

TITLE 38
YAVAPAI-APACHE WHITEHILLS CODE

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Section 101 - PURPOSE

To establish Yavapai-Apache Whitehills, a Subordinate Economic Organization of the Yavapai-Apache Nation, define Yavapai-Apache Whitehills powers, its financial responsibilities, the composition and authority of its Board of Directors, and for other purposes.

Section 201 - DEFINITIONS

- A. “Board of Directors” or “Business Board” means that body created pursuant to Title 32, The Business Board of Directors Act of 2012 to govern the operation of Whitehills.
- B. “Council” means the Yavapai-Apache Nation Tribal Council.
- C. “Nation” means the Yavapai-Apache Nation.
- D. “Routine Contract” means a recurring written agreement entered into at least more than twice in any particular fiscal year between Whitehills and the same person or entity whereby the terms of such agreement with the possible exception of price and/or quantity have not changed from the initial agreement approved by the Business Board for that same person or entity other than the date of the agreement and the quantity and/or price of the services or products provided therein.
- E. “SEO” means Subordinate Economic Organization.
- F. “Tribal Court” means the Yavapai-Apache Tribal Court.
- G. “Whitehills” means the Yavapai-Apache Whitehills.

Section 301 - ESTABLISHMENT

A. There is established a Subordinate Economic Organization (“SEO”) of the Yavapai-Apache Nation (“Nation”) to be known as Yavapai-Apache Whitehills (“Whitehills”), an economic subdivision of the Yavapai-Apache Nation.

B. Whitehills is an integral part of the Nation organized to perform an essential governmental function of the Nation, with all revenues restricted to public purposes and serving the Nation’s interests rather than for private gain. Whitehills is subject to the ultimate financial and managerial control by the Nation’s Tribal Council (“Council”). When exercising Council delegated powers, Whitehills maintains the full measure of the Nation’s sovereign immunity, the Nation’s exemption from federal and state taxation, and the Nation’s right to be treated as a state for the purposes of Section 7871 of the Internal Revenue Code of 1986, as amended from time to time.

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C. Whitehills promotes the economic self-sufficiency of the Nation by generating revenues through operating a gas station, convenience store, and fast food business for or on behalf of the Nation, in part to make up for property tax revenues funding state, county and local government operations and which revenues are generally unavailable to the Nation. Whitehills performs such other duties and responsibilities as may be assigned periodically to Whitehills by the Council. Whitehills shall have no private shareholders.

Section 302 - COUNCIL DELEGATED POWERS TO WHITEHILLS

A. Whitehills shall have the power to administer and operate the business of Whitehills, including hiring and firing of Whitehills staff, entering into agreements on behalf of Whitehills and managing such assets as the Nation assigns to Whitehills. In so doing, Whitehills shall function autonomously on a day-to-day basis while remaining ultimately accountable to the Nation, and specifically to the Council, through the enactment of policies, resolutions, laws, or otherwise as provided for in this Code.

B. Whitehills may enter into agreements without specific Council approval only when the following requirements of this Section 302, B and Section 302, C, below, are met:

1. For contracts, the transaction in question is: a) part of Whitehills' ordinary and routine course of business; b) specifically beneficial to Whitehills; and c) funded by and consistent with the specific allocations of a Whitehills' budget approved pursuant to Section 303, C below.

2. For debt in leasing or purchasing equipment and using that equipment as collateral for such debt: a) the transaction must be authorized by a budget that has been approved pursuant to Section 303, C below; and b) the significant terms of such transaction must be included in Whitehills' report to the Council for the quarterly period in which the transaction took place.

3. Whitehills shall not enter into any agreement or partake in any transaction, without the approval of the Council, which requires expenditures or involves financial obligations in excess of Whitehills' budget approved pursuant to Section 303, C below.

4. Council approval is required for any acquisition, conveyance, lease or other disposition of real property by Whitehills. For any acquisition by Whitehills of real property, the Council shall determine, by resolution, whether such land shall be owned in fee simple absolute by Whitehills, in fee simple absolute by the Nation or by the United States in trust for the Nation.

5. Sovereign immunity shall not be waived except as set forth under the requirements of this Section 302. Whitehills is required to regularly consult with the Nation's Attorney General or his/her designee to determine whether

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agreements entered into pursuant to this Section are consistent with this Section, the Nation's law and adequately protective of the Nation's assets. Any agreement that contains, appears to contain, or may be interpreted to contain, a waiver of sovereign immunity must be reviewed and approved by the Nation's Attorney General or his/her designee before the agreement is entered into. Any agreement purporting to waive sovereign immunity without the necessary reviews and approvals or otherwise not complying with the requirements of this Section 302 is void or voidable.

C. Except as provided in this Section 302, C, there shall be a limit to the liability and financial obligations that Whitehills can incur without further specific Council approval through resolution.

1. Whitehills' aggregate liability, obligation and financial exposure shall always remain limited solely and specifically to the assets of Whitehills obtained through the operation of Whitehills' designated business. Barring Council directive providing otherwise, such liability, obligation and financial exposure shall never include or obligate any real property, personal property or accounts or any other assets of the Nation, or any other SEO of the Nation, or of any branch, program, department, affiliate, enterprise, authority, division, subdivision or entity of the Nation. Unless the Council provides otherwise, no liability, obligation, financial exposure or debt of Whitehills shall extend to those assets transferred from the accounts or business of Whitehills to the accounts of the Nation or to amounts payable to the Nation by Whitehills.

2. All obligations incurred by Whitehills in connection with Whitehills shall be special obligations of Whitehills payable solely from the assets of Whitehills, separate and apart from the assets of the Nation.

3. Whitehills' obligations are not general obligations of the Nation.

4. Unless specifically provided otherwise in a separate resolution adopted by the Council, Whitehills can only assume responsibility and be liable only in its own name, and never in the name of the Nation, or any other Nation branch, program, department, authority, affiliate, enterprise, division, subdivision or entity.

5. No claim for liability or any other payment obligation in relation to the activities of Whitehills may be brought against the Nation or the Nation's other assets or property, including those of other SEOs, branches, programs, departments, authorities, affiliates, enterprises, divisions, subdivisions or entities by any other name or designation of the Nation. Unless a waiver is granted in accordance with the Section 302, nor shall any claim for liability or any other payment obligation be brought against Whitehills.

6. Unless specifically provided otherwise in a separate resolution adopted by the Council, Whitehills' liability for any project, undertaking or act

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shall always be expressly limited to actual unpaid contractual obligations (compensatory damages) and/or contractual specific performance and shall not include general, consequential, incidental, special or punitive damages.

7. No waiver of sovereign immunity may be implied. Any waiver of sovereign immunity that is approved under this Section 302 shall be: (a) express and unequivocal; (b) set forth in writing; and (c) narrowly construed.

8. Unless specifically provided otherwise in a separate resolution adopted by the Council:

a. Whitehills may, subject to the limitations set forth in this Section 302, by simple majority vote constituting official Business Board action, waive its sovereign immunity from un-consented suit to resolve disputes (i) in tribal court or (ii) through arbitration (where arbitration issues and judgments are enforced in the Tribal Court), respectively. With unanimous vote constituting official Business Board action, Whitehills may waive its sovereign immunity from un-consented suit in (iii) federal court or (iv) state court, respectively. Any waiver of sovereign immunity taken pursuant to this paragraph shall be in writing, reflected in the Business Board's minutes, and taken in the order of preference as set forth in this paragraph. Any authority to waive sovereign immunity delegated by the Board to the Chair of the Board or to the Manager of Whitehills pursuant to Section 302, C, Subsection 11 below, shall also be reduced to writing and reflected in the Board's minutes.

b. The waiver of sovereign immunity contained herein shall extend solely to the parties (including applicable third-party beneficiaries thereto) executing the agreement with Whitehills, as well as any approved successors and assigns thereof. Such waiver of sovereign immunity does not extend to: (i) any person or entity other than such parties, third-party beneficiaries, and approved successors and assigns; or (ii) any claims for general, consequential, incidental, special or punitive damages.

c. The preferential order for the choice of law Whitehills shall use in resolving disputes shall be: (i) the law of the Nation; (2) the law of the United States; or (3) the law of the State of Arizona, respectively.

9. No provision herein and no action of Whitehills shall be deemed or construed to waive the sovereign immunity of the Nation, or any other Nation SEO, branch, program, department, authority, affiliate, enterprise, division, subdivision or entity by any other name or designation of the Nation.

10. Unless specifically provided otherwise in a separate resolution adopted by the Council and to the extent that Whitehills obtains or provides insurance, bonding or other third-party indemnification pertinent to any agreement, Whitehills shall not have the authority to waive the sovereign

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immunity of Whitehills pursuant to that agreement beyond the limits of the coverage of such insurance, bonding or third-party indemnification applicable thereto. Whitehills' sovereign immunity is not, and shall not be, waived beyond the limits of such coverage. An insurer, bondsman or indemnitor retained by Whitehills may not avoid its obligations by asserting the sovereign immunity of Whitehills.

11. The Business Board may delegate the authority to enter into Routine Contracts to the Chairperson of the Board and/or to the Manager of Whitehills without further Business Board review if the following conditions are met: (a) the Routine Contracts do not have a waiver of sovereign immunity or the Routine Contracts have a waiver of sovereign immunity the Business Board has already decided by appropriate Business Board vote to grant in a prior Routine Contract; (b) the dollar amount of the Routine Contract does not exceed the dollar amount set by the Business Board; and (c) the Routine Contract otherwise meets all the remaining requirements of this Section 302.

12. Any waiver of sovereign immunity by Whitehills, the Business Board, or by Whitehills' officers, agents, employees or representatives resulting through action outside the scope of authority of Whitehills, the Business Board, or Whitehills' officers, agents, employees or representatives not allowed under this Code is void or voidable.

D. The Business Board may seek permission from the Council for consent to enter into transactions that are not within the powers delegated to Whitehills under this Section 302, Subsections A through C above, including the following:

1. Purchasing or leasing real property on behalf of the Nation or encumbering real property owned by the Nation, provided that the subleasing of real property may be conducted by Whitehills without the Council's approval should a master lease or other document covering such real property approved by the Council so provide;

2. Entering into any contract or otherwise incurring any obligation in connection with an activity that is not within the ordinary course of Whitehills' business such as, by way of example, construction of significant improvements in real property owned by the Nation or the entry into a new business activity;

3. Entering into any financial obligation, and executing any associated loan documents, which designate, as collateral or security, property other than that which is identified in Section 302, B, Subsection 2, above; and

4. Any transaction or act that involves liability, obligation or financial exposure in excess of that which is permitted under the terms of Section 302, B and C above.

E. Notwithstanding the provisions set forth in this Section 302, the Council retains the discretion to veto agreements and transactions, and to withhold any associated

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waivers of sovereign immunity, on a case-by-case basis, where specific questions are raised regarding certain agreements not already entered into by Whitehills, but which are otherwise authorized under Section 302, A through C, above. Furthermore, the Council retains the sole discretion to prospectively limit, by resolution, the types of agreements in which sovereign immunity may be waived even if such agreements otherwise satisfy the requirements set forth herein.

Section 303 - FINANCIAL RESPONSIBILITIES OF WHITEHILLS

A. Whitehills shall maintain financial books and records of account separate and apart from those of the Nation and other SEOs. Whitehills shall generate and maintain reports accurately reflecting the financial position, revenues and disbursements of Whitehills in accordance with generally accepted accounting principles and following the Nation's fiscal year. Whitehills' business and financial records shall be available for inspection and copying by the Council and/or the Finance Director, or their designees. Whitehills' books of account and financial reports shall be audited by an independent and reputable firm of certified public accountants, approved by the Council, and the corresponding audit reports shall be presented to the Council and to the Finance Director in such format as they may from time to time prescribe. The Council may order a special audit of Whitehills to be performed either by an independent and reputable firm of certified public accountants or by the Nation's internal auditor(s) and/or Finance Director.

B. In order to properly track the assets of Whitehills, Whitehills shall maintain a separate tax identification number issued by the United States Internal Revenue Service.

C. Consistent with the Nation's fiscal year, Whitehills shall adopt an annual operating budget of revenues and expenditures and a capital expenditures budget. These budgets shall be in such form as may be prescribed from time to time by the Council and/or the Finance Director. The capital expenditures budget shall identify and define Whitehills' plans for capital investments, including material operating leases, and shall state whether the planned investments are intended to be made from cash flow accumulations, from borrowing, or otherwise. The budgets shall be approved by the Business Board before such budgets are presented to the Council for approval before the end of the then current fiscal year. The Council must approve the budgets and, if applicable, appropriate money before Whitehills can expend such funds. Any amendments to an approved budget that would exceed the total amount of the approved budget shall also be approved by the Council before Whitehills can expend such funds.

D. Whitehills shall account for and transfer to the Nation any cash flow accumulations that exceed Whitehills' operational and capital expenditure requirements set forth in approved annual budgets, as amended from time to time. Such transfers shall be made in a timely manner as determined in consultation with the Finance Director and pursuant to guidelines adopted by the Council, if any.

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E. The highest dollar amount of indebtedness or liability, direct or contingent to which Whitehills may at any time subject itself, either in the aggregate or for a specific transaction or undertaking, shall be determined and directed from time to time by the Council. Review and approval by the Council shall be required only for any transaction or undertaking in excess of such amount.

F. The Council may, in its sole discretion, require Whitehills to utilize the services of one or more accountants, which accountant(s) may also provide accounting services to the Nation's other SEOs.

G. At least twice each fiscal year and consistent with Section 309 below, Whitehills shall appear before and report to the Council regarding Whitehills' activities.

Section 304 - WHITEHILLS' BOARD OF DIRECTORS

The operation of Whitehills shall be governed by a Board of Directors created pursuant to Title 32, The Business Board of Directors Act of 2012.

Section 305 - MANAGER

The Business Board, by vote of a majority of all Board members, shall appoint and retain a Manager to act as the high-ranking full-time employee of Whitehills. The Manager is the Chief Administrative and Executive Official of Whitehills, subject to the authority of the Business Board, and shall perform such duties as are designated in a position description approved by the Business Board, as well as such further duties as are assigned/delegated to him or her by the Business Board. The Manager shall consult monthly with Whitehills' administrative and fiscal staff to prepare monthly reports on Whitehills' income, expenses and operations. The Manager shall also oversee the preparation of Whitehills' budgets. The Manager shall supervise Whitehills' efforts in connection with all audits and insure that all financial reports and records are timely submitted to the entities or persons having a legitimate right to receive such reports and records or to whom such reports and records are legitimately due. The Manager shall attend Whitehills meetings of the Business Board. While in service for Whitehills, the Manager shall be ineligible to sit on the Business Board or on the board of any other SEO of the Nation.

Section 306 - FINANCIAL INTERESTS IN WHITEHILLS

No employee of Whitehills may have any direct or indirect financial interest that conflicts with, or appears to conflict substantially with, their responsibilities or duties as employees. No employee of Whitehills shall, for private gain: (i) engage in financial transactions with Whitehills; or (ii) make use of information and/or influence obtained through his or her status as an employee of Whitehills. In addition, no employee of Whitehills shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from any person, corporation, group or entity that has interests in or any relationship with, or is seeking to obtain any

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contractual or other business or financial relationship with Whitehills, or that conducts or seeks to conduct operations or activities that are regulated by Whitehills, or that has interests that may be affected by an employee's performance or non-performance of his or her official duties for Whitehills. Employees may, however, accept, within the bounds of good taste, social amenities and tokens of negligible monetary value as are consistent with generally prevailing customs. Employees may not use any Whitehills property for purposes other than officially approved activities.

Section 307 - INDIAN PREFERENCE IN EMPLOYMENT

Whitehills shall maintain effective policies for giving preference in hiring, promotion, and training to qualified enrolled Nation members in all levels of employment, including specifically in the employment of officers and other management employees. Effective preference policies shall be developed and adopted by the Business Board and approved by the Council for Whitehills consistent with the Nation's law and policies. Whitehills shall, in furtherance of the policies so developed, advise Nation employment officials of job openings as soon as possible and give full consideration to any enrolled Nation member referred to Whitehills for any job opening. The Indian preference policies shall provide for and require training programs to prepare enrolled Nation members for hiring and promotion in all levels of employment.

Section 308 - REPORTS TO THE COUNCIL

A. Whitehills shall provide written reports to the Council on its operations and significant activities and events in each calendar quarter within forty-five (45) days after the close of the quarter. At least two of these written reports shall be accompanied by oral presentations to the Council on a fiscal year basis. The reports shall include at least the following information as well as any other information the Council may request:

1. Financial statements showing revenues and disbursements for the quarter and for the fiscal year to date with comparisons to the operating and capital expenditure budgets.
2. A description of all waivers of sovereign immunity given in connection with any transaction entered into by Whitehills pursuant to Section 302 above.
3. A list and brief description of any claims asserted against Whitehills by way of lawsuit. The report shall also advise of any threats of lawsuit.
4. An assessment of the impact of Whitehills' activities on the Nation's sovereign political status and on the Nation's cultural preservation objectives.

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5. The report shall state the number of persons employed by Whitehills, the number of employees who are enrolled members of the Nation, the number of employees who are enrolled members of other Indian tribes and the number of enrolled Nation member employees who left employment during that period.

B. Whitehills' report for the fourth quarter of each fiscal year shall be submitted in writing containing the financial statements for the concluded fiscal year. However, if requested by the Council, a verbal presentation shall also be made.

C. From time to time the Nation's Finance Director may provide formats for the quarterly presentations and may request that additional information be included.

D. The Council may request additional or supplemental reports or presentations at any time.

Section 309 - MISCELLANEOUS

A. The Nation's Attorney General or his/her designee shall serve as legal counsel to Whitehills.

B. The Business Board is responsible for determining management's compensation based upon the goals of Whitehills.

C. The Business Board shall cooperate with the Nation's Finance Director in working with the Nation's external auditors to complete Whitehills' annual audit. At least one Board Member and the Manager shall meet with the external auditors of Whitehills prior to the beginning of the audit to advise the auditors of any concerns or areas of emphasis for the audit, as well as after the audit is completed to receive and review the audit report.

D. The employees of Whitehills shall not be liable for the debts of Whitehills. The private property of Whitehills' employees shall be forever exempt from Whitehills' debts and the Yavapai-Apache Nation indemnifies and holds harmless Whitehills' employees from liability or other claims arising out of their duties or functions as employees. This indemnity and protection from personal liability shall not extend to those actions or activities of the employees of Whitehills who create liability in relation to their intentionally wrongful acts or omissions, and/or who create liability for themselves or Whitehills by exceeding the scope of their official duties, responsibilities or obligations.

E. The Council hereby determines that all actions taken by Whitehills and all rights and obligations of Whitehills which have been established as a result of Whitehills' powers derived from Whitehills' original creation enactments are not to be invalidated by the adoption of this Code and this Code shall be controlling as to future actions, rights and obligations of Whitehills beginning with the effective date specified below.

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Section 310 - EFFECTIVE DATE

This amended Code will take effect on the date identified in the applicable Council Resolution adopting this amended Code.