

WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Amended and Restated Articles of Incorporation and Amended and Restated Bylaws for the Apache Behavioral Health Services, Inc.)



WHEREAS, The Constitution of the White Mountain Apache Tribe of the Fort Apache Indian Reservation (“Constitution”) provides at Article IV, Section 1(a) that the Tribal Council (“Council”) shall exercise the power “[t]o represent the Tribe and act in all matters that concern the welfare of the Tribe”, and in Article IV Section 1(s), “to regulate subordinate organizations for economic and other purposes”; and

WHEREAS, Apache Behavioral Health Services, Inc. (“ABHS”) is an organization chartered by the White Mountain Apache Tribe to provide behavioral health services to residents of the Fort Apache Indian Reservation and tribal members of the White Mountain Apache Tribe; and

WHEREAS, The initial Articles of Incorporation of ABHS were adopted by the Council under Resolution No. 05-2007-175 on May 2, 2007 and an amendment to the Articles of Incorporation was adopted by the Council under Resolution No. 08-2007-327 on August 21, 2007 (collectively, the “Articles”); and

WHEREAS, The control and management of the affairs of ABHS are vested in its Board of Directors (the “Board”) pursuant to Article XII of the Articles; and

WHEREAS, Article XV of the Articles states that the Board may amend the Articles and the Bylaws by an affirmative vote of the majority of the Board at a meeting noticed for that purpose, provided that such amendments shall not become effective until approved by a majority vote of the Council; and

WHEREAS, Section 12.1 of the Bylaws provides that the Board may amend the Bylaws by a majority vote and Section 12.2 provides that amendments shall not become effective until approved by the Council; and

WHEREAS, the Board approved an Amended and Restated Articles of Incorporation on March 13, 2024 which, if approved by the Council, will amend the Articles by:

1. Confirming that ABHS is a subdivision of the Tribe under the Indian Tribal Governmental Tax Status Act (Article V);
2. Striking language providing that ABHS is organized under Section 501(c)(3) of the Internal Revenue Code (Article III) and striking all references Section 501(c)(3) elsewhere in the Articles, provided that ABHS shall continue to be operated as a non-profit corporation;
3. Authorizing ABHS to provide medical services and other health services, in addition to behavioral health services, which includes the authority to operate a dialysis center and provide related treatment as delegated by the Tribal Council in Resolution No. 10-2017-236 on October 4, 2017 (Article III.(2));

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4. Authorizing ABHS to enter into P.L. 93-638 contracts on behalf of the Tribe for mental health and adolescent and family services programs and any other programs authorized by the Tribal Council, until such time that the Tribal Council modifies or revokes such contracting authority by resolution or ordinance (Article III.(3));
5. Striking the term “Executive Director” from the Articles and substituting it with the term “Chief Executive Officer” (Article III.(8) and elsewhere);
6. Providing that the annual report to Tribal Council shall occur after the annual audit is completed and available to Indian Health Services (Article III.(8));
7. Striking provisions regarding director liability, indemnification and insurance (current Articles IX, X, and XI) (which matters are addressed in the Bylaws);
8. Changing the size of the Board of Directors from “five to seven” (current Article XII) to “five” Directors (proposed Article VIII);
9. Inserting qualifications for Directors (proposed Article VIII);
10. Changing the Board of Directors’ terms from three year terms to staggered terms of four years after one time appointments of three and five years, so that thereafter the terms of no more than three members of the Board shall expire in a single year (Article VIII.);
11. Changing the registered agent from the “Tribal Attorney of the White Mountain Apache Tribe” (current Article XVI) to the CT Corporation System or such other agent as may be designated by the Board of Directors (proposed Article XIII); and
12. Making other non-substantive organizational and clarifying edits; and

WHEREAS, the Board approved Amended and Restated Bylaws on March 13, 2024 which, if approved by the Council, will amend the Bylaws by:

1. Organizing the Bylaws by Section rather than by Article;
2. Striking language that refers to ABHS as being organized under Section 501(c)(3) of the Internal Revenue Code (current Preamble and Article XI), and provide that ABHS shall continue to be operated as a non-profit corporation;
3. Changing the size of the Board of Directors from “no fewer than five (5) and no more than fifteen (15)” to five (5) (Section 2.2.);
4. Changing the term of Directors from three years to four years (Section 2.3.);
5. Striking all ex-officio members of the Board, other than the Chief Executive Officer (Section 2.7);
6. Removing the “Life Members” section (current Section 2.8.);
7. Striking the Board of Director qualifications section (current Section 2.10.) (which matters are to be addressed in the amendments to the Articles of Incorporation, above);
8. Striking the term “Executive Director” from the Bylaws and substituting it with the term “Chief Executive Officer” (Section 3.1(G) and elsewhere);
9. Striking the requirement for Tribal Council approval when ABHS enters into leases or subleases of real property (Section 3.1(H));
10. Clarifying the section on Board of Director meeting stipends and reimbursements and requiring the Board to provide Tribal Council with notice of any change to the amount for meeting stipends (Section 3.1(Q));

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11. Clarifying that the annual report to Tribal Council shall occur as required by the Articles of Incorporation (Section 3.1(S));
12. Changing the date when the draft ABHS budget is to be presented to the Board of Directors from “not later than October 15” to “thirty (30) days before the end of the fiscal year” (Section 3.8);
13. Striking the “Executive Committee” and “Committees” sections (Section 4.1, current Articles VII and IX);
14. Clarifying how and when notices for regular and special meetings must be sent (Section 4.2.);
15. Providing that a director who elects to run for an elected tribal office must take a leave of absence from the Board while running for office (Section 4.5(B));
16. Providing that Directors shall not disclose confidential information (proposed Section 2.9);
17. Clarifying the duties of the Board Treasurer (Section 6.6.);
18. Clarifying that the Board may enter into an employment contract with a CEO and requiring the Board to provide the CEO with notice and an opportunity to be heard prior to removal of the CEO (proposed Section 7.1.);
19. Striking the section on “Auxiliary Membership Organizations” (current Article X.);
20. Updating the section on director and CEO liability (a similar section was removed from the Articles of Incorporation and incorporated into this section in the Bylaws) (proposed Section 8.1.);
21. Revising the “Sovereign Immunity” section so that (i) ABHS may only be sued in the courts of the White Mountain Apache Tribe for claims covered by an insurance policy and for contract claims under \$100,000, (ii) the Board may elect to consent to suit for a contract claim between \$100,000 and \$500,000 and may agree upon a forum outside of the courts of the Tribe, and (iii) any consent to suit for a claim greater than \$500,000 must be approved by Tribal Council (current Section 9.2.);
22. Updating the “Indemnification” section (a similar section was removed from the Articles of Incorporation and incorporated into this section in the Bylaws) (proposed Section 10.2.);
23. Modifying the requirements for amending the Bylaws by changing the required notice of any proposed amendment to each director from 20 days to 14 days (Section 121.); and
24. Clarifying other provisions to make the Bylaws consistent with the Amended and Restated Articles of Incorporation; and

WHEREAS, the Board requests that the Council approve the Amended and Restated Articles of Incorporation in the form attached hereto and the Amended and Restated Bylaws in the form attached hereto in order to support the timely opening of the Dialysis Center and to assist the operation of ABHS; and

WHEREAS, the Council finds it is in the best interest of the Tribe to approve the Amended and Restated Articles of Incorporation in the form attached hereto and the Amended and Restated Bylaws in the form attached hereto as requested by ABHS.

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BE IT RESOLVED, by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the Amended and Restated Articles of Incorporation, in the form attached hereto, and the Amended and Restated Bylaws, in the form attached hereto.

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 any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

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 Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **JUNE 05, 2024** duly adopted by a vote of **FIVE** for, **ONE** 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

Kasey Velasquez
Kasey Velasquez, Chairman

6.7.2024
Date

Vaneyssa Johnson
Vaneyssa Johnson, Tribal Secretary

06/07/2024
Date