



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Authorizing a Waiver of the Tribe's Sovereign Immunity Pursuant to an Agreement between Sunrise Park Resort and National Bank of Arizona to Secure a Loan Under the Paycheck Protection Act)

- WHEREAS,** The Constitution of the White Mountain Apache Tribe ("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 for Sunrise to waive the sovereign immunity of the Tribe by consenting to suit on the Tribe's behalf; and
- WHEREAS,** Sunrise has applied for funds from National Bank of Arizona under the 2020 CARES Act, SBA Paycheck Protection Program to enable Sunrise to maintain employment for summer operations and necessary maintenance programs; and
- WHEREAS,** The principal loan amount (the "Loan") is forgivable at the end of the compliance period if the funds are used for eligible purposes under the Paycheck Protection Program regulations; and
- WHEREAS,** The eligible purposes under the regulations include payroll and related expenses and the cost of utilities, for which Sunrise seeks the funding; and
- WHEREAS,** National Bank of Arizona has advised that a limited waiver of sovereign immunity is required as a loan condition under SBA regulation to permit court enforcement if loan funds are used by the borrower for an ineligible purpose; and
- WHEREAS,** National Bank of Arizona has produced an addendum ("Addendum") to the loan agreement to authorize the limited waiver of sovereign immunity (attached and incorporated herein); and
- WHEREAS,** The terms of the waiver contained in the Addendum allow for enforcement through court action against Sunrise Park Resort only, such that the Tribal government and its other programs, enterprises or assets would bear no obligation under the loan terms and conditions; and

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WHEREAS, the Sunrise Park Board of Directors approved the transaction on April 23, 2020, and, this day, requests Tribal Council authorization; and

WHEREAS, The Council has considered the Board's request and finds that authorizing a limited waiver of the Tribe's sovereign immunity for the purposes of securing the Loan will help Sunrise to obtain needed funding and 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 and delivery of the application by Sunrise Park Resort to National Bank of Arizona for loan funds under the 2020 CARES Act Paycheck Protection Program, in the amount of \$671,100.00 to be used for payroll costs, utility expenses and other qualifying purposes.

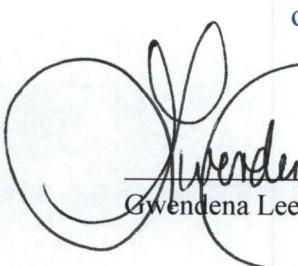
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the limited waiver of sovereign immunity, as detailed in an addendum to the loan agreement promissory note, which shall be substantially similar to the copy attached as Exhibit A to this Resolution, to allow for court enforcement according to its terms for a claim against Sunrise in the event loan funds are used for a purpose that is not allowable under the SBA Paycheck Protection Program, and for that purpose, the Tribal Council authorizes the appropriate Sunrise Park Resort official to execute and deliver the loan documents, including the addendum for the limited waiver of sovereign immunity.

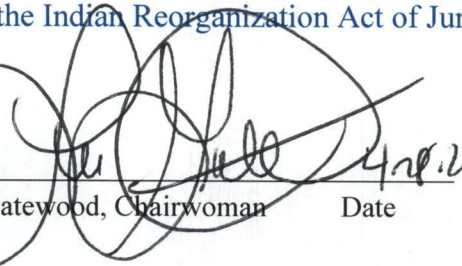
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that this authorization is made on behalf of Sunrise Park Resort and is limited to the assets and activities of Sunrise Park Resort only, such that nothing herein shall be deemed to waive the sovereign immunity of the White Mountain Apache Tribe, except as it may pertain to the assets and activities under the direct control and management of Sunrise Park Resort.

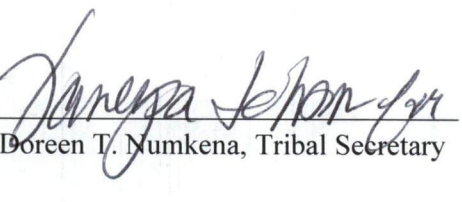
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.


BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that 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 **APRIL 27, 2020** duly adopted by a vote of **TEN** for, **ZERO** against, and **ONE** 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 4/28/20


Boreen T. Numkena, Tribal Secretary


Date 4/28/2020

ATTACHMENT A

Addendum to Promissory Note

Limited Waiver of Sovereign Immunity

Sunrise Park Resort (Company)

WHEREAS, Company, also known as Sunrise Park Ski Resort, is requesting that Zions Bancorporation, N.A. dba National Bank of Arizona (“Lender”) provide loans or other financial accommodations to Company, which will be governed by the terms of the Note and each other document or agreement entered into in connection therewith (singly or collectively, the “Agreements”); and

WHEREAS, Lender requires Company to agree to provide a limited waiver of its sovereign immunity in order for Company to enter into the Agreements with Lender.

WHEREAS, in the event of a conflict between the provisions of this Addendum and the provisions of the Promissory Note, the provisions of this Addendum shall apply and control.

THEREFORE, the undersigned, a duly authorized representative of Company, hereby agrees to the following:

1. The “CHOICE OF VENUE” and “GOVERNING LAW” paragraphs of the Note are hereby deleted and replaced as follows:

Except as otherwise expressly provided below, and to the extent that Company holds rights of sovereign immunity, Company reserves all of its inherent sovereign rights, including sovereign immunity from unconsented suit or legal proceedings against it in connection with the Agreements or matters related hereto and thereto. Company irrevocably grants to Lender, solely and to no other party (other than Lender’s successor or assign), a limited waiver of sovereign immunity (and any defense based thereon) from any suit, action or proceeding or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or otherwise) in any forum. Such waiver is limited to enforcement of the Agreements, including any action to enforce an order, judgment, ruling or arbitration award resulting from any enforcement action arising out of or relating to the Agreements, and shall operate throughout the term of the Agreements plus any applicable statute of limitations. Company hereby consents to the jurisdiction of (i) the courts of the FEDERAL DISTRICT, (ii) the courts of the State of Arizona and (iii) the courts or tribunals of the White Mountain Apache Tribe, solely with respect to any enforcement action, including any action to enforce an order, judgment, ruling or arbitration award resulting from such an enforcement action.

Notwithstanding the foregoing, when SBA is the holder, the Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing paper, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.

Should SBA not be the holder of the Note, the Note will be governed by federal law and to the

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extent not preempted by federal law, the laws of the State of Arizona without regard to conflicts of law provisions.

2. Company hereby waives any requirement that may exist for exhaustion of any remedies available in any court or tribunal of White Mountain Apache Tribe prior to commencement of any enforcement action in any state or federal Court in Arizona. Company expressly agrees not to commence or initiate any action in any court or other forum of White Mountain Apache Tribe.
3. Any recovery by Lender for money damages under the Agreements shall be satisfied solely against the assets of Company.

In the event that the federal or state courts of Arizona lack or decline jurisdiction to hear any dispute between Lender and Company, the parties agree to binding arbitration conducted pursuant to the rules of the JAMS or the American Arbitration Association (as selected by the party bringing the claim) with enforcement of pre-arbitration orders and post-arbitration awards in any court of competent jurisdiction, including, upon the consent of Lender, in any court or other forum of White Mountain Apache Tribe. Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note.

4. This Addendum shall remain in place as long as there are amounts owing to Lender under the terms of the Agreements.
5. Company shall within 30 days from the date of the Loan Agreement, provide Lender an original resolution acceptable to Lender, from the White Mountain Apache Tribe confirming its consent to the terms set forth in this Addendum. Company shall not use any loan proceeds until such resolution has been delivered to Lender. In the event the Loan Agreement, Note or any loan documents executed in connection therewith that is not executed in an e-signature format acceptable to Lender, Company shall deliver to Lender fully-executed with original hand-written signatures (i.e. wet signatures), of the Addendum, Loan Agreement, Note and other documents not executed in an e-signature format acceptable to Lender, within 30 days from the date of the Loan Agreement, and Company's failure to provide the resolution or the original signatures referenced in this paragraph on or before such date shall constitute an Event of Default under the loan documents.

Date: April 22, 2020

IN WITNESS WHEREOF, Company, by its duly authorized representative, has executed this Addendum.

Sunrise Park Resort

X _____
Tara Chief, Authorized Signer

Zions Bancorporation, N.A. dba National Bank of Arizona

By: _____
Authorized Signer