

# THE SAN CARLOS APACHE COLLEGE, INC.

## BYLAWS

### PREAMBLE

The San Carlos Apache College, Inc. ("Corporation") is a 501(c)(3), nonprofit Corporation chartered by the Tribal Council of the San Carlos Apache Tribe ("Tribe") pursuant to Resolution No. AU-141-231 on August 11, 2014.

### ARTICLE I OFFICE

Principal Office. The Principal Office of the Corporation for the transaction of its business is located at San Carlos Indian Reservation ("Reservation," also known as San Carlos Apache Tribe trust lands), Arizona, but offices may be maintained, meetings held, and business of the Corporation carried on in such other places within or without the Reservation as the Board of Trustees may designate.

### ARTICLE II BOARD OF TRUSTEES

- 2.1 Authority of the Board of Trustees. The business of the Corporation, as specified in the Articles of Incorporation, shall be conducted by the Corporation's Board of Directors which shall be known as the "Board of Trustees". ("Board").
- 2.2 Members. The Board shall include no fewer than five (5) and no more than seven (7) voting member Trustees ("Trustee"). Each Trustee shall be entitled to one vote at Board meetings. Membership on the Board shall be by recommendation of the Corporation to the Chairperson of the Tribal Council, who may in turn submit the recommendation to the Tribal Council. The Tribal Council has the power to make appointments to the Board, subject to the qualifications set forth in Section 2.3 below.
- 2.3 Ex-Officio Trustees. The Tribal Chairperson, the Executive Director of the Tribe's Education Department, the Executive Director of the Tribe's Planning and Economic Development Department, a representative of the Tribe's Council of Elders, the President of the Corporation, and a representative of the college education industry (not doing business with the Corporation) as may be recommended by the Board shall be Ex Officio members of the Corporation's Board of Trustees. Ex Officio members shall not be entitled to vote on matters before the Board, and shall not be counted in computing the quorum or the maximum number of Trustees allowable. The term of office of each such Ex Officio Trustee shall continue until a successor takes office.
- 2.4 Life Members. The Tribal Council or the Board may, on the basis of unanimous endorsement, recommend that certain persons be invited to become Life

**ARTICLES OF INCORPORATION  
OF  
SAN CARLOS APACHE COLLEGE, Inc.**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That the undersigned incorporators, whose mailing address appears beneath their names, have this day associated themselves for the purpose of forming a nonprofit corporation under the laws of the San Carlos Apache Tribe ("Tribe") and the United States of America where pecuniary profit is not our object, do hereby certify:

**ARTICLE I**

The name of the Corporation is and shall be:

**SAN CARLOS APACHE COLLEGE, INC.** (hereinafter "CORPORATION")

**ARTICLE II**

The principal place of business shall be the San Carlos Apache Indian Reservation, Arizona, but offices may be maintained, meetings held and business of the Corporation carried on in such other places within or without the San Carlos Apache Indian Reservation as the Board of Regents may designate.

**ARTICLE III**

The Corporation is organized under Section 501(c)(3) of the Internal Revenue Code and the Corporation Code of the San Carlos Apache Tribe, and shall be operated as a non-profit corporation solely and exclusively for charitable, higher education and research purposes within the service area as may be defined by the Corporation.

**ARTICLE IV**

Without limiting the generality of the foregoing or the character of the affairs to be conducted by the Corporation in the future, the Corporation initially shall conduct the following business in close collaboration with the Tribe's Treasurer, the Tribe's Department of Education, the Tribe's Department of Planning and Economic Development, and other Tribal offices and programs sharing the Corporation's goals and mandates:

- (1) Offer College Degrees and Programs that provide students with technical training and skills development certificates, associate, baccalaureate, and post-graduate degrees;

- (2) Apache and Native American Studies Program which provides learning experiences enabling students to develop a clear sense of identity, learn the Apache language, culture, history, and unique skills useful to Apache and Native American communities;
- (3) Creating and enforcing student respect for the rights of others and preservation of orderly, democratic and traditional values;
- (4) Provide specific services to San Carlos Apache communities by:
  - (a) Assessing and identifying community needs;
  - (b) Developing programs and working with other agencies to meet community educational needs; and
  - (c) Providing other services to the communities related to the educational process;
- (5) Provide the following additional services related to the effective operation of the college facility and programs:
  - (a) Continually study and inventory the educational needs of the San Carlos Apache Tribe, and develop long-range plans to meet these needs, including implementation of a plan to obtain accreditation as a baccalaureate and postgraduate institution;
  - (b) Provide a research and technical assistance to the San Carlos Apache Tribal Council and its committees, the San Carlos Apache Tribe and its departments, other organizations and enterprises;
  - (c) Extend and offer educational opportunities by establishing multiple remote campuses and distributive learning centers;
  - (d) Offer students career counseling and placement services;
  - (e) Evaluate and improve the effectiveness of degree programs by maintaining communication with former students;
  - (f) Provide effective administrative support and student services to assure full utilization of the educational programs and maximum efficient use of budgeted funds;
  - (g) Encourage educational excellence in students by developing high scholastic standards to measure accomplishment and award degrees to students meeting such standards; and

- (h) Formulate and deliver land-grant institution programs in natural and rural development, classroom instruction, extension and research consistent with the Equity in Educational Land Grant Status of 1994, as applicable, and thereby participate and collaborate fully with entities of the San Carlos Apache Tribe and with other land grant colleges and universities to meet the human resource development needs of the San Carlos Apache people and others.
- (6) Coordinate all activities related to higher education services, programs and degrees provided by the Corporation, including development of the buildings, land and improvements, as may be provided by the Tribe and such other buildings as may be built by the Corporation for its purposes;
- (7) Appoint and supervise a President of the College to assure the performance of all duties and activities related to the Corporation and to act as a liaison between the Corporation, the Tribal Chairman, Tribal Council, the Tribe's Department of Education, and the Tribe's Department of Planning and Economic Development;
- (8) Develop, implement, and amend, as appropriate, a Strategic Plan for higher education services, institutional development, community outreach, research, and other subsidiary and supporting plans, as necessary;
- (9) Develop and provide higher educational programs, technical training and financial assistance to Tribal programs, businesses, community groups, and individual Tribal members in relevant and useful aspects of job training, curriculum development, and tribal culture and history;
- (7) Solicit, develop, and accept by subscription, gift, grant, bequest, devise or otherwise, money and property of any kind from any member of the general public and from any firm, association, trust, foundation, or corporation, including any municipal, state, county, or government unit of the Tribe, enterprise, or instrumentality thereof to support the purposes of the Corporation;
- (8) Promote public interest, as appropriate, in higher education, including, but not limited to, degree programs and Apache culture, tradition and history, and other appropriate topics and means;
- (9) Consistent with the foregoing purposes, to do all and everything necessary, suitable and proper for the accomplishment of the purposes or attainment of the objects herein set either alone or in association with other individuals, corporations or authorities; and, in general, to do and

perform such acts and transact such business in connection with the foregoing objects not inconsistent with law; provided, however, that the Corporation shall not perform any act or transact any business that will jeopardize the tax exempt status of the corporation under Section 501(c)(3) of the Internal Revenue Code and its regulations as such Section and regulations now exist or may hereafter be amended or under corresponding laws and regulations hereafter adopted;

- (10) Undertake an annual fiscal and management audit of the Corporation's operations through the services of an independent and certified public accounting firm;
- (11) The Chairperson of the Board of Regents and the President of the Corporation, after the completion of an annual fiscal and management audit, shall make a formal oral and written report to the Tribal Chairman, to the Tribal Council, and to the Corporation's Board of Regents, which shall contain information comparable to that required by IRS Form 990, not less often than annually and within 90 days of the close of the Corporation's fiscal year, and include a summary of the Corporation's operations, the budget which the Board has approved for the coming fiscal year, program details of the Corporation's major activities for the year just completed and projections for the succeeding year;
- (12) Make such other audit or financial reports available to the Tribal Council as reasonably requested by the Tribal Chairman or as directed by resolution of the Tribal Council, including a comparison audit of the prior fiscal year;
- (13) Establish such policies and procedures as are necessary for accounting, employment and operations of the Corporation; and
- (14) Establish long-term, institutional development for the Corporation through marketing and fundraising from donors, foundations, businesses, corporations, trusts, governments or other entities.

#### ARTICLE V

This Corporation shall be a nonprofit corporation and shall have no stock, and no dividends or pecuniary profits shall be declared or paid to the Regents hereof or to any other private individual. All of the earnings and property of the Corporation shall be used to further the mission, goals and mandates of the Corporation as set forth in Article III. No part of the net earnings, property, or assets of the Corporation, including donation or gifts of any kind whatsoever, shall inure to the benefit of or be distributable to any private shareholder or individual or any officer, Regent, or President of the

Corporation, except that the Corporation shall be authorized to pay reasonable compensation for administrative costs and expenses in accordance with established industry standards for like nonprofit corporations; provided, that such compensation is paid pursuant to an annual budget approved by the Board and to make payment and distributions in furtherance of the purposes set forth in the Articles of Incorporation and Bylaws. No substantial part of the activities of the Corporation shall be involved in carrying on *propaganda*, making political campaign contributions or otherwise attempt to influence Tribal, Federal, State or local legislation; nor shall the Corporation participate in, or intervene in, including publishing or distributing statements, any political campaign on behalf of, or in opposition to, any candidate for Tribal, Federal, State or local public office.

## ARTICLE VI

Under Section 7871 of the Indian Tribal Governmental Tax Status Act, Tribes are treated as states and under Sections 170, 2055, 2106(a)(2), and 2522 of the Internal Revenue Code, certain contributions or property transfers made to Tribes are tax deductible, regardless of any specific 501(c)(3) non-profit corporation status. The Corporation shall be operated in a manner that prevents it from being a private foundation within the meaning of Section 509 of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted; provided, however, that in the event the mission, goals and mandates of the Corporation cannot be accomplished unless the Corporation is operated as a private foundation, it shall not be operated in violation of the following limitations, restrictions and prohibitions:

- (1) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted;
- (2) The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted.
- (3) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted; and
- (4) The Corporation shall not make any taxable expenditure as defined in

Section 4945(d) of the Internal Revenue Code and its regulations as such Section and regulations now exist, or may hereafter be amended, or under corresponding laws and regulations hereafter adopted.

#### ARTICLE VII

According to Revenue Ruling 67-284, 1967-2 C.B.55, 58, as modified by Revenue Ruling 74-13, 1974-1 C.B. 14, federally recognized Indian Tribes are not taxable entities. In addition, as indicated by Revenue Ruling 81-295, 1981-2 C.B. 15, Tribal entities incorporating under Tribal law share the same tax status as that of the Tribe; as such, they are exempt from federal income taxation. Consequently, the Corporation shall at all times operate as a Tribal organization and shall not engage in any conduct which would jeopardize its status as a tax-exempt Tribal organization.

#### ARTICLE VIII

The time for the commencement of this Corporation shall be the date of the filing of these Articles of Incorporation and the issuance of a Charter by the San Carlos Apache Tribal Council. The duration of the Corporation shall be perpetual and shall continue in existence until dissolved by resolution of the Tribal Council of the San Carlos Apache Tribe.

#### ARTICLE IX

The Corporation shall not lend money to or use its credit to assist its Regents, President, Vice Presidents, Officers or employees, person or other entities, corporations, partnerships or businesses, governments, enterprises, or elected officials. Any Regent, President, Vice President, Officer or employee who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until the repayment of the loan and any such Regent, President, Vice President, Officer, or employee shall also be subject to terminated from office or employment in accordance with the Bylaws governing removal.

#### ARTICLE X

The Regents and Officers of the Corporation shall not be individually liable for the Corporation's debts or other liabilities. The private property of such individuals shall be exempt from any corporate debts or liabilities. A Regent of the Corporation shall not be personally liable to the Corporation or its members, if any, for monetary damages for breach of fiduciary duty as a Regent, except for liability:

- (1) For any breach of the Regent's duty of loyalty to the Corporation;

- (2) For acts of omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
- (3) From any transaction from which the Regent derived any improper personal benefit.

Any repeal or modification of this Article shall not adversely affect any right or protection of a Regent of the Corporation existing at the time of such repeal or modification.

#### ARTICLE XI

The Corporation shall maintain appropriate liability, property and error and omissions insurance for its operations and facilities sufficient to protect the interests of the Corporation, its Incorporators, the Board of Regents, and the San Carlos Apache Tribe. Such insurance policies shall designate the Tribe as an additional named insured. The Corporation shall maintain, as required: workers' compensation insurance; unemployment compensation insurance; fidelity bond or employee theft and dishonesty insurance covering the Regents, Officers, and employees who handle funds or property; and such other forms of insurance as the Board deems appropriate.

#### ARTICLE XII

The Corporation shall indemnify any Incorporator, Regent, Officer, President or employee of the Corporation or any former Incorporator, Regent, Officer, President or employee, for reasonable expenses actually and necessarily incurred in connection with the defense of any civil action, suit or proceeding in which said person is made a party by a reason of being, or having been such Incorporator, Regent, Officer or employee except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence, willful misconduct in the performance of duty, or otherwise acting beyond the scope of his or her duties. The Corporation shall also indemnify any such Incorporator, Regent, Officer, President, or employee for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Board, other than the Regents involved in the matter or controversy (whether or not a quorum exists), that it is in the best interests of the Corporation and the San Carlos Apache Tribe that such settlement be made and that such Incorporator, Regent, Officer, President or employee was not guilty of gross negligence, willful misconduct or other conduct beyond the scope of his or her duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such Incorporator, Regent, Officer, President or employee may have.

Any repeal or modification of this Article shall not adversely affect any right or protection of an Incorporator, Regent, Officer, President, or employee of the Corporation existing at the time of such repeal or modification.



### ARTICLE XIII

The control and management of the affairs of the Corporation shall be vested in a Board of Directors which shall be known as the "Board of Regents", initially appointed by the Tribal Council of the San Carlos Apache Tribe, of not less than five (5) nor more than seven (7) persons. The Regents shall represent a cross-section of Tribal members and non-members possessing individual experience and knowledge that are relevant to the goals of the Corporation. A certain number of "*ex officio*" Regents shall also be appointed but their positions will be non-voting. The Bylaws shall prescribe the terms of office and the manner of appointment and filling of vacancies on the Regents.

### ARTICLE XIV

The Corporation shall not have a membership, except as provided in Article 9 of the Bylaws.

### ARTICLE XV

(1) No person shall possess any property right in, or to, the property or assets of the Corporation.

(2) Upon dissolution of this Corporation as provided in the Bylaws, all assets remaining after payment of any outstanding liabilities shall be distributed exclusively to the San Carlos Apache Tribe, or, if designated by the Tribal Council, to the Tribe's charitable, religious, educational or scientific organizations which would then qualify under the provisions of Sections 501©(3), 170, 2055, 2106(a)(2), and 2522 of the Internal Revenue Code and its regulations, as such Sections and regulations now exist, or may hereafter be amended, or under other corresponding laws and regulations hereafter adopted or under Section 7871 of the Indian Tribal Governmental Tax Status Act, as determined in accordance with the Bylaws.

### ARTICLE XVI

The Articles of Incorporation and Bylaws of this Corporation may be amended by an affirmative vote of the majority of the Board of Regents at a meeting noticed for that purpose, provided that such amendments shall not become effective until approved by a majority vote of the San Carlos Apache Tribal Council.

### ARTICLE XVII

Nothing contained in these Articles shall constitute a waiver of sovereign immunity by the San Carlos Apache Tribe in any manner whatsoever or for any purpose and any such waiver by implication or otherwise is expressly denied.

## ARTICLE XVIII

This Corporation hereby appoints the Tribe's Attorney General of the San Carlos Apache Tribe as its initial statutory agent. All notices and processes, including service of summons, may be served upon said statutory agent and, when so served, shall be lawful, personal service upon the Corporation. The Board of Regents may, at any time, appoint another agent for such purpose and the filing of such other appointment shall revoke this or any other previous appointment of such agent.

## ARTICLE XIX

The names and addresses of the incorporators of the Corporation are:

1. Terry Rambler, Chairman, San Carlos Apache Tribe  
PO Box 0  
San Carlos, Arizona 85550
2. Bernadette Goode, Chair, Education Committee, San Carlos Apache Tribe  
PO Box 0  
San Carlos, Arizona 85550

IN WITNESS WHEREOF, these Articles of Incorporation are executed this 14 day of AUGUST, 2014, in San Carlos, Arizona, on the San Carlos Apache Indian Reservation, pursuant to Resolution No. AA-14-231.

  
Incorporator – Terry Rambler

  
Incorporator – Bernadette Goode

ATTEST:

  
Katrina Talkalai  
Tribal Council Secretary

Mailing Address:  
Office of Attorney General  
San Carlos Apache Tribe  
PO Box 40  
San Carlos, Arizona 85550