other governmental agencies for search and rescue operations, recovery or arrest operations, and/or medical treatment when persons go Out of Bounds or into Prohibited Areas and trespass onto other Tribal or State lands. See section 13.8.B, which follows.**

C. **Any person who receives or causes search and rescue operations, recovery or arrest operations, and/or medical treatment by any Tribal search and rescue team, the Sunrise Ski Patrol or other Sunrise employees, any other employee or agent of the Tribe, or other federal, state, county, municipal or other governmental agencies for search and rescue operations, recovery or arrest operations, and/or medical treatment to that violator, shall be held liable to the full amount of the costs incurred to provide such services. These costs shall be assessed in addition to the civil restitution fee imposed by this Act in Section 13.8A.**

SECTION 13.9 CONCURRENT ENFORCEMENT OF GAME AND FISH CODE
FAILURE TO PAY RESTITUTION; REPEATED VIOLATIONS

~~This act is to be enforced in addition to and in conjunction with the White Mountain Apache Game and Fish Code, as amended.~~ **Failure to pay the restitution and expenses described in Section 13.8; or a repeated trespass and violation of this act may result in further legal action against the trespasser or violator by the White Mountain Apache Tribe for civil damages.**

SECTION 13.10 REPEATED VIOLATIONS

~~Failure to pay the fees and expenses described herein; or a repeated trespass and violation of this act may result in further legal action against the violator by the White Mountain Apache Tribe.~~

SECTION 13.140 NO WAIVER; RIGHT TO SUE

Allowing a violator to return to the reservation or failure to pay the fees and expenses incurred does not constitute a waiver of the Tribe's right to sue for repeated violations or to pursue any other rights or remedies.

SECTION 13.131 FEDERAL PROSECUTION

A. This Chapter shall not preclude federal prosecution of non-members **Indians or other persons who are not enrolled members of the Tribe pursuant to** under 18 U.S.C. §1164 who trespass on the reservation. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided by this Chapter.

B. This Chapter has been enacted to protect the **health, safety and welfare of those who use the Sunrise Park Resort and adjacent Tribal or State lands, and to preserve and protect the resources and** property of the White Mountain Apache Tribe.

C. **The use or taking or using of** Tribal property, **assets** or services contrary to this Chapter constitutes theft of Tribal assets. This Chapter does not preclude **Tribal or** federal prosecution of violators under 18 U.S.C. §1163 for theft of Tribal assets. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of any other enforcement procedure provided for by this Chapter.

D. This Chapter shall not preclude federal prosecution of violators of this Chapter under the Lacey Act Amendments of 1981, Public Law 97-79. Any authorized officer may follow the procedure provided by Tribal law to initiate federal prosecution in addition to or in lieu of other enforcement procedure provided for by this Chapter.

SECTION 13.12 ~~CHAPTER NOT~~ NO WAIVER OF SOVEREIGN IMMUNITY OR CONSENT TO BE SUED

Neither the use of Sunrise Park by non-members nor any provision provided in this Chapter constitutes consent by the White Mountain Apache Tribe to be sued in any **federal or state** Court. **The Tribe may only be sued in the White Mountain Apache Tribal Court when authorized by this Tribal Code or by applicable federal law.** This Chapter does not represent a waiver of the White Mountain Apache Tribe's sovereign immunity for any purpose.

SECTION 13.13 SAVINGS CLAUSE

This Chapter does not affect rights and duties that matured, penalties that were incurred and proceedings that were commenced before its effective date.

SECTION 13.14 SEVERABILITY

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are severable.

CHAPTER FOURTEEN SKI SAFETY AND LIABILITY

[NOTE: Chapter Fourteen was amended by Ordinance 162, enacted January 9, 1991; by Ordinance 172, enacted July 25, 1991; by Ordinance 197, enacted March 8, 1995; and amended by Ordinance 254, enacted May ____, 2012.]

SECTION 14.1 TITLE

This Chapter shall be known and may be cited as the Ski Safety and Liability Regulations.

SECTION 14.2 PURPOSE OF CHAPTER

The purpose of this Chapter is to help protect the health, safety and welfare of persons who use the ski runs, ski lifts, and the other facilities at Sunrise Park Resort and to protect Tribal resources by limiting the responsibility and liability of the Tribe and Sunrise Park Resort in accordance with industry standards. There are inherent risks in using ski lifts, in the sport of skiing, and in recreating on mountainous terrain which should be understood by each skier person and which are essentially impossible to eliminate by the Tribe or by Sunrise Park ski area operators. It is the purpose of the Ski Safety Chapter to define those areas of responsibility and affirmative acts for which the Tribe, Sunrise Park Resort or any a ski area operator shall be liable for loss, damage or injury, and those risks which the skier and other persons using Sunrise Park Resort facilities expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery; to defend the legal responsibilities of the Tribe, Sunrise Park Resort, ski area operators and their agents and employees; to define the responsibilities of skiers and other persons using the facilities at such ski areas, and to define the rights and liabilities existing between the skier and the Tribe, Sunrise Park Resort, ski area operators, and between skiers.

SECTION 14.3 DEFINITIONS

As used in this Chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise.

A. **Skier** means any person admitted to Sunrise Park Resort and those persons who purchase or use ski lift passes or permits at admitted to Sunrise Park Resort for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas in the Park and includes any person using a ski lift, and includes any person utilizing a ski area for the purpose of skiing or for the purpose of sliding on snow or ice on skis, which includes by definition alpine skis, cross country skis, snowboards, monoskis, sleds,

~~toboggans, saucers, trays, downhill on snow or ice on skis, which includes by definition snowboards and monoskis, and any other device used designed for the purpose of skiing or sliding downhill on snow or ice, including those devices used by disabled skiers.~~ **Skiers shall also include persons who are not skiing but who use the ski lifts, the ski runs and other facilities at Sunrise Park Resort.**

B. **Passenger** means any person who is being transported or conveyed by a ski lift and includes a person, skier or non-skier who gets on or off of or is transported by a ski lift, regardless of whether the ski lift is being used during the ski season or during some other times of the year.

C. **Ski Slopes or Ski Trails** means those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in subsection (1) of this section. Ski slopes or trails shall be set forth on trail maps, if provided, and designated by signs indicated to the skiing public the intent that only such areas are to be used by skiers for the purpose of skiing.

D. **Ski Area** means all ski slopes or trails and other places under the control of the ~~ski area operator and administered~~ **Sunrise Park Resort and which are directly supervised** within the boundaries **and the designated Open Areas** of Sunrise Park Resort. **Ski area also includes the terrain and facilities within the Sunrise Park Resort used by persons for other snow recreational activities including sledding, tubing, hiking, and other recreational activities at Sunrise Park Resort.**

E. **Ski Area Operator** means the White Mountain Apache Tribe as administrator **the owner/operator** of Sunrise Park Resort, its ski school instructors, ski patrol, employees, agents, **managers**, and representatives.

F. **Ski Lift** means a device for transporting persons uphill with or without skis. A ski lift is usually suspended in the air by the use of cables, chains, belts or ropes, and is usually supported by trestles or towers with one or more spans. Ski Lift includes **any mechanical device used to move persons uphill including** the following devices:

(1) **Chairlift:** a device on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans, or similar devices.;

(2) **J-bar, T-bar or Platter Pull:** devices that pull skiers standing on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans or similar devices.;

(3) **Rope Tow:** a device with one span and no intermediate towers that pulls skiers riding on skis as they grasp a rope manually, or similar devices.;

(4) **Wire Tow Rope:** a device with one span and no intermediate towers by which skiers are pulled on skis while manually grasping a bar attached to a wire hauling cable.;

and

(5) **Carpet Lifts:** a mat or carpet-like device upon which a person stands or sits and is moved uphill.

G. **Ski Retention Device** means a device designed to prevent runaway skis.

H. **Conditions of Ordinary Visibility** means daylight and, when applicable, nighttime in non-precipitating weather.

I. **Snowmobile** means any of a variety of motorized sleds designed to carry passengers or to tow a non-motorized sled on snow.

J. **Tree Skiing** means skiing in areas where there are trees, other than on designated ski slopes or ski trails. **Tree skiing is very hazardous and any person tree skiing at Sunrise Park Resort assumes all risk of injury or death to himself or others.**

K. **Jumping** means becoming or attempting to become airborne by whatever means **while skiing**. Jumping also includes jumping out of a ski lift at other than designated unloading points. **Jumping is allowed in terrain parks and other areas designated for jumping by Sunrise Park Resort. Jumping is very hazardous and any person jumping at Sunrise Park Resort assumes all risk of injury or death to himself or others.**

L. **Tribal Member** means any person who is a member of the White Mountain Apache Tribe.

M. **Non-Tribal Member** means any person who is not a member of the White Mountain Apache Tribe.

SECTION 14.4 DUTIES OF SUNRISE PARK WITH RESPECT TO SKI AREAS

A. Skiing, as a recreational sport, is hazardous to skiers regardless of all feasible safety measures which can be taken. A skier expressly assumes the risk of any legal responsibility for any loss or damages that result from skiing, including but not limited to: losses or damages caused by **jumping, tree skiing, collisions with other skiers,** variations of terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, stumps and other forms of forest growth or debris; lift towers and their components either above or below the snow surface; utility poles; and plainly marked or visible snow making, snow grooming, trail maintenance, snowmobile or other hill management equipment and components thereof, including but not limited to lines, pipes, hoses and hydrants; racing or running gates for competitive or recreational purposes, regardless of the course construction or layout; use of a snowboard terrain garden.

B. The Sunrise Park **Resort** ~~shall~~ **will:**

(1) Mark all trail maintenance vehicles and furnish such vehicles with **orange, red, yellow or other bright color paint markings, or with flashing or rotating lights, flags or other markings** which shall be **visible** ~~in operation~~

whenever the vehicles are working or are moving in the ski area **during regular business hours**;

(2) Mark all snowmobiles with at least one of the following:

(a) **Orange, red, yellow or other bright color paint markings;**

(ab) **An Indicator Flag;**

(bc) **A Headlight; or**

(ed) **A Rotating ~~or~~ Flashing Light;**

(3) Mark ~~conspicuously~~ the top (the beginning) of each **ski** slope or trail with an appropriate symbol for its relative degree of difficulty; and those slopes or trails which are closed shall be marked at the top with the appropriate symbol;

(4) Maintain one or more trail map boards at prominent locations of each ski area, displaying the areas network of ski trails and slopes with each trail and slope rated thereon as to its relative degree of difficulty;

(5) Make ski area trail maps available to skiers at the ski area;

(6) Place, or cause to be placed, whenever snow grooming or snow-making operations are being undertaken upon any trail or slope when such trail or slope is open to the public, a conspicuous notice to that effect at or near the top (the beginning) of such trail or slope;

(7) Post notice that ski retention devices are required for all skiers. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices;

(8) Provide a ski patrol trained in first aid, winter rescue and toboggan handling to serve injured skiers and to provide personnel trained for the evacuation of passengers from stalled ski lifts; **and**

(9) Post a sign at the entrance of the Sunrise Park notifying visitors that use of the Park is regulated by this Chapter.

~~(10) Have no duty or liability of any kind to any skier skiing out of control, or in violation of any skier duty as defined herein, or to any skier skiing beyond the area boundaries marked as required by this section, or to any skier "tree skiing" or skiing beyond designated trails and slopes within the Sunrise Park boundaries.~~

(140) Upon finding a person skiing in a careless and reckless manner, which includes but is not limited to "Jumping", "Tree Skiing", or skiing beyond

ski area boundaries or beyond designated trails and slopes within the ski area boundaries, may revoke that person's **ski pass and** skiing privileges. Sanctions in this subsection **Chapter** are in addition to those found in Chapter 13 of the Health and Safety Code of the White Mountain Apache Tribe.

~~(12) Have no duty to eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection A above.~~

~~(13) Have no liability for any injury, harm or other damage for acts undertaken in an attempt to eliminate, alter, control, or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection 14.4A above.~~

C. The Tribe and Sunrise Park Resort and their employees and agents shall have no duty or liability of any kind:

(1) To any person jumping (whether in terrain parks, other designated areas, or any other area), skiing out of control, skiing faster than conditions safely allow, tree skiing, skiing in any manner that causes the skier to collide with any other person or object, violating any skier duty as defined in this Chapter, skiing beyond the ski area boundaries, or skiing outside or beyond designated trails and slopes within the Sunrise Park boundaries;

(2) To eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection 14.4A above;

(3) To any person injured by colliding or contacting other skiers or objects;

(4) For any injury, harm or damage suffered by a person as a result of the negligence, intentional act or omission or other fault of any person not employed by the Tribe or Sunrise Park Resort; and

(5) For any injury, harm or other damage for acts undertaken by the Tribe or Sunrise Park Resort in an attempt to eliminate, alter, control, warn of, or lessen the risks inherent in the sport of skiing, which risks include but are not limited to those described in Subsection 14.4A above.

SECTION 14.5 DUTIES OF THE SUNRISE PARK - SIGNS REQUIRED FOR SKIERS' INFORMATION

A. The Sunrise Park shall maintain a sign system with information required by this Chapter. Signs shall be readable under conditions of ordinary visibility. Signs shall be posted as follows:

(1) At or near the loading point of each passenger ski lift, regardless of the type, advising that any person not familiar with the operation of the lift device shall ask the operator of the device for assistance and instruction;

(2) At all chairlifts, J-bars, T-bars, Platter Pulls, Rope Tows, and any other surface lift stating the following:

(a) **"Prepare to Unload"** which shall be located ahead of the unloading area;

(b) **"Keep Ski Tips Up"** which shall be located ahead of any point where the skis may come in contact with the platform or the snow surface;

(c) **"Unload Here"** which shall be located at the point designated for unloading;

(d) **"Safety Gate"** which shall be located where applicable;
and

(e) **"Remove Pole Straps From Wrist"** which shall be located at each loading area.

B. Other signs not specified by Subsection A of this section may be posted at the discretion of Sunrise Park, **but are not required**.

C. Sunrise Park, before opening any ski lift to the public, ~~each day~~ shall inspect such ski lift for the presence and visibility of the signs required by Subsection A of this section.

D. Evidence that the signs required by Subsection A of this section were present, visible, and readable on any given date raises the **irrebuttable** presumption that all ~~visitors~~ **persons** have seen, read and understood said signs.

E. Trail maps shall ~~explain~~ **display** the following signs and symbols:

(1) Sunrise Park's least difficult trails and slopes shall be designated by a green circle, **green lines or coloring**, and/or the words "Easier or Easiest";

(2) Sunrise Park's most difficult trails and slopes shall be designated by a black diamond, **black lines or coloring**, and/or the words "Most Difficult";
and

(3) Sunrise Park's trails and slopes with a degree of difficulty between the ~~green circle and black diamond~~ **Easier and Most Difficult trail** designations shall be designated by a blue square, **blue lines or coloring**, and/or the words "More Difficult".

SECTION 14.6 DUTIES OF PASSENGERS

A. No passenger shall board or attempt to board a ski lift if he does not have sufficient physical dexterity, ability, and knowledge to embark upon or disembark from or use such equipment safely, or until such passenger has asked for and received information or assistance sufficient to enable him to use the equipment safely. The passenger is required to follow any written or verbal instructions that are given to him regarding the use of the ski lift.

B. No passenger shall:

(1) **Jump or otherwise** Get on or off a ski lift except at a designated area, except in the event of stoppage of the ski lift, and then only under the supervision of the operator, or unless necessary in the event of an emergency to prevent injury to the passenger or others;

(2) Throw or expel any object from any ski lift while riding on such device, except as permitted by the operator;

(3) Act in any manner that may interfere with proper or safe operation of such ski lift;

(4) Engage in any type of conduct which may contribute to or cause injury to any person;

(5) Place in an uphill track of a J-bar, T-bar, Platter Pull, Rope Tow, or any other surface lift, any object that could cause another skier to fall;

(6) Embark upon a ski lift marked as closed;

(7) Disobey any instructions posted in accordance with this article, **which appear on Sunrise Park ski area trail maps**, or any verbal instructions by the ski area operator regarding the proper or safe use of a ski lift;

(8) Willfully or negligently engage in any type of conduct which contributes to or causes injury to any person;

(9) Wear skis without properly secured ski retention devices;

(10) Use a ski lift while intoxicated or under the influence of any controlled substance;

(11) Use a ski lift while impaired to the slightest degree or under the influence of any intoxicating liquor, controlled substance or any other substance;
or

(12) Do any act which interferes with the running or operation of the ski lift.

SECTION 14.7 DUTIES OF SKIERS

A. Skiing is a recreational sport which is inherently hazardous to skiers, regardless of all feasible safety measures which can be taken. It is the duty of each skier to conduct himself in accordance with this Chapter. A person who takes part in the sport of skiing assumes as a matter of law the dangers inherent in the sport. Each skier expressly assumes the risk of and the legal responsibility for any injury to person or property which results from participation in the sport of skiing at the Sunrise Park, including any injury caused by the following:

- (1) Variations in terrain;
- (2) Surface or subsurface snow or ice conditions including conditions created by snow making equipment;
- (3) Natural objects above or below the snow surface in areas designated for skiers, including but not limited to bare spots, rocks, trees, tree stumps, or other forms of forest growth or debris;
- (4) Manmade objects above or partially below the snow surface which are visible or marked in accordance with this Chapter, including but not limited to lift towers and components thereof, utility poles, snow making, snow grooming, trail maintenance, snowmobile or other hill management equipment and components thereof, including but not limited to lines, pipes, hoses and hydrants;
- (5) Racing or running gates for competitive or recreational purposes, regardless of the course construction or layout;
- (6) Use of snowboard terrain garden;
- (7) **Jumping;**
- (8) **Tree skiing;**
- (9) **Collisions with other skiers, persons, or objects; or**
- (710) Any other risk inherent in the sport of skiing.

B. Each skier shall:

- (1) Have the sole responsibility for knowing the range of his/her own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own liability;
- (2) Maintain control of speed and course at all times while skiing and maintain a proper lookout so as to be able to avoid other skiers and objects;

(3) Refrain from **jumping (except in terrain parks and other designated areas), tree skiing, or** acting or skiing in a manner which may cause or contribute to his/**her** injury or to the injury of any other person;

(4) Not stop in a place so as to obstruct a trail or cease to be visible to skiers above;

(5) Yield to other skiers when entering a trail or starting down hill;

(6) Use ski retention devices to help prevent runaway skis;

(7) Ski only in areas which are designated for skiing by Sunrise Park;

(8) Read and obey all posted signs. There shall be an irrebuttable presumption that skiers have seen, read and understood all signs and information posted in accordance with this Chapter. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with this Chapter;

(9) Not use any ski slope or trail which his/her ability to do so is impaired to the slightest degree or while he/she is under the influence of intoxicating liquors, controlled substances or any other substance; and

(10) Not cross the uphill track of a surface lift except at locations designated by the operator.

C. The responsibility for collisions by any skier with any person or object, shall be solely that of the individual or individuals involved in such collisions, except where such collision resulted from any breach of duty imposed upon Sunrise Park under the provisions of this Chapter. The primary duty shall be on the person skiing **or moving** downhill to avoid collisions with any persons or objects below him.

D. When involved in a skiing accident in which another person is involved who needs medical assistance or other assistance, a skier shall have the responsibility to **report the accident immediately to Sunrise Park employees, to** obtain assistance for the injured person, **to provide the other person with name and other contact information.**

E. When injured at Sunrise Park or when involved in a collision with another skier or object in which an injury results, a skier shall not leave the ski area before giving his/her name, **and his/her** current address **and contact information** to Sunrise Park, the location where the injury or collision occurred and the circumstances thereof.

SECTION 14.8 LIMITATION OF SUNRISE PARK'S LIABILITY

Sunrise Park shall not be liable for personal injury or property damage caused solely or in part by any of the following:

A. To any person who acts in violation of this Chapter.

- B. To any person who is not legally entitled to be in Sunrise Park, e.g. has not purchased a ski lift pass or permit.
- C. By any object dropped, thrown or expelled by a passenger from a ski lift.
- D. Collisions between a skier and any natural, manmade, or other object or person unless such other person is employed by and acting within the course and scope of his/her employment with Sunrise Park Resort.
- E. Improper use of ski lifts as defined in this Chapter.

SECTION 14.9 STATUTE OF LIMITATIONS

- A. All actions arising from this Chapter to recover damages for injury or death to persons or damage to property shall be commenced ~~within one year after the cause of action accrues and not thereafter~~ as required by the White Mountain Apache Tribe Tort Claims Act.

SECTION 14.10 PENALTIES

- A. Any passenger who violates any of the provisions of this Chapter shall be subject to immediate forfeiture of his/her ski lift pass or permit and of any further use of the ski lifts and other ski area facilities.
- B. Any skier who violates any of the provisions of this Chapter shall be subject to immediate forfeiture of his/her ski lift pass or permit and of any further use of Sunrise Park the ski lifts and other ski area facilities.
- C. Any tribal member who violates any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of at least Three Hundred Dollars (\$300.00), but not more than One Thousand Dollars (\$1,000.00).
- D. Any non-tribal member who violates any of the provisions of this Chapter may be civilly sanctioned for at least Three Hundred Dollars (\$300.00) but no more than One Thousand Dollars (\$1,000.00).