



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## **(Authorizing Limited Waiver of the Tribe's Sovereign Immunity as Contained in Sunrise Park Resort Snowcat Master Equipment Lease Agreement And Approving the Same)**

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- WHEREAS,** The Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation ("Constitution") provides, at Article IV, Section 1(i) that the Tribal Council ("Council") shall exercise the power "To manage all economic affairs and enterprises of the Tribe..."; and
- WHEREAS,** Sunrise Park Resort ("Sunrise") is a tribal enterprise governed by a board of directors (the "Board") under the authority of a Plan of Operation approved by the Tribal Council on October 30, 2012; and
- WHEREAS,** The Plan of Operation gives broad authority to the Board and management team to act to operate Sunrise, but requires approval from the Council for all waivers of the Tribe's sovereign immunity so that Sunrise can contractually consent to suit; and
- WHEREAS,** The Board and management team have identified a critical need for new snowcat grooming equipment for this upcoming ski season; and
- WHEREAS,** The snowcats would be acquired from International Financial Services Corporation, as lessor ("IFSC"), pursuant to a Master Equipment Lease Agreement (the "Lease") whereby Sunrise, as lessee, agrees to make lease payments in the aggregate amount of \$530,000 as provided in the Lease; and
- WHEREAS,** Sunrise has sufficient funds and cash flow for this transaction; and
- WHEREAS,** The Lease terms require that IFSC have the right to repossess the equipment and bring suit for damages in the event of a breach by Sunrise; and
- WHEREAS,** Sunrise and IFSC have negotiated Lease terms that would restrict any court action to the White Mountain Apache Tribal Court and limit any claims to Sunrise and its permitted successors and assigns only, thereby shielding the remainder of the Tribe from any obligation or liability; and

**Resolution No. 10-2019-221**

**WHEREAS,** The Board approved entering into the Lease on October 9, 2019, and in recognition of Article 8 of the Plan of Operation, requests the Tribal Council authorization as provided herein for this necessary transaction; and

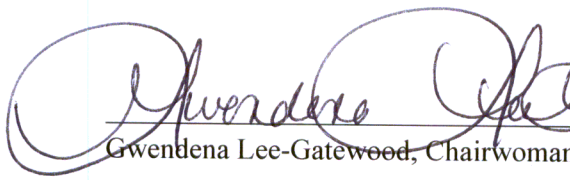
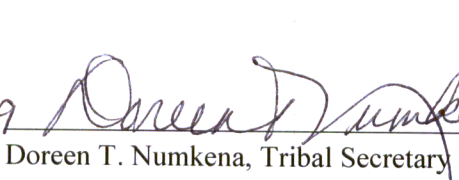
**WHEREAS,** The Council has reviewed the Lease and finds that approving the Lease and the waiver of the Tribe's sovereign immunity, as provided in "Attachment A" (attached and incorporated herein), limited to repossession of the leased equipment and suit to recover contractual damages from Sunrise into the Tribe's own courts, is in the best interests of the Tribe and its members.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby ratifies the execution, delivery, and performance of the Lease in the substantial form reviewed by the Board, including the limited waiver of sovereign immunity as provided by "Attachment A", and with such modifications to the Lease terms other than the waiver, as may be approved by the officer of Sunrise executing the same.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that if any section, paragraph or provision of this Resolution is held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision will not affect any of the remaining provisions of this Resolution. Any previous Board actions, either oral or written, which are inconsistent with this Resolution are hereby repealed and have no further force or effect.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairwoman, or in her absence, the Vice-Chairman, is hereby authorized to execute and deliver any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **OCTOBER 10, 2019** duly adopted by a vote of **SIX** for, **ZERO** against, and **THREE** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

  
Gwendena Lee-Gatewood, Chairwoman      Date      10/15/2019        
Doreen T. Numkena, Tribal Secretary      Date      10/15/19