



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 12-73

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Tribe entered that certain loan agreement with the Bank of America dated May 15, 2008, modified by agreement dated February 11, 2010; and

WHEREAS, the Parties wish to make certain technical modifications with respect to the loan covenants and other commitments therein; and

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council hereby agrees to enter in to the attached second modification to the loan, which modification incorporates and preserves the existing waiver of sovereign immunity in favor of the Bank of America.

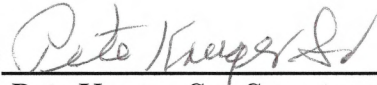
NOW THEREFORE BE IT FINALLY RESOLVED, that the Tribal Council hereby authorizes each Council member or the Executive Director, to do any and all accounts necessary and sign all papers to effect execution and implementation of the loan modification as shown.

CERTIFICATION

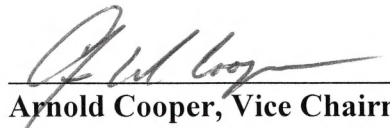
The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 13th day of December, 2012, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Pete Kruger Sr., Secretary



Arnold Cooper, Vice Chairman

This Second Loan Modification Agreement ("Second Modification") modifies the Loan Agreement dated May 15, 2008 (as previously modified by the First Loan Modification Agreement dated February 11, 2010, the "Agreement"), executed by the **Squaxin Island Tribe**, a federally-recognized Indian tribe ("Borrower") and **Bank of America, N.A.**, a national banking association ("Bank"), regarding various credit facilities provided by the Bank to the Borrower (the "Facilities"). Terms used in this Second Modification and defined in the Agreement shall have the meaning given to such terms in the Agreement. For mutual consideration, Borrower and Bank agree to amend the Agreement as follows:

1. Applicable Rate. Section 1.6 of the Agreement is amended to read as follows:

1.6 Applicable Rate. *The Applicable Rate shall be the following amounts per annum listed below the headings "LIBOR +," "Prime Rate +" and "Commitment Fee," based upon the ratio of Funded Debt to Adjusted EBITDA (determined in accordance with Section 10.3 of this Agreement, as set forth in the most recent compliance certificate received by the Bank as required in Section 10.2(e)):*

Pricing Level	Funded Debt/ Adjusted EBITDA	Applicable Rate (in percentage points per annum)		
		LIBOR +	Prime Rate +	Commitment Fee
1	≤1.50x	1.25%	0.50%	0.250%
2	>1.50x but ≤ 2.00x	1.50%	0.75%	0.375%
3	>2.00x but ≤ 2.50x	1.75%	1.00%	0.375%
4	>2.50x but ≤ 3.00x	2.00%	1.25%	0.500%
5	>3.00x	2.25%	1.25%	0.500%

The Applicable Rate shall be in effect from the date the most recent compliance certificate or financial statement is received by the Bank until the 10th day of the month following the date the next compliance certificate or financial statement is received; provided, however, that if the Borrower fails to timely deliver the next compliance certificate, the Applicable Rate from the date such compliance certificate was due until the date such compliance certificate is received by the Bank shall be the highest pricing level set forth above.

2. Funded Debt to EBITDA Ratio. Section 10.3 of the Agreement is amended to read as follows:

10.3 Funded Debt to EBITDA Ratio. *To maintain a ratio of Funded Debt to EBITDA that does not exceed the following for each quarter end specified below:*

Closing through 06/30/08 3.50 to 1
09/30/2008 through 03/31/2009 3.25 to 1
06/30/2009 through 09/30/2009 3.00 to 1
12/31/2009 through 09/30/2010 2.75 to 1
12/31/2010 and thereafter 2.50 to 1

(a) "Funded Debt" means, with respect to any date, without duplication, the sum of the aggregate outstanding on such date of all Recourse Indebtedness, plus letters of credit, plus capital leases outstanding on the last day of each month in the most recent quarter, divided by 3.

(b) "EBITDA" means net income, less income or plus loss from discontinued operations and extraordinary items, plus income taxes, plus interest expense, plus

depreciation, depletion, and amortization, plus the Borrower's permanent trust distribution and interest income, before payment of taxes.

(c) "Recourse Indebtedness" means funded indebtedness of the Borrower that has recourse to the Gaming Facilities.

This covenant shall be tested at the end of each fiscal quarter (including a fiscal quarter which is also the last day of a fiscal year), commencing with the first fiscal quarter ending after the date of this Agreement.

3. Fixed Charge Coverage Ratio. ~~The first sentence of~~ Section 10.4 of the Agreement is amended to read as follows:

~~2. 10.4 Fixed Charge Coverage Ratio. To maintain a Fixed Charge Coverage Ratio of at least 1.00 to 1. This covenant shall be tested at the end of each fiscal quarter (including a fiscal quarter coinciding with a fiscal year end): (1) initially for the number of quarters to date starting December 31, 2012, through quarter ending June 30, 2013, (2) and then for each subsequent quarter, for the four fiscal quarters ending on such date.~~

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(a) "Fixed Charge Coverage Ratio" means:

(i) the sum (without duplication) of the following for the four fiscal quarters ending on the date of determination: (A) EBITDA, as defined in Subsection 10.3(b), minus (B) Maintenance Capital Expenditures, minus (C) all dividends or other distributions, but excluding (1) transfers that are for principal and interest on the Golf Course Loan, and (2) 625,000 of distributions related to mediation expense for the Golf Course; divided by

(ii) the sum (without duplication) of the following for each fiscal quarter (including a fiscal quarter coinciding with a fiscal year end), (1) initially for the number of quarters to date starting December 31, 2012, through quarter ending June 30, 2013, (2) and then for each subsequent quarter, for the four fiscal quarters ending on the date of determination: (A) cash interest expense (including capitalized interest), plus (B) the actual reductions made of Recourse Indebtedness as defined in Subsection 10.3(c) of this Agreement.

(b) "Maintenance Capital Expenditures" means, for any period, the aggregate of all expenditures by the Borrower for the acquisition or leasing of fixed or capital assets or additions to equipment (including replacements, capital repairs and improvements during such period) that should be capitalized under GAAP on the balance sheet of the Gaming Enterprise, less net proceeds from the sales of fixed or capital assets of the Gaming Enterprise received by the Borrower. For the purpose of this definition, the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment owned by the Borrower or with insurance proceeds shall be included in Maintenance Capital Expenditures only to the extent that the gross amount of such purchase price exceeds the credit granted by the seller of such equipment for the equipment being traded in at such time, or the amount of such insurance proceeds, as the case may be.

~~3.4. Waiver of Defaults.~~ Borrower acknowledges that Borrower ~~failed and Bank disagree as to comply whether Borrower had complied~~ with Section 10.4 of the Agreement for the ~~period periods~~ ending June 30, 2012, ~~and September 30, 2012. Whether or not there was noncompliance,~~ Bank waives as an event of default ~~any~~ such failure. Notwithstanding such waiver, Bank shall have the right to enforce strict compliance for all subsequent periods with the recited Section (as amended in this Second Modification) and with all other terms and conditions of the Agreement.

4.5. Effectiveness of Amendments. The amendments contained in this Second Modification shall become effective upon delivery by the Borrower of, and compliance by the Borrower with, the following:

(a) This Second Modification duly executed by the Borrower.

(b) The Borrower shall have delivered to the Bank evidence satisfactory to the Bank of the authority of those executing this Second Modification on behalf of the Borrower to bind the Borrower, including resolution of the Tribal Council approval the transaction evidenced by this Second Modification and a current certificate of incumbency from the Tribal Secretary.

(c) The Borrower shall have provided or performed any other items that the Bank may reasonably require.

5-6. Representations, Warranties, Authority, No Adverse Claim.

(a) Reassertion of Representations and Warranties, No Default. The Borrower hereby represents that on and as of the date hereof and after giving effect to this Second Modification (i) there is no event that is, or with notice or lapse of time or both would be, an event of default under the Agreement except those events, if any, that have been disclosed in writing to the Bank or waived in writing by the Bank, and (ii) the representations and warranties in the Agreement are true as of the date of this Second Modification as if made on the date of this Second Modification.

(b) Authority; No Conflict; No Consent Required. The Borrower represents and warrants that the Borrower has the power and legal right and authority to enter into this Second Modification and has duly authorized as appropriate the execution and delivery of this Second Modification by proper tribal action, and this Second Modification does not contravene or constitute a default under any agreement, instrument or indenture to which the Borrower is a party or a signatory or a provision of the Borrower's Constitution, Bylaws or any other agreement or requirement of law, or result in the imposition of any lien on any of its property under any agreement binding on or applicable to the Borrower or any of its property except, if any, in favor of the Bank. The Borrower represents and warrants that no consent, approval or authorization of or registration or declaration with any person, including but not limited to the Bureau of Indian Affairs or any other governmental authority, is required in connection with the execution and delivery by the Borrower of this Second Modification or the performance of obligations of the Borrower therein described, except for those that the Borrower has obtained or provided and as to which the Borrower has delivered certified copies of documents evidencing each such action to the Bank.

(c) No Adverse Claim. The Borrower warrants, acknowledges, and agrees that no events have taken place and no circumstances exist at the date hereof that would give the Borrower a basis to assert a defense, offset, or counterclaim to any claim of the Bank with respect to the Borrower's obligations under the Agreement as amended by this Second Modification.

6-7. Affirmation of Agreement Further References, Affirmation of Security Interest. The Bank and the Borrower each acknowledge and affirm that the Agreement, as hereby amended, is hereby ratified and confirmed in all respects and all terms, conditions, and provisions of the Agreement, except as amended by this Second Modification, shall remain unmodified and in full force and effect. All references in any document or instrument to the Agreement are hereby amended and shall refer to the Agreement as amended by this Second Modification. The Borrower confirms to the Bank that the Borrower's obligations under the Agreement as amended by this Second Modification are and continue to be secured by the security interest in the collateral granted by the Borrower in favor of the Bank under the Agreement.

7-8. Successors. This Second Modification shall be binding upon the Borrower and the Bank and their respective successors and assigns, and shall inure to the benefit of the Borrower and the Bank and the successors and assigns of the Bank.

8-9. Dispute Resolution and Waiver of Sovereign Immunity. The Dispute Resolution Provision and Waiver of Sovereign Immunity provisions of the Agreement, Sections 13.4 and 13.5, respectively, are incorporated herein by this reference.

9-10. Legal Expenses. The Borrower agrees to reimburse the Bank, immediately upon execution of this Second Modification, for all reasonable out-of-pocket expenses (including attorney' fees

and legal expenses of outside counsel for the Bank) incurred in connection with this Second Modification and all other documents negotiated, prepared and executed in connection with this Second Modification, and on demand to pay and save the Bank harmless from all liability for any taxes that may be payable with respect to the execution or delivery of this Second Modification, which obligations of the Borrower shall survive any termination of the Agreement.

~~10.11.~~ Counterparts. This Second Modification may be executed in several counterparts as deemed necessary or convenient, each of which, when so executed, shall be deemed an original, provided that all such counterparts shall be regarded as one and the same document, and either party to this Second Modification may execute any such agreement by executing a counterpart of such agreement.

~~11.12.~~ **WASHINGTON NOTICE. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

DATED as of ~~December 13~~October ____, 2012.

Bank:

BANK OF AMERICA, N.A.

Borrower:

SQUAXIN ISLAND TRIBE

By _____
Donald D. Schulke, Senior Vice President

By _____
David Lopeman, Chairman