

WHITE MOUNTAIN APACHE
LAND CODE

Effective July 13, 2005

**WHITE MOUNTAIN APACHE
LAND CODE**

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WHITE MOUNTAIN APACHE LAND CODE

[NOTE: Chapter One and Two of the Land Code are derived from Ordinance No. 29, enacted on December 10, 1958.]

CHAPTER ONE GENERAL PROVISIONS

SECTION 1.1 CONSTITUTIONAL AUTHORITY

Authority for the establishment of a land code for the Fort Apache Indian Reservation is provided for in the Constitution and By-Laws of the White Mountain Apache Tribe approved by the Tribe June 27, 1958.

SECTION 1.2 PURPOSE

A. To govern the management and administration of lands on the Fort Apache Indian Reservation for beneficial use and occupancy and to formalize the assignment and usage of lands for farming and other beneficial purposes.

B. To aid in equitable distribution of the tribal resources in order that the maximum number of tribal members may derive a livelihood from their farm or livestock operations.

C. To preserve the land and other resources of the Fort Apache Indian Reservation through proper use and management.

SECTION 1.3 SCOPE; EFFECT ON EXISTING INTERESTS

A. All arable land within the exterior boundaries of the Fort Apache Indian Reservation shall be governed and subject to the provisions of this Code.

B. Upon said ordinance being approved by the Secretary of the Interior, the Land Board shall set a date thereafter and all persons having land claims, leases or any interest in lands applicable hereto, or use permits shall be required to apply for a new permit or assignment.

**CHAPTER TWO
ADMINISTRATION**

[Note: Chapter Two is revised by Ordinance No 198, enacted March 8, 1995]

SECTION 2.1 LAND BOARD; MEMBERSHIP; BIA REPRESENTATIVE

A. The Tribal Council shall appoint a Land Board composed of five members, all of whom shall be adult members of the Tribe, provided that at least one Board member is also a member of the Tribal Council. Said appointments shall be for an indefinite term, subject to removal at any time by the Tribal Council.

B. A minimum of three Land Board members, duly assembled, will constitute a quorum.

C. The officers of the Land Board shall consist of a Chairman and a secretary, who shall be elected by said Board.

D. The Superintendent of the Fort Apache Indian Reservation or his designated representative shall serve as an advisory member of the Land Board.

SECTION 2.2 DUTIES OF BOARD

A. The Land Board shall consult with Bureau, Tribal officials and land users regarding land transactions and usage and shall advise the Council as to their recommendations.

B. The Land Board shall process all applications for land use rights and improvements and recommend to the Council for issuance of assignments, permits, substitutions, leases, rights of way, individual or community pastures and lands for public use purposes.

C. It shall also be the responsibility of the Board to inspect all land improvements to ascertain if maximum beneficial utilization is being obtained and that all conditions of agreements pertaining thereto are being complied with and if the Board finds any breaches of the aforementioned agreement, this fact shall be forwarded to the Chairmen who shall then summon the Council who shall take immediate action to rectify the breach.

D. Act as appraisal and condemnation board on all matters and to obtain, and, if necessary, compensate experts to assist in the appraisal and/or condemnation procedures.

E. Act as advisory board to the Council in all matters pertaining to proper land use.

SECTION 2.3 STANDARD ASSIGNMENTS

Standard Assignments on Standard Assignment Forms designated as Assignment Form WA-1, a copy of same being attached hereto and by reference made a part hereof, shall be made, upon a proper application being filed with the Land Board, to any individual member of the White Mountain Apache Tribe or to any recognized group of individuals of said Tribe, including but without limitations, any livestock association.

SECTION 2.4 ELIGIBILITY

Applicants must be members of the White Mountain Apache Tribe as defined in Article III of the amended Constitution and By-Laws of the White Mountain Apache Tribe, however, all applicants shall agree before receiving an assignment, to make full and proper use of said lands and premises and that to farm in a good husbandlike manner and follow approved practices in connection with proper tillage and maintenance of structures designed to conserve the fertility of the soil.

SECTION 2.5 QUALIFICATIONS OF APPLICANT

A. Applicants shall first indicate a sincere interest in obtaining an assignment with the intent of making full and proper use of lands and premises.

B. Applicants shall consent to a thorough investigation by the Land Board to determine his qualifications.

C. Applicants shall be judged substantially on past experiences as a farmer on the Reservation and on the basis of his personal history as it is reflected by the following factors:

1. Family responsibility.
2. Reputation in his community or village.
3. Character and integrity.
4. Credit rating.
5. Dependability.
6. Industry.
7. Physical condition, ability or perform arduous work.

D. Preference shall be given to applicants who are residents of the district, as defined by Article VI, Section 2 of the amended Constitution and By-Laws of the Tribe,

where the land is located.

SECTION 2.6 APPLICATIONS FOR STANDARD ASSIGNMENTS

A. Applications for standard assignments shall be made in writing to the Secretary of Land Board by the applicant. The Land Board shall give advance public notice of the date, and when and where applications will be received. The Secretary of the Land Board shall record all necessary information on an approved application form. The applications shall be prepared in quadruplicate, numbered consecutively, dated and filed chronologically, in a bound folder, one copy in the Agency Office and one copy to the applicant. The Secretary shall at this time schedule a date when the applicants may appear before the Land Board for hearing on his application.

B. Any member of the Tribe wishing to oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the Secretary of the Land Board, and shall appear before the Land Board to present evidence at the time of the scheduled hearing of the applicant.

C. The Land Board shall investigate each applicant to determine his eligibility and qualifications as set forth in the Land Code and then shall present the application along with their recommendations in writing to the Tribal Council for their consideration and action. The decision of the Tribal Council shall be final.

D. The Secretary of the Land Board shall furnish the Superintendent a complete record of all actions and findings made by the Land Board and the Tribal Council regarding applications for assignments and all such records shall be maintained in the Agency, Tribal and Land Board files.

E. Applicants shall be considered in the order that their applications were filed; however, procedures for the selection of assignees from the qualified list of applicants shall be formulated by the Land Board and may be modified from time to time as conditions warrant.

SECTION 2.7 IMPROVEMENTS ON ASSIGNMENTS

Any property placed on the land by the assignee which has become affixed to the realty shall not be removed by said assignee if his assignment has been cancelled either voluntarily or involuntarily. The Land Board shall be the final authority as to whether the property has or has not been affixed to the realty. Irrigation improvements shall remain the property of the Tribe when installed by appropriated or tribal funds.

SECTION 2.8 PROPER USE OF STANDARD ASSIGNMENTS

A. Continued use and control of assignments shall be based on actual and beneficial use described as follows:

(1) Clean cultivation shall be practiced on row crops and the land kept reasonably free from weeds, crop pests, Johnson grass, etc.

(2) The maintenance and protection of the project works shall in part be the responsibility of the assignee and each assignee shall contribute his share towards such maintenance and protection.

(3) Non-use of any portion of the assignment shall be considered sufficient cause for cancellation of the assignment. Non-use caused by acts of God shall not be determined as the fault of the assignee and shall not be used as evidence of willful neglect.

(4) The apportionment of water shall be on an equal basis for all assignees within a designated project area. Continued misuse or waste of water will be just cause for cancellation of the assignment.

(5) Assignees shall conduct their individual farming operations and practices so that they will not be detrimental or harmful to other assignees operating on the project.

B. Any assignee who disregards the practices described above shall be charged with willful negligence by the Land Board and appropriate recommendations made to the Tribal Council.

SECTION 2.9 AUTHORITY TO REVOKE OR CANCEL ASSIGNMENTS

A. Complaints may be initiated by any individual or group including any member of the Land Board that an assignee is violating some provision of the Land Code. The complaint shall be in writing and filed with the Board who shall then hold a public hearing regarding same and shall render a decision within five days of the hearing. If the assignee is dissatisfied with the decision of the Land Board, he shall then have the right to appeal the decision to the Tribal Council and said Council shall likewise hold a hearing in which all interested parties are entitled to be present and their decision shall be final.

B. Should the decision of the Board and/or the Tribal Council be that the assignee's assignment is cancelled the land involved covered by said assignment shall become available for reassignment and the assignee shall be given reasonable time, not to exceed 60 days, to dispose of any of his personal property which has not become affixed to the realty located on the assigned premises.

C. Should an assignee wish to voluntarily relinquish his land, he shall be given reasonable time, not exceeding 60 days, to dispose of his personal property located thereon.

SECTION 2.10 TRANSFER OF ASSIGNMENTS

A. Transfer of assignments may be granted to assignees under the following circumstances: An assignee who becomes physically unfit to farm the land and is unable to have it farmed under his own supervision, a widow of deceased assignee, minor children of deceased assignee and in other instances where the best interest of the family is involved. Permits to transfer shall first be recommended by the Land Board and then approved by the Tribal Council.

B. Transfer shall be prepared on an approved from and recorded and filed in the Land Board, Tribal Office and Agency Office files.

C. Transfers of assignments may be approved for a period of one year. Transfers of assignments may be made as hereinbefore provided for, however, the Land Board and/or Council may reduce the period remaining in the original assignment in order to enable the transferee to prove to the satisfaction of the Board that he intends to put the land to its full beneficial use.

D. The transferee shall be bound by all of the covenants and stipulations provided in the original assignment, provided, however, that before a transfer of an assignment is made an application must be made by the administrator or executor to the Land Board and approved by the Tribal Council as hereinbefore provided for in the application for original land assignment.

SECTION 2.11 INHERITANCE OF STANDARD ASSIGNMENTS

In the event of death of the assignee, the heirs, executors, administrators and assigns of the assignee shall inherit all rights, privileges and obligations incurred herein subject to the terms of the assignments.

**CHAPTER THREE
HAWLEY LAKE HOMESITE LEASES**

[NOTE: Chapter Three is derived from Ordinance No. 33, enacted March 4, 1959.]

SECTION 3.1 POLICY

The White Mountain Apache Tribe has expended in excess of one hundred sixty thousand dollars (\$160,000.00) to build the Smith Park Dam, and a certain portion of the area surrounding Hawley Lake is now ready for leasing.

SECTION 3.2 STANDARD LEASE FORM

BE IT ENACTED by the White Mountain Apache Tribal Council in Council assembled: that the attached lease form marked "Exhibit A" is approved as the lease form for all lots to be leased in the Smith Park Recreational Area.

**CHAPTER FOUR
HONDAH HOMESITE LOT LEASE**

[NOTE: Chapter Four is derived from Ordinance 54, enacted October 10, 1963.]

SECTION 4.1 POLICY

The Area Projects Development Committee has recommended that the area between the Indian Pine west side of Highway 73 to the south boundary of the White Mountain Country Club containing approximately 1000 acres be developed by the Tribe for leasing of homesite and commercial development sites.

SECTION 4.2 STANDARD LEASE FORM

BE IT ENACTED by the Council of the White Mountain Apache Tribe that the lease form now being used in the Hawley Lake Development area is hereby adopted for use in the Indian Pine Development, except that the lease is modified to read: "Honda Homesite Lot Lease".

CHAPTER FIVE TRESPASS

[NOTE: Chapter Five is derived from Ordinance 223, enacted July 13, 2005.]

SECTION 5.1 FOREST TRESPASS

A. Definitions.

1. “**Authorized Tribal Representative**” and/or “**Enforcement Agency**” means the following officials and officers duly empowered by the Tribe to enforce the provisions of this Ordinance and includes: Tribal Game Rangers, Tribal Police Officers, Tribal Forester, the Tribal Attorney, and their respective designees.

2. “**BIA**” means the Bureau of Indian Affairs within the United States Department of Interior.

3. “**Forest or forest land**” means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

4. “**Forest Products**” means marketable products extracted from Indian forest, such as:

- a. Timber;
- b. Timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products;
- c. Bark;
- d. Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms and herbs;
- e. Other marketable material, and
- f. Gravel which is extracted from, and utilized on, Indian forest land.

5. “**Forest Resources**” means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

6. **“Forest Trespass”** means the removal of forest products from, or damaging forest products on Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.

7. **“Indian”** means a member of an Indian tribe.

8. **“Indian Land”** means land, title to which is held by:

a. The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

b. An Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

9. **“Indian Forest Land”** means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken.

10. **“Indian tribe”** or **“tribe”** means any Indian tribe, band, nation, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe’s reservation.

11. **“NIFRMA”** means the National Indian Forest Resources Management Act of November 28, 1990 (104 Stat. 4532, 25 U.S.C. §3101 *et seq.*), and includes regulations promulgated by the Secretary of Interior in 25CFR §169.29.

12. **“Reservation”** includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma, and in this ordinance means the Fort Apache Indian Reservation of Arizona of the White Mountain Apache Tribe as established by Executive order November 9, 1871 and by Act of Congress June 7, 1897, (Ch.2., 30 stat. 62, 64).

13. **“Tribe”** means the White Mountain Apache Tribe.

14. **“Tribal Court”** means the trial and appellate courts of the White Mountain Apache Tribe.

15. “**Woodland**” means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

SECTION 5.2 TRESPASS

A. Trespassers will be liable for civil penalties and damages to the authorized Tribal representative/enforcement agency and the White Mountain Apache Tribe and will be subject to prosecution for acts of forest trespass.

1. Cases In Tribal Court. For forest trespass actions brought in tribal court pursuant to this Ordinance, the measures of damages, civil penalties, remedies and procedures will be as set forth in 25 C.F.R. §163.29 and as adopted herein. All other aspects of a tribal trespass prosecution brought under this Ordinance will be that prescribed by the law of the Tribe.

2. Cases in Federal Court. For forest trespass actions brought in Federal court pursuant to 25 C.F.R. 163.29, the measure of damages, civil penalties, remedies and procedures will be as set forth in 25 C.F.R. § 163.29. In the absence of applicable federal law, the measure of damages shall be that prescribed by this Ordinance and other applicable laws of the Tribe.

3. Civil penalties for forest trespass include, but are not limited to:

a. Treble damages, whenever any lawful person, without lawful authority injures, severs, or carries off from the reservation any forest product as defined in this Ordinance and in 25 C.F.R. §163.1. Proof of the Tribe’s ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

b. Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

c. Payment of all reasonable costs associated with the enforcement of this trespass Ordinance and 25 C.F.R. §163.29, beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

d. Interest calculated at the statutory rate prescribed by the law of the Tribe or in absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be the statutory rate upon judgments as prescribed by the law of the State of Arizona. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

4. Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under this Ordinance and in 25 C.F.R. §163.29(a). After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

a. Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Tribe and any costs and expenses needed to restore the trespass land; or

b. Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Tribe, the Tribal enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

c. Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the Reservation.

d. Civil penalties and other damages collected under this Ordinance and 25 C.F.R. §163.29, except for penalties and damages provided in 5.10 (a)(3)(ii) and (iii) of this Ordinance and 25 C.F.R. §163.29(a)(3)(ii) and (iii), shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

e. When a federal official or authorized tribal representative/enforcement agency pursuant to 5.10 (j) of this part, or 25 C.F.R. §163.29(j), has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure under this Ordinance only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through an administrative appeal to the Tribal Court of the White Mountain Apache Tribe and shall provide the name and the address of the Tribal Court to which the appeal may be filed.

If a Federal official initiates seizure under 25 C.F.R. §163.29 only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through an administrative appeal pursuant to part 2 of title 25 C.F.R., and shall provide the name and the address of the official with whom the appeal may be filed.

If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal court forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

f. When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to 25 C.F.R. § 163.29(j) or 5.10

(j) of this Ordinance who is responsible for forest trespass enforcement shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

1.) That such products could be Indian trust property involved in a trespass; and

2.) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or the Tribe.

g. A representative of the Secretary or authorized tribal representative pursuant to 25 C.F.R. §163.29(j) or 5.10 (j) of this Ordinance will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the possessor:

1.) That a determination has been made that a trespass has occurred;

2.) The basis for the determination;

3.) An assessment of the damages, penalties and costs;

4.) Of the seizure of forest products, if applicable; and

5.) That disposition or removal of Indian forest products taken in trespass may result in civil and/or criminal action by the United States or the Tribe.

h. The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by the Tribe exercising its concurrent jurisdiction pursuant to 25 CFR §163.29 (j) and 5.10(j) of this Ordinance.

i. Nothing in this Forest Trespass Ordinance which adopts the Secretary's Forest Trespass regulations in 25 CFR §163.29 shall be construed to prohibit or any way diminish the authority of the Tribe to prosecute individuals under its other criminal or civil trespass laws where it has jurisdiction over those individuals.

j. The Tribe has concurrent civil jurisdiction to enforce 25 U.S.C. §3106 and 25 C.F.R. §163.29 against any person or entity.

SECTION 5.3 TRESPASS ON TRIBAL AGRICULTURAL LANDS

A. Definitions.

1. “**AIARMA**” means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. §3701*et seq.*), and amended on November 2, 1994 (108 Stat. 4572) and regulations promulgated pursuant thereto as set forth in 25 C.F.R. §166.800 *et seq.*

2. “**Agricultural Product**” means:

 a. Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

 b. Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animal specifically raised and utilized for food or fiber or as beast of burden;

 c. Forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

 d. Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

3. “**Agricultural Resources**” means:

 a. All the primary means of production, including the land, soil, water, air, plant communities, watersheds, human resources, natural and physical attributes, and man-made developments, which together comprise the agricultural community; and

 b. All the benefits derived from Indian agricultural lands and enterprises, including cultivated and gathered food products, fibers, horticulture products, dyes, cultural or religious condiments, medicines, water, aesthetic, and other traditional values of agriculture.

4. “**BIA**” means the Bureau of Indian Affairs within the Department of the Interior and the Tribe acting on behalf of the BIA under 25 C.F.R. § 163.29 as adopted by this Ordinance.

5. “**District**” means one for the four voting Districts established pursuant to the Constitution of the White Mountain Apache Tribe.

6. “**Farmland**” means Indian land excluding Indian forest land that is

used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products and maybe either dry land, irrigated land, or irrigated pasture.

7. **“Indian Agricultural Lands”** means Indian land within the Tribe’s Reservation, including farmland and rangeland, excluding Indian forest land, that is used for the production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

8. **“Indian forest land”** means forest land as defined in section 304(3) of the National Indian Forest Resources Management Act (25 U.S.C. §3103(3)).

9. **“Indian”** means an individual who is a member of an Indian tribe.

10. **“Indian land”** means land that is:

- a. Held in trust by the United States for the Tribe; or
- b. Owned by an Indian or the Tribe and is subject to restrictions against alienation.

11. **“Indian Landowner”** means the Indian or the Tribe that:

- a. Owns such Indian land; or
- b. Is the beneficiary of the trust under which such Indian land is held by the United States.

12. **“Indian tribe”** means any Indian tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

13. **“Rangeland”** means Indian land, excluding Indian forest land, on which the native vegetation is predominantly grasses, grass-like plants, forbs, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands revegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

14. **“Reservation”** means the land within the exterior boundaries of the Fort Apache Indian Reservation as established by Executive Order November 9, 1871 and by Act of Congress, June 7, 1897 (ch.2, 30 Stat.62, 64).

15. “**Trespass**” means any unauthorized occupancy, use of, or action on the Reservation and tribal lands of the White Mountain Apache Tribe.

16. “**Tribal Council**” means the governing body of the tribe as provided in Article III of the Tribal Constitution of the White Mountain Apache Tribe adopted November 12, 1993.

17. “**Tribal land**” means the surface estate of land or any interest therein held by the United States in trust for the Tribe, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. §476).

18. “**Tribal law**” means the body of non-federal law that governs lands and activities under the jurisdiction of the White Mountain Apache Tribe including ordinances or other enactments by the Tribe, tribal court rulings, and tribal common law.

19. “**Tribal Realty Office**” means the duly authorized and empowered Tribal entity responsible for bringing enforcement actions under this Ordinance and 25 C.F.R. §166.800 *et seq.*

20. “**Tribe**” means the White Mountain Apache Tribe.

21. “**Trust land**” means any tract, or interest therein, that the United States holds in trust status for the benefit of the Tribe or individual Indian.

22. “**Unauthorized Livestock**” means livestock found on an open range within Tribal lands that is not authorized by the Tribe, Tribal Livestock Association or roundup bosses to graze the range where the livestock is found.

SECTION 5.4 TRESPASS POLICY

A. The Tribe hereby adopts 25 C.F.R. §166.800 and will:

1. Investigate accidental, willful, and/or incidental trespass on Indian agricultural land within its Reservation;

2. Respond to alleged trespass in a prompt, efficient manner;

3. Enjoin or otherwise halt an ongoing trespass pending enforcement and disposition in accordance with the provision of this Ordinance;

4. Seize and impound unauthorized livestock;
5. Assess trespass penalties for the value of products used or removed, cost of damage to Indian agricultural land, and enforcement costs incurred as a consequence of the trespass; and
6. Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

SECTION 5.5 ENFORCEMENT

A. The Tribal Realty Office shall enforce the provisions of this Ordinance unless otherwise provided herein. Enforcement of this Ordinance shall be in addition to Tribal enforcement remedies under: (1) Section 1.24 of the White Mountain Apache Natural Resources Code; (2) Chapter 6 of the White Mountain Apache Tribe Game and Fish Code; (3) Chapter Four, Article Four, of the White Mountain Apache Livestock Code; and (4) the Tribe's Exclusionary Ordinance. The Tribe has concurrent jurisdiction with the BIA to enforce the provisions of Subpart I of Part 166, Title 25 of the Code of Federal Regulations. Pursuant to 25 C.F.R. §166.802(a), the BIA, upon request by the Tribe, will defer to the Tribe's prosecution of trespass on Indian agricultural lands within the Tribe's Reservation.

B. Nothing in this ordinance or in 25 C.F.R. §166.800 *et seq.* shall be construed to diminish the inherent sovereign authority of the Tribe with respect to trespass.

SECTION 5.6 NOTIFICATION OF A TRESPASS DETERMINATION

A. When the Tribal Realty Office has reason to believe that a trespass on Indian agricultural land has occurred within the Reservation, the Realty Office, within five (5) business days, shall provide written notice to the alleged trespasser, the possessor of the trespass property, any known lien holder, and beneficial Indian land owner, as appropriate. The written notice shall include the following:

1. The basis for the trespass determination;
2. A legal description of where the trespass occurred;
3. A verification of ownership of unauthorized property, which, in the case of livestock trespass, shall include verification of brands in the Tribal and State of Arizona Brand Book;
4. Corrective actions that must be taken;
5. Time frames for taking the corrective actions;

6. Potential consequences and applicable penalties for failure to take corrective action; and

7. A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by the Tribal Realty Office, Superintendent of Livestock, Tribal Forestry, or the Tribe's Wildlife and Outdoor Recreation Division.

B. If the Tribal Realty Office determines that the alleged trespasser or possessor of trespass property is unknown or refuses service of written notice, a public trespass notice will be posted at (a) the Office of the voting District nearest to the Indian agricultural lands where the trespass is occurring, (b) the U.S. Post Offices located in Whiteriver, Fort Apache, and in Cibecue, Arizona, and (c) will be published in the newspaper nearest to the Indian agricultural lands where the trespass is occurring. Notice by publication shall be considered constructive service to the alleged trespasser(s) of the public trespass notice and contents thereof.

C. Trespass notices under this Section are not subject to appeal.

SECTION 5.7 RESPONSE TO A WRITTEN TRESPASS NOTICE

A. The recipient of a written notice issued pursuant to Section 6.3.1 shall either: (a) comply with the ordered corrective action; or (b) contact the Tribal Realty Office by telephone, but any explanation of trespass or why the trespass notice is in error must be in writing.

B. The Tribal Realty Office shall consider any written response from the recipient of a written notice, and based thereon, the Tribal Realty Office may subsequently modify or amend the written notice of trespass with respect to corrective actions that must be taken, time frames for taking the corrective actions, and potential consequences and penalties for failure to take corrective action.

C. If the Tribal Realty Office determines that it issued the trespass notice in error, the Tribal Realty Office shall withdraw the notice.

SECTION 5.8 DURATION OF A WRITTEN TRESPASS

A written trespass notice will remain in effect for the same conduct identified in the written notice for a period of one year from the date of receipt of the written notice by the trespasser, or date of publication of the trespass notice as provided in Section 6.3.2.

SECTION 5.9 ACTIONS AGAINST TRESPASSERS

A. If the trespasser fails to take corrective action specified by the Tribal Realty Office, Then the Tribal Realty Office may take one or more of the following actions, as appropriate:

1. Seize, impound, sell or dispose of unauthorized livestock, or other property involved in the trespass. The Tribal Realty Office may keep seized property for use as evidence.

2. Assess penalties, damages, and costs, under Section 9. of this Ordinance and 25 C.F.R. §166.812.

3. Enjoin or otherwise halt an on-going trespass pending enforcement and disposition in accordance with the provisions of this Ordinance.

SECTION 5.10 IMPOUNDING UNAUTHORIZED LIVESTOCK OR OTHER PROPERTY

A. The Tribal Realty Office will impound unauthorized livestock or other property determined to be a trespass upon Indian agricultural lands within the Tribe's Reservation under the following conditions: (a) where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage; or (b) when the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

B. Any time after five (5) days of providing notice of impoundment if the trespass is not corrected.

SECTION 5.11 NOTIFICATION OF INTENT TO IMPOUND UNAUTHORIZED LIVESTOCK OR OTHER PROPERTY IF TRESPASS NOT CORRECTED PURSUANT TO TRESPASS NOTICE

A. If the trespass is not corrected in the time specified in the initial trespass notice under Section 6.3.1, the Tribal Realty Office shall notify, in writing, the owner and lienholder, if known, of its intent to impound the unauthorized livestock or other property. The written notice shall provide that the impounded livestock will be sold unless the impounded livestock is redeemed prior to its sale, pursuant to the redemption procedures in the notice.

B. If the Tribal Realty Office determines that the owner of the unauthorized livestock or other property is unknown or refuses delivery of the written notice of intent to impound, the Tribal Realty Office will post a public notice of intent to sell the impounded livestock at (a) the office of the voting District nearest to the Indian agricultural lands where the trespass occurred, and (b) the U.S. Post offices in Fort Apache, Whiteriver, and Cibecue, and (c) will also publish a notice of intent to sell the impounded livestock in the local newspaper nearest to the Indian agricultural lands where the unauthorized livestock or other property in trespass is occurring.

C. After notice is given as described in Sections 6.8.1 and 6.8.2, the Tribal Realty Office will impound unauthorized livestock or other property without any further notice.

SECTION 5.12 NOTIFICATION OF INTENT TO SELL IMPOUNDED LIVESTOCK OR OTHER PROPERTY

A. Following the impoundment of unauthorized livestock or other property, the Tribal Realty Office will provide written notice of the sale of the impounded livestock or other property to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure set forth in Section 7.00, pursuant to which the impounded property may be redeemed prior to the sale.

B. The Tribal Realty Office will provide public notice of the sale of impounded property by posting (a) at the office of the voting District nearest to the Indian agricultural lands where the property was located, and in the U.S. Post Offices in Fort Apache, Whiteriver, and Cibecue, and at the Livestock complex if the property is unauthorized livestock; and (b) publish a public notice of sale in the local newspaper nearest the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time and place of the public sale. The sale date must be at least five days after the publication and posting of notice, whichever is later.

SECTION 5.13 REDEMPTION OF IMPOUNDED LIVESTOCK OR OTHER PROPERTY

A person may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under 25 C.F.R. §166.812, or Section 9.0 of this Ordinance and completing all corrective actions identified under Section 6.3.1 of this Ordinance.

SECTION 5.14 SALE OF IMPOUNDED LIVESTOCK OR OTHER PROPERTY IF NOT REDEEMED

A. Unless the owner or unknown lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under Sections 9.0 and 6.3.1, the property will be sold by public sale to the highest bidder.

B. If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

C. The purchaser will receive a bill of sale or other written receipt evidencing the sale.

SECTION 5.15 **PENALTIES, DAMAGES, AND COSTS PAYABLE BY TRESPASSERS**

A. Trespassers on Indian agricultural land must pay the following penalties and costs:

1. Collection of the value of the products illegally used or removed plus a penalty of double their values;
2. Costs associated with any damage to Indian agricultural land and/or property;
3. The cost associated with enforcement of 25 C.F.R. §166.800 *et seq.* or this Ordinance, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court cost, and attorney fees;
4. Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under 25 C.F.R. §166.807 or Section 6.7 of this Ordinance.
5. All other civil or criminal penalties authorized by law.

SECTION 5.16 **DETERMINATION OF THE VALUE OF FORAGE OR CROPS CONSUMED OR DESTROYED**

The Tribal Realty Office will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

SECTION 5.17 **DETERMINATION OF THE VALUE OF THE PRODUCTS OR PROPERTY ILLEGALLY USED OR REMOVED**

The Tribal Realty Office will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

SECTION 5.18 **DETERMINATION OF THE AMOUNT OF DAMAGES TO INDIAN AGRICULTURAL LANDS**

The Tribal Realty Office will determine the damages to Indians agricultural lands by considering the costs of rehabilitation and vegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

SECTION 5.19 **DETERMINATION FOR THE COST ASSOCIATED WITH TRESPASS ENFORCEMENT**

Costs of enforcement may include detection and all actions taken by the Tribe through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court cost, attorney fees, and other costs.

SECTION 5.20 **FAILURE TO PAY THE ASSESSED PENALTIES, DAMAGES AND COSTS**

A. The Tribe will refuse to issue any permit for use, development, or occupancy of Indian agricultural lands to any person who fails to pay any penalties, damages or costs assessed under this Ordinance.

B. The Tribe will prosecute any person who fails to pay any penalties, damages or costs assessed under this Ordinance or forward its claim to the BIA for appropriate legal action.

C. The Tribe may file an appropriate action in Tribal Court, Federal, or State of Arizona Courts to recover trespass damages.

SECTION 5.21 **DISTRIBUTION OF PROCEEDS FROM ASSESSMENT OF TRESPASS DAMAGES AND COSTS**

A. All amounts recovered under Section 9 of this Ordinance or 25 C.F.R. §166.812 shall be treated as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

B. Proceeds recovered under Section 9 of this Ordinance or 25 C.F.R. §166.812 may be distributed to:

1. Repair damages of the Indian agricultural land and property;
2. Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit; or
3. Reimburse the Tribe for costs associated with the enforcement of this Ordinance.

SECTION 5.22 **DEFICIENCY ASSESSMENT**

If the Tribe does not collect enough money to satisfy the penalty assessed pursuant to Section 9 or 25 C.F.R. §166.812, the Tribal Realty Office will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received with five (5) business days from the date of receipt, the

deficiency will be pursued through legal action. The Tribal Realty Office may send a copy of the notice to the Indian landowner, permittee, and any known lien holders.

SECTION 5.23 EXCLUSIONARY ACTION

In addition to the Penalties, damages, and costs set forth herein, the Tribe may bring an exclusionary action against the trespasser pursuant to and in accordance with the Tribe's Exclusionary Ordinance.

SECTION 5.24 SEVERABILITY

If any section or provision of this Ordinance, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other sections, provisions or applications of the Ordinance which can be given effect without the invalid section or provision, and to this end the sections and provisions of this Ordinance are severable.

APPENDIX 1

Assignment Form WA-1

WHITE MOUNTAIN APACHE TRIBE
ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT made and entered into this _____ day of _____, 19__, by and between the WHITE MOUNTAIN APACHE TRIBE, hereinafter referred to as the Assignor, and _____ of _____ hereinafter referred to as the Assignee:

WITNESSETH:

That for and in consideration of the agreements and covenants on the part of the Assignee to be performed, the Assignor does hereby assign to Assignee the lands and premises described as follows, to-wit:

Sec. __T. __R. __East and containing __acres or more or less. The period of this assignment is from the __day of ____, 19__ to the __day of ____, 19__.

The Assignee covenants and agree as follows:

1. That he will make full and proper use of said lands and premises; that he will farm in good husbandlike manner and will follow approved practice in connection with proper tillage and maintenance of structure designed to conserve the fertility of the soil.
2. That he will keep the building, fences and other improvements in good repair.
3. That he will not permit said premises to be used for any unlawful purpose or purposes and shall be held fully responsible for any malicious destruction to the lands or premises.
4. That upon the expiration date of this Assignment, if there be no renewal thereof, he will immediately relinquish possession of the above described premises to Assignor.
5. That he will not cut or use any timber located on said premises except with special permission of Assignor.

It is understood and agreed by the Assignee that if the said Assignee or his successors or assigns fail to make good and proper use of said lands and premises, or violate any of the terms of this contract, the Tribal Council may terminate this assignment agreement.

It is further understood and agreed by Assignee that if he violates any of the terms or conditions of this agreement or fails to make goods and proper use of said lands and premises, and Tribal Council and/or Land Board fail to take the necessary steps to terminate this agreement, then the Superintendent of the Fort Apache Agency may terminate said agreement or use any other remedy to insure proper usage of the land or to correct any violations.

It is further understood and agreed by Assignee that all improvements placed on the above described premises which have become affixed to the realty shall become a part thereof and shall revert to the Assignor upon the termination of this agreement.

It is further understood and agreed that the Assignee may construct the following improvements, which improvements shall not be considered as being affixed to the realty and may be removed by the Assignee within sixty (60) days after the termination of this agreement: _____

Anything to the contrary notwithstanding in this assignment, the Assignee further agrees to abide by all existing regulations and laws of the White Mountain Apache Tribe and those prescribed by the Secretary of the Interior relative to the assigning of Indian tribally owned trust lands, which reference are made a part of this assignment agreement.

Time is of the essence of this agreement.

This agreement shall be binding on the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands this ___day of _____, 19__.

WHITE MOUNTAIN APACHE TRIBE

By _____
Tribal Chairman
ASSIGNOR

Attest:

Secretary

ASSIGNEE

WITNESS

APPROVED:

Superintendent, Fort Apache Agency

APPENDIX 2

Contract No. __

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

.....

Hawley Lake Lot Lease

THIS INDENTURE OF LEASE, made and entered into in sextuplicate on this ___ day of _____, 195_, between LESTER OLIVER, Chairman of the Tribal Council, for and on behalf of the White Mountain Apache Tribe of Indians of Whiteriver, Arizona, party of the first part, hereinafter called the Lessor, and _____ of _____, part ____ of the second part, hereinafter called the Lessee:

WITNESSETH:

THAT WHEREAS, Lessor desires to enter into a long-term lease of those certain premises described as follows, to-wit:

Lot No. ____, Smith Park Recreation Area, Apache County, Arizona, according to the map thereof on file in the office of the County Recorder of Apache County, Arizona, a copy of which is attached hereto, marked Exhibit "A", and by reference made a part hereof; and

WHEREAS, the Lessee hereto desires to enter into said long term lease covering said above-described premises for the purpose of constructing a residential dwelling;

NOW, THEREFORE, in consideration of the premises and of the premises, covenants and conditions hereinafter set forth, to be kept and preformed by the respective parties hereto, it is mutually agreed as follows:

1. The Lessor, in consideration of the rents and covenants hereinafter agreed to be paid and performed by said Lessee, does hereby said Lessor, those certain premises hereinabove described.

TO HAVE AND TO HOLD said premises for a term of twenty-five (25) years, commencing on _____, 19__.

2. Lessee hereby agrees to pay rent for said premises the sum of _____ Dollars, payable as follows:

_____ Dollars on or before _____, 19__, and the balance in yearly installments of _____ Dollars per year, and like amount on or before the 1st day of ___ of each and every year thereafter during the term of this lease.

3. Construction under this lease shall begin within twelve months and shall be completed within thirty-six months from the date hereof.

4. The Lessee covenants and agrees to abide by the minimum construction specifications as prescribed by Lessor, and all development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the Lessor. Tress or shrubbery on the leased area may be removed or destroyed only after the Lessor or its designated agent and the Superintendent have approved, and have marked or have otherwise designated that which may be removed or destroyed. Trees, shrubs and other plants may be planted in such manner and in such places about the premises as may be approved by Lessor.

5. The Lessee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to Lessor, and all electric wiring, if and when installed, shall conform to underwriters specifications.

6. The Lessee in exercising the privileges granted by this lease, covenants and agrees to and with the Lessor that the premises shall, during the said leased term, to be used only and exclusively for proper and legitimate residential purposes, and it is expressly agreed between the parties hereto that the Lessee will not use or suffer to permit any person to use in any manner whatsoever the demised premises, or any building or improvements thereon or any portion thereof, for any purpose calculated to injure the reputation of the premises or of the neighboring property, not for any purpose or use in violation of the laws of the United States, the State of Arizona, or the ordinances or regulations of the White Mountain Apache Tribe, including but not restricted to Tribal Fish and Game Laws, nor for any immoral or unlawful purpose whatsoever; and Lessee further covenants and agrees not to disturb the peace or quiet of the neighborhood nor to keep or harbor any animals of any kind in or on the demised premises without the prior written consent of Lessor.

7. Lessee covenants and agrees not to perform any acts or carry on any practices which may be a nuisance or menace to other lessees in the Hawley Lake Area, and shall keep the premises under his control clean and free from rubbish at all times, and in the event the Lessee shall not comply with these provisions, the Lessor may enter on said premises and have the rubbish removed and in which event the tenant agrees to pay all charges for removing the rubbish. Said charges shall be paid to the Lessor by the Lessee as soon as a bill is presented to him.

8. The Lessee shall take all reasonably precautions to prevent and suppress forest fires. No materials shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the Lessor its authorized agent. The roof shall be kept clear of leaves and other inflammable material while the premises or occupied and the grounds shall be

kept clean of all brush, dry grass or other inflammable waste material for distance of twenty-five (25) feet on all sides of the dwelling and all campfires built outside the dwelling will be confined to small areas cleared of all inflammable material and will be carefully tended until extinguished. Brush or debris burning will not be allowed during windy dry periods. Lessee further agrees to indemnify, protect, and save had less Lessor, the United States of America, its officials and employees, the White Mountain Apache Tribe of Indians and the individual members thereof from and against all claims, demands and damages together with costs and expenses arising out of Lessee's negligence of actionability faults in connection with constructing said building or improvements and occupying said premises.

9. The Lessee shall exercise diligence in protecting from damage the land and property of the Lessor covered by and used in connection with its lease, and shall pay the Lessor for any damage resulting from negligence or from the violation of the terms and conditions of this lease or of any law or regulation applicable to the forests of the Fort Apache Indian Reservation by the Lessee, or by any agents or employees of the Lessee acting within the scope of their agency or employment.

10. The Lessee shall fully repair all damages to the roads or trails on the Fort Apache Indian Reservation, other than ordinary wear and tear, caused by the Lessee in the exercise of the privilege granted by this lease.

11. Lessor shall make available, to the exterior boundaries of the leased premises, electric power and water at no charge to the Lessee; however, the Lessee shall pay all reasonable charges for water, electricity, garbage or watchman services used by said Lessee and shall further install a septic tank, in accordance with approved specifications.

12. The Lessee shall have the right at any time during the term of this lease to alter, make additions to, remodel or repair any building or improvements placed upon the lands, but no removal of demolition of the improvements under this lease shall take place without the prior written consent of the Lessor first had. The Lessee shall at all times during the term of this lease and at the Lessee's sole cost and expense, keep and maintain all buildings, structures, and other improvements erected and placed on said premises in good order and repair and the whole thereof in a clean, sanitary, neat, and attractive conditions, and in such manner as shall be approved by the Lessor, and the Lessee shall construct, maintain and repair all fences, walls, sewers, sewer connections, drains, driveways, sidewalks, and other improvements which may be required at any time by law to be constructed, maintained, and repaired upon adjoining or in connection with or for the use said premises or any part thereof, and the Lessee shall make any and all additions to or alterations in the building and structures erected on said premises which may be required by law and shall otherwise observe and comply with any and all public laws, ordinances, and regulations for the time being applicable to the said premises, and Lessee shall indemnify and save harmless the Lessee against all actions, claims, and damages by reason of the Lessee's failure to keep and maintain said premises and the buildings and improvements thereon as hereinabove provided, or by reason of its nonobservance of law, ordinance, or regulation applicable thereto.

13. In the event of partial or total destruction of any building or improvement erected under this lease, the Lessee, at the Lessee's sole cost and expense, shall reconstruct the building or improvements in compliance with applicable laws and building regulation and in accordance with the original general plans agreed upon under this lease, excepting those charges, alterations, or commissions permitted by the written consent of the Lessor. Such reconstruction shall commence within ninety (90) days, weather permitting, after the injury occurs and shall be pursued diligently.

14. The Lessee shall not permit any mechanics, materialmen's contractors' or sub-contractors' liens arising from any work of construction, repair, restoration or removal as herein provided or another claims or demands of any nature to be enforced against the lease, premises or any part thereof, but the Lessee shall pay all such claim liens and demands before any actions is brought to enforce same; or if the Lessee desires to contest any such lien, claim, or demand, Lessee may do so, provided that the Lessee will deposit an adequate bond to prevent enforcement of any lien if the Lessee is unsuccessful in such contest; and the Lessee agrees to hold the Lessor and said premises free and harmless from any and all such liens, claims, or demands, together with all costs and expenses in connection therewith, the Lessee similarly shall have the right to contest any asserted tax or assessment against property by posting bond to prevent enforcement of any lien resulting therefrom, and the Lessor will execute any documents necessary in the Lessee's contest.

15. The Lessee shall pay, when and as the same become due and payable, all taxes, general and special assessments, and other like damages, including any and all licenses, fees or charges properly assessed, which may be levied, assessed, or imposed during the term of this lease or against the leased land and all interest therein and improvements and other property thereon to which either the Lessee or Lessor may become liable in relation thereto; and the Lessee agrees to protect and hold harmless the Lessor and the leased premises and all interest therein and improvements thereon from any and all such taxed assessments, and charges and from any lien therefor or sale or other proceedings to enforce payment thereof. Upon written application of the Lessor, the Lessee shall furnish to the Lessor for inspection and for such use as may be proper for the protection of the Lessor's interest in the leased property, written evidence duly certified that any and all taxes required to be paid by Lessee hereunder have been paid, satisfied, or otherwise discharged, Lessor shall execute and file any documents required by Lessee with reference to real estate tax exemption of the land.

16. In the event the Lessee shall fail to pay any tax, assessment, or other charges upon the leased premises when due and payable as provided herein, or shall fail to pay any lien or claim for labor or material used or employed in, or any claim for damages arising out of the construction, repair, restoration, maintenance, and use of said premises and the buildings and improvements erected and placed thereon, or any other claim, charge, or demand which Lessee has agreed to pay under the covenants of this lease, then the Lessor may, at his option, if the Lessee, after written notice from the Lessor, has failed to pay or to post bond against enforcement, pay any such tax, assessment, lien, claim, charge, or demand, or settle or discharge any action therefor, and all costs, expenses, damages and other sums incurred by Lessor in connection therewith shall be paid to Lessor upon demand, together with interest thereon at the rate of six per cent (6%) from the date of payment until repaid, and any default in such payment shall constitute a breach of the covenants and conditions of this lease.

17. Neither the Lessor nor the United States Government, nor their officers, agents, and employees shall be liable for any loss, damage, injury of any kind whatsoever to the person or property of the Lessee or sublessee or any of the Lessee's of Sublessee's employees, guests, or invitees, or any other person whomsoever, caused by any use of the leased premises, or by any defect in any building, structure, or other improvement erected thereon, or arising from any accident on said premises or any fire or other casualty thereon, or occasioned by the failure on the part of the Lessee or Sublessee to maintain said premises in a safe condition, or by any nuisance made or suffered on said premises, or by any act or omission of Lessee or Sublessee, or of Lessee's or Sublessee's employees, guests, or invitees, or arising from any other

cause whatsoever; and Lessee, as a material part of the consideration of this lease, hereby waives on Lessee's behalf all claims and demands against Lessor and agrees to indemnify and save Lessor free and harmless from liability for all claims and demands for any such loss, damage, or injury, together with all costs and expenses arising therefrom and in connection therewith.

18. The Lessee shall not encumber, assign, or transfer the lease or any right or interest thereto without the written consent and approval of the Lessor and the Secretary of the Interior or his duly authorized representative. The Lessee shall not encumber, assign or transfer any right or interest thereto, in or to any of the buildings and improvements erected and placed on the leased premises, without the written consent and approval of the Lessor, and no such encumbrances, assignment, or transfer, whether voluntary or involuntary by operation of law, under legal process, in bankruptcy, or otherwise, shall be valid, or effective without prior written consent and approval of the Lessor and/or the Secretary of the Interior or his duly authorized representative, and then only upon the condition that the encumbrance, assigns, or other successor in interest shall agree in written with and for the benefit of the Lessor, to assume, perform, and be bound by each and all of the covenants and conditions of the Lessee herein contained. Should the Lessee attempt to make any such encumbrance, assignment, or transfer, except as aforesaid, or should any right or interest of the Lessee hereunder or in or to said buildings and improvements be attached, levied upon, seized, or sold by or under court order or legal process, or otherwise, or should the Lessee become insolvent or be adjudged bankrupt, then any of the foregoing events shall be deemed a breach of the conditions and restrictions of this lease and thereupon the Lessor may, at his option, termination of this lease forthwith by written notice, and upon such termination of this lease shall cease and end and thenceforth be of no further force or effect, except as hereinafter otherwise provided. Should the Lessee sublet any building or improvement, or part thereof, he shall provided that such sub-tenant shall be subject to and bound by each and all of the conditions of this lease and no such subletting shall affect any of the obligations or liabilities of the Lessee hereunder. Should the Lessor and the Secretary of the Interior or his duly authorized representative consent to any such encumbrance, assignment, transfer, or sublease, none of the restrictions of this article shall be thereby waived and the same shall apply to each successive encumbrance, assignee, transferee, sublessee, and other successor in interest of the lease.

19. The Lessee shall abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to leases of this nature, provided that the annual rental, other payments, provisions for subletting or the term and extension or the term of this lease may not be changed by future regulation without the written consent of the parties hereto.

20. Time is hereby declared to be the essence of this lease. If the Lessee shall fail to pay any tax, assessment, lien, claim, charge, or demand provided for in this lease to be paid by the Lessee at the time and in the manner herein provided, or should Lessee default in the payment of any installment of rent or any other sum when due as herein provided, and if such default shall continue uncured for the period of thirty (30) days from and after written notice thereof Lessor to Lessee, or in the event Lessee shall default in the performance of or shall breach any other covenant, condition or restriction of this lease herein provided to be kept or performed by the Lessee, and if such provided to be kept or performed by the Lessee, and if such default or breach shall continue uncured for period of sixty (60) days from and after notice thereof by Lessor to Lessee, (during which 30-day or 60-day period, as the case may be, Lessee shall have the privilege of curing such default or breach), and in any such event, Lessor, at its option, may declare this lease forfeited by giving the Lessee written notice thereof, and upon such forfeiture, Lessee shall thereafter have no further rights or interests hereunder or in or to the leased premises or any part thereof, and Lessor may reenter and take possession of the leased premises and all buildings and improvements thereon, title to which shall vest in the Lessor, and may cast therefrom the Lessee and all persons claiming under the Lessee.

21. If action be brought by either party in unlawful detainer for rent or any other sums of money due under this lease, or to enforce performance of any of the covenants and conditions of this lease, the leasing party shall pay reasonable attorney's fees of the prevailing party, to be fixed by the Court as a part of the costs in any such action.

22. The Lessor or the Secretary of the Interior or their duly authorized representative shall have the right at any time during the term of this lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

23. Holding over the Lessee after the expiration of the term of this lease shall not constitute a renewal or extension thereof or give the Lessee any rights hereunder or in or to the leased premises.

24. Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land during the term of this lease; however, such termination shall not serve to abrogate this lease. In the event of such termination, all powers, duties, or other functions of the Secretary of the Interior or his authorized representative shall terminate, and the responsibility for enforcing compliance with the covenants of this lease shall be assumed by the Lessor, his heirs, devise, executors, administrators, or assigns.

25. The voluntary or other surrender of this lease by the Lessee, or a mutual cancellation thereof, shall not work a merger, but shall, at the option of the Lessor, terminate all of any existing subleases or sub-tenancies, if any, at the option of the Lessor, and operate as an assignment to it or any or all such subleases or sub-tenancies.

26. Upon abandonment, termination, revocation or cancellation of this lease, the Lessee may remove, within a reasonable time not to exceed ninety days, weather permitting, all structures and improvements, except those owned by the White Mountain Apache Tribe, and further excepting therefrom all septic tanks or water or sewage lines which are attached to the land and all electric lines or poles. All fixtures and improvements not so removed within the time specified shall be considered abandoned by the said Lessee; however, Lessee covenants and agrees that all fixtures, building and improvements placed upon said premises during the existence of this lease shall be subject to a landlord's lien for the payment of all rental due or to become due under the terms of this lease.

27. Whenever under this lease provision is made for notice of any kind, it should be deemed a sufficient notice and service thereof if the said notice to the Lessee is in writing and addresses to the last known post office address of the Lessee and deposited in the mail; and notice to the landlord shall be deemed sufficient notice and service thereof if the notice is in writing addressed to the Lessor at Whiteriver, Arizona, and deposited in the mail. Notice need be sent to only one Lessee where the Lessee consists of more than one person.

28. This lease and the covenants, conditions, and restrictions hereof shall be extended to and be binding upon the

successors, heirs, assigns, executors and administrators of the parties hereto.

29. This lease shall not be valid or binding upon either party hereto until approved by the Secretary of the Interior or his duly authorized representative.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this __day of _____, 195__.

WHITE MOUNTAIN APACHE TRIBE

BY _____

LESSOR

LESSEE

LESSEE

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

This instrument was acknowledge before me this ___day of ____, 195_, by _____

NOTARY PUBLIC

My commission expires: _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

This instrument was acknowledge before me this ___day of ____, 195_, _____

NOTARY PUBLIC

My commission expires: _____