



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 13- 108

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe ("Tribe" or "Borrower"), 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, N.A. (the "Bank") dated January 23, 2012 (the "Existing Loan Agreement"); and

WHEREAS, the Tribe has not borrowed any amounts under the Existing Loan Agreement and the Availability Period (as defined in the Existing Loan Agreement) for the Draw Term Loan (as defined in the Existing Loan Agreement) has expired;

WHEREAS, the Bank seeks to broaden the waiver of sovereign immunity in the Existing Loan Agreement and to revise those provisions for changing the applicable interest rate to be consistent with federal regulations; and

WHEREAS, the Parties wish to extend the Availability Period under the Existing Loan and to make other modifications with respect to the loan covenants and other commitments therein, principally revising the provisions for changing the applicable interest rate so as to be consistent with federal regulation, and expanding the scope of the waiver of sovereign immunity; and

WHEREAS, terms not defined herein shall have the meaning set forth in the First Amendment to the Existing Loan Agreement and the Existing Loan Agreement.

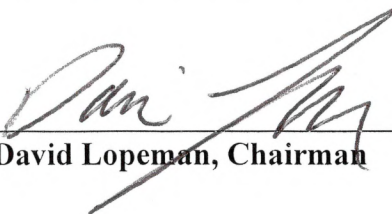
NOW THEREFORE BE IT RESOLVED AND ENACTED by the Council that the Squaxin Island Tribal Council hereby authorizes, ratifies and approves the terms and conditions of the attached First Amendment to the Existing Loan Agreement, which modification, among other matters, incorporates, preserves and expands the existing waiver of sovereign immunity in favor of the Bank.

BE IT FURTHER RESOLVED AND ENACTED that the Tribal Council hereby authorizes each Council member or the Tribal Administrator (each an "Authorized Officer") to (1) finalize, with such modifications and revisions that the Authorized Officers, in consultation with the Tribe's legal counsel, determine are in the best interests of the Tribe; and (2) execute and deliver the First Amendment to the Existing Loan Agreement, and do any and all accounts necessary and sign any and all other documents, certificates, instruments, financing statements, and any other papers necessary to carry out the obligations and transactions contemplated by the First Amendment to the Existing Loan Agreement.

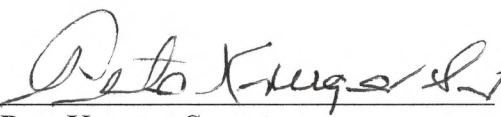
BE IT FURTHER RESOLVED AND ENACTED that the Tribal Council hereby expressly, irrevocably, and independently, by and through this resolution, waives the sovereign immunity of the Tribe to suit, consents to the jurisdiction of specified courts, consents to the application of the laws of the State of Washington, consents to arbitration, and waives any right to the exhaustion of tribal remedies as set forth in the First Amendment to the Existing Loan Agreement, and such provisions are incorporated by reference as if set forth fully herein.

CERTIFICATION

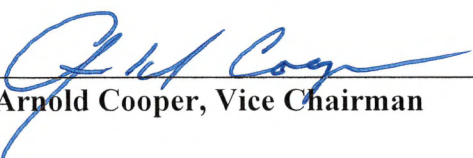
The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 22nd day of August, 2013, at which time a quorum was present and was passed by a vote of 5 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Pete Kruger, Secretary



Arnold Cooper, Vice Chairman



FIRST AMENDMENT TO LOAN AGREEMENT

This FIRST AMENDMENT TO LOAN AGREEMENT (this "Amendment"), is dated as of _____, by and between the SQUAXIN ISLAND TRIBE, a federally recognized Indian tribe (the "Borrower"), and BANK OF AMERICA, N.A. (the "Bank").

RECITALS

A. The Bank and the Borrower have entered into a Loan Agreement dated as of January 23, 2012, (as such may be further amended, restated, modified, extended or supplemented from time to time, the "Existing Loan Agreement").

B. The Borrower has not borrowed any amounts under the Existing Loan Agreement and the Availability Period (as defined in the Existing Loan Agreement) for the Draw Term Loan (as defined in the Existing Loan Agreement) under the Existing Loan Agreement has expired.

C. The parties desire to extend the Availability Period under the Existing Loan Agreement and amend certain other provisions of the Existing Loan Agreement, subject to the terms and conditions set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby covenant and agree to be bound as follows:

Section 1. Capitalized Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Existing Loan Agreement, unless the context shall otherwise require.

Section 2. Amendments.

2.1 Section 1.2 of the Existing Loan Agreement is hereby amended in its entirety to read as follows:

1.2 Availability Period. The Draw Term Loan is available between the date of this Agreement and March 31, 2014, or such earlier date as the availability may terminate as provided in this Agreement (the "Draw Term Loan Expiration Date").

2.2 Section 1.3(c) of the Existing Loan Agreement is hereby amended in its entirety to read as follows:

(c) The Borrower will repay principal in equal installments of \$24,655.55 each, beginning on May 1, 2014, and on the same day of each month thereafter, and ending on May 1, 2029 (the "Repayment Period"). On the last day of the Repayment Period, the Borrower will repay the remaining principal balance plus any interest then due.

2.3 Section 1.4 of the Existing Loan Agreement is hereby amended in its entirety to read as follows:

1.4 Interest Rate.

(a) The interest rate for the Draw Term Loan is a rate per year equal to the Prime Rate plus 1.50%, computed on the basis of a 365/366 –day year and the actual number of days elapsed.

(b) The Prime Rate means for any day, a fluctuating rate per annum set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such Prime Rate announced by Bank of America shall take effect at the opening of the first business day of any December, March, June or September on or after the day specified in the public announcement of such change. The Bank's Prime Rate is published periodically by Bloomberg and is also available at: <http://newsroom.bankofamerica.com/press-kit/prime-rate-information>

2.4 Section 2.2(a) of the Existing Loan Agreement is hereby amended in its entirety to read as follows:

(a) The interest period during which the LIBOR Rate will be in effect will be three, six or 12 months as elected by the Borrower and agreed to by the Bank, provided that any such elected interest period may only be elected such that it takes effect on the first LIBOR Banking Day of any December, March, June or September in any year. The first day of the interest period must be a day other than a Saturday or a Sunday on which the Bank is open for business in New York and London and dealing in offshore dollars (a "LIBOR Banking Day"). The last day of the interest period and the actual number of days during the interest period will be determined by the Bank using the practices of the London inter-bank market. Each interest period shall expire no later than the Draw Term Loan Expiration Date.

2.5 Section 10.4(d) of the Existing Loan Agreement is hereby amended by adding the following sentence at the end of such sub-section:

“An arbitration award shall not be subject to review or modification by a court for any reason other than the circumstances described in 9 U.S.C. §§10 and 11, and in the event the arbitration award is enforced in a forum of the Borrower, the circumstances described in the Borrower’s Arbitration Code, Title 4, Chapter 4.52.”

2.6 Section 10.5 of the Existing Loan Agreement is hereby amended in its entirety to read as follows:

10.5 Waiver of Sovereign Immunity.

(a) The Borrower expressly and irrevocably waives its sovereign immunity from suit (and any defense based thereon) from any suit, action, arbitration proceeding or other proceeding or from any legal process, whether such action be brought in law or in equity, arising in contract, tort or statute, for claims arising under or with respect to the obligations and indebtedness evidenced by this Agreement and any related documents or to enforce and execute any order, judgment or ruling resulting from any such action or arbitration and consents to be sued in the courts of the United States District Courts located within the State of Washington and any appellate court to which any appeals therefrom are available (collectively the “Washington Federal Courts”) and the courts of the State of Washington and any appellate court to which any appeals therefrom are available (collectively the “Washington State Courts” and together with the Washington Federal Courts the “Washington Courts”). If it is determined that none of the foregoing courts has jurisdiction, then the Borrower consents to the jurisdiction of the Squaxin Island Tribal Court (the “Tribal Courts” and together with the Washington Courts, the “Consented Courts”). The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any action arising out of or relating to this Agreement or the transactions contemplated hereunder or thereunder in any Washington Court. The Borrower hereby irrevocably waives any requirement of exhaustion of tribal remedies. Provided, the waiver of sovereign immunity expressed herein is limited to the Bank, its successors in interest and assigns, the indemnitees under this Agreement or any of their respective officers, directors, agents or employees (a “Grantee”).

(b) The obligations of the Borrower under this Agreement, the Security Agreement or any related security or other agreements or documents required by this agreement (the “Loan Documents”) are general obligations of the Tribe; provided however, that in no case may recourse or enforcement be made against: (i) real estate held in trust by the United States for the benefit of the Borrower; (ii) real estate subject to restrictions by the United States against alienation; (iii) any restricted federal or grant funds or other assets against which enforcement is unlawful under applicable Federal or State law; (iv) the Borrower’s minor’s trust established under its revenue allocation plan; or (v) the Permanent Trust. As used herein, “Permanent Trust” means that portion of Tribal enterprise revenues, and the earnings thereon, deposited into a long-term account and managed under the prudent investor standard by the Tribe’s Finance Department under the authority

of Section 2.36.095, subsections (A)(2)(a) and (C)(2)(c) of the Tribal Code, as those sections may be amended or recodified from time to time, including but not limited to those funds deposited in Charles Schwab Account #91090667.

Section 3. Effectiveness of Amendment. This Amendment shall become effective upon the date (the "Effective Date") of delivery of, and compliance by the Borrower (or such other party specified below) with, the following:

3.1 This Amendment duly executed by the Borrower and the Bank.

3.2 A copy of the resolutions of the Tribal Council ("Tribal Council") of the Borrower authorizing the execution, delivery and performance of this Amendment and any other instrument or agreement executed by the Borrower in connection with this Amendment (collectively, the "Amendment Documents") along with a certification by the Secretary of the Tribal Council identifying the officer or officers of the Borrower authorized to execute the Amendment Documents, and certifying as to such officer's incumbency in such offices as such officer holds.

3.3 A (i) a written opinion or other written determination from the United States Department of Agriculture ("USDA") approving the amendments of the terms of the Existing Loan Agreement to which USDA Conditional Commitment for Guarantee dated as of September 23, 2011, applies; and (ii) issuance of a revised USDA Conditional Commitment for Guarantee consistent with the terms of this Amendment.

3.4 The Borrower shall have paid the costs and expenses of the Bank in connection with this Amendment, including the fees of legal counsel to the Bank as provided in Section 10.8 of the Existing Loan Agreement.

3.5 The Borrower shall have satisfied such other conditions as specified by the Bank in connection with the Existing Loan Agreement and this Amendment.

Section 4. Representations, Warranties, Authority, No Adverse Claim, Notice.

4.1 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 Amendment (a) all of the representations and warranties contained in the Existing Loan Agreement are true, correct and complete in all respects as of the date hereof as though made on and as of such date, except for changes permitted by the terms of the Existing Loan Agreement, and (b) there will exist no Default or Event of Default under the Existing Loan Agreement as amended by this Amendment on such date.

4.2 Authority, No Conflict, No Consent Required. The execution, delivery and performance by Borrower of this Amendment have been duly authorized by all necessary action of the Borrower and other action, and do not:

(a) require any consent or approval not heretofore obtained of the Tribal Council, the Tribe or membership of the Tribe or of any security holder or creditor;

(b) violate or conflict with any provision of any ordinance or other laws of the Tribe;

(c) result in or require the creation or imposition of any lien upon or with respect to any property now owned or leased or hereafter acquired;

(d) violate any applicable law to Borrower; or

(e) result in a breach of or default under, or would, with the giving of notice or the lapse of time or both, constitute a material breach of or default under, or cause or permit the acceleration of any obligation owed under, any mortgage, indenture or loan agreement or any other contractual obligation to which Borrower is a party or by which Borrower or any of its property is bound or affected.

4.3 No Adverse Claim. The Borrower warrants, acknowledges and agrees that no events have taken place and no circumstances exist at the date hereof which would give the Borrower a basis to assert a defense, offset or counterclaim to any claim of the Bank with respect to the obligations of the Borrower under the Existing Loan Agreement.

Section 5. Affirmation of Existing Loan Agreement, Further References, Affirmation of Security Interest. The Bank and the Borrower each acknowledge and affirm that the Existing Loan Agreement, as hereby amended, is hereby ratified and confirmed in all respects and all terms, conditions and provisions of the Existing Loan Agreement, except as amended by this Amendment, shall remain unmodified and in full force and effect. All references in any document or instrument to the Existing Loan Agreement are hereby amended and shall refer to the Existing Loan Agreement as amended by this Amendment. The Borrower confirms to the Bank that the obligations of the Borrower under the Existing Loan Agreement, as amended hereby, are and continue to be secured by the security interests granted by the Borrower in favor of the Bank under the Security Agreement given by the Borrower, as Pledgor, to the Bank dated as of January 23, 2012, and all of the terms, conditions, provisions, agreements, requirements, promises, obligations, duties, covenants and representations of the Borrower under the Loan Documents are incorporated herein by reference and are hereby ratified and affirmed in all respects by the Borrower.

Section 6. Merger and Integration, Superseding Effect. This Amendment, from and after the date hereof, embodies the entire agreement and understanding between the parties hereto and supersedes and has merged into this Amendment all prior oral and written agreements on the same subjects by and between the parties hereto with the effect that this Amendment, shall control with respect to the specific subjects hereof and thereof.

Section 7. Severability. If any part of this Amendment is not enforceable, the rest of this Amendment may be enforced.

Section 8. Successors. This Amendment 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.

Section 9. Legal Expenses. As provided in Section 10.8 of the Existing Loan Agreement, the Borrower agrees to reimburse the Bank, upon execution of this Amendment, for all costs and attorney's fees (including the allocated costs of the Bank's in-house counsel and the fees and expenses of outside counsel for the Bank) incurred in connection with this Amendment.

Section 10. Headings. The headings of various sections of this Amendment have been inserted for reference only and shall not be deemed to be a part of this Amendment.

Section 11. Counterparts. This Amendment 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 Amendment may execute this Amendment by executing a counterpart thereof.

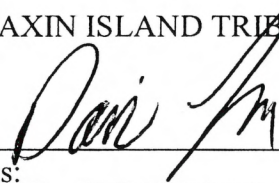
Section 12. Governing Law. The provisions of the Existing Loan Agreement relating to the Governing Law (Section 10.2) are hereby expressly incorporated into this Amendment as though fully set forth herein.

Section 13. Arbitration; Waiver of Sovereign Immunity; Consent to Jurisdiction. The provisions of the Existing Loan Agreement relating to the waiver of the sovereign immunity of the Borrower and the consent by the Borrower to the jurisdiction of the courts specified in the Existing Loan Agreement, as amended by this Amendment (Section 10.5) and dispute resolution, arbitration and the waiver of jury trial, as amended by this Amendment (Section 10.4) are hereby expressly incorporated into this Amendment as though fully set forth herein.

Section 14. Disclosure. ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date and year first above written.

SQUAXIN ISLAND TRIBE

By: 
Its: _____

BANK OF AMERICA, N.A.

By: _____
Its: _____

