



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 07-01

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 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 with protecting and managing the lands and treaty resources and rights of the Tribe including those expressed in Section 1 (b) and (i) of the Constitution;

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 treaty land and treaty resources of the Tribe; and

WHEREAS, the Tribe and Bank of America, N.A. (“Bank”) have negotiated a first amendment to the Business Loan Agreement entered into on August, 2006, and by such amendment the Bank will relax the financial covenant of the ratio of Funded Debt to EBIDTA through June 2007 to allow the Tribe to exercise its option to exercise the first of two agreed \$5,000,000 increments, for the purpose of financing (a) a non-smoking casino remodel project, (b) a hotel room expansion, (c) an events centers, (d) a wastewater reclamation facility, and (e) tribal capital projects, including (1) construction of a cigarette factory; (2) infrastructure work for a Washington Department of Transportation interchange; (3) construction of a water and sewer project; and (4) development of a parking lot, and to pay fees and expenses associated with the amendment and to restate the pricing as evidenced by the First Amendment to Business Loan Agreement between Bank and the Borrower (“First Amendment” or “Amended Loan Agreement”) dated August 1, 2006; and

WHEREAS, in order to induce Bank to complete this loan and execute the First Amendment and perform the same it is necessary for the Council to ratify and approve the terms of the First Amendment and to authorize the Tribe to negotiate and execute final versions of the First Amendment, to issue a limited waiver of sovereign immunity; to authorize arbitration of certain controversies that could arise regarding the transaction; to consent that the Tribe be sued in state,

federal and tribal courts pertaining to the transaction; to consent to the application of the substantive laws of the State of Washington – all in order that the Bank may be induced to make the loan as evidenced by the existing Note, as amended, and in order that Bank may be assured it may enforce the Amended Loan Agreement and any related documents as well as the existing Note against the Tribe.

NOW, THEREFORE, BE IT RESOLVED AND ENACTED By the Council as follows:

Section 1. Authorization to Execute and Deliver. The terms and conditions of the above-described drafts of the First Amendment to the Loan Agreement are hereby authorized and ratified. The Chairman, or in his absence the Vice-chairman, is hereby authorized to execute and deliver on behalf of the Tribe the First Amendment to the Loan Agreement, as well as any non-material revisions of the same prior to their execution as they shall determine, together with any and all other documents, promissory notes, financing statements, consents, certifications, representations and warranties required by Bank or its representatives in order to effect the transactions and the making of the loan. In addition, the Chairman, or in his absence the Vice-chairman, is hereby authorized to (a) enter into any swap transaction, forward transaction, foreign exchange transaction or any combination of the foregoing transactions or option to enter into any of the foregoing transactions, including, without limitation, any commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction and currency option, or any similar transaction (each a “Transaction”), with Bank of America, N.A. and (b) to execute and deliver (i) any agreement or document (including, without limitation, a master agreement and confirmations of any Transaction) that in the opinion of the officer executing or delivering any such agreement or document may be necessary or appropriate in connection with any Transaction and (ii) any amendment or revision to any such agreement or document which in the opinion of the officer executing or delivering any such agreement of document may be necessary or appropriate.

Section 2. Choice of Law Authorization.

A. The parties to any contract, agreement, or other like document related to the transaction described in Section 1 of this Resolution, including the Tribe and any department, program, or corporation of the Tribe, are hereby permitted and authorized to include in the document a stipulation providing that a designated body of laws will govern the interpretation and enforcement of the document(s), and

B. The Tribal Court shall, in cases brought before the Court over which it has jurisdiction and involving the document, use the designated body of laws for the interpretation and enforcement of the document.

Section 3. Choice of Law. The First Amendment to the Loan Agreement and all related documents thereto shall create the rights and remedies that would apply and shall be governed by and construed in accordance with the laws of the state of Washington (without regard to principles of conflict of laws), including the Washington Uniform Commercial Code.

Section 4. Waiver of Exhaustion of Tribal Remedies. The Council for itself and on behalf of the Tribe consents and agrees that it shall not be necessary in any litigation or arbitration or dispute resolution proceedings pertaining to the transactions described in the First Amendment to the Loan Agreement and other documents or transactions relating thereto, that there first be any deferral to or exhaustion of remedies in the Tribal Court of the Tribe, any other tribal court or dispute resolution tribunal, or the Council. The Council agrees for itself and on behalf of the Tribe not to assert that the Tribal Court of the Tribe or any other courts or dispute resolution tribunals created by the Tribe, including but not limited to the Council itself, shall have jurisdiction as an adjudicative tribunal over any case or controversy or proceeding pertaining to said transaction or the First Amendment to the Loan Agreement unless the same is initiated by or consented to in writing by Bank.

Section 5. Choice of Venue; Submission to Jurisdiction. The Council, for itself and on behalf of the Tribe, consents and agrees that the United States District Court for the Western District of Washington, the United States Claims Court (in actions that would be within its jurisdiction where the United States is the only defendant), the federal appellate courts, and the Washington courts of general jurisdiction, including their appellate courts, shall have jurisdiction in any dispute regarding the transactions or subject matter or proceedings described in the Note or the Amended Loan Agreement. This consent and agreement will not extend to any other transactions or subjects. If it is determined that the foregoing court does not enjoy proper jurisdiction, then the Tribe consents to suit to compel or enforce arbitration in any federal or tribal court of competent jurisdiction, including the Squaxin Island Tribal Court.

Section 6. Waiver of Sovereign Immunity, Arbitration and Waiver of Jury Trial. The Council, for itself and on behalf of the Tribe, expressly and irrevocably waives its sovereign immunity from suit for claims by Bank with respect to the obligations and indebtedness evidenced by the First Amendment to the Loan Agreement and any other document related to this transaction and consents to be sued in the courts of the state of Washington to compel or enforce arbitration as described and under the terms of the Amended Loan Agreement; *provided*, the waiver of sovereign immunity expressed herein is limited to the Bank and its successor and assigns as lender under the First Amendment to the Loan Agreement and, *provided further*, that recourse of the Bank under this waiver of sovereign immunity is limited to the Net Revenues of the Borrower's Gaming Enterprise, as defined in the Loan Agreement dated March 7, 2003, and all personal property associated with same..

The Council further agrees that:

(a) At the request of the Bank, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U. S. Code) (the "Act"). The Act will apply even though this Agreement provides that it is governed by the law of a specified state.

(b) Arbitration proceedings will be determined in accordance with the Act, the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and the terms of this paragraph. In the event of any inconsistency, the terms of this paragraph shall control.

(c) The arbitration shall be administered by AAA and conducted in Washington state. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and enforced.

(d) The arbitrator(s) will have the authority to decide whether any Claim is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis. For purposes of the application of the statute of limitations, the service on a party of a demand for arbitration under applicable AAA rules is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Agreement.

(e) This paragraph does not limit the right of the Bank to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or nonjudicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies

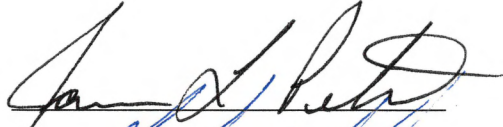
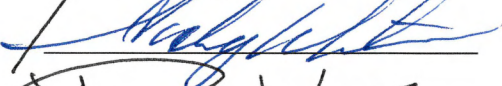
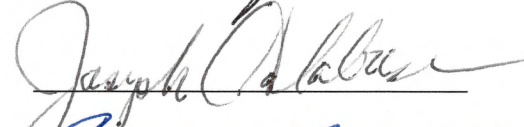
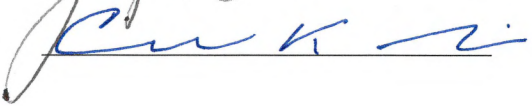
(f) The filing of a court action is not intended to constitute a waiver of the right of Tribe or the Bank, including the suing party, thereafter to require submittal of the Claim to arbitration.

(g) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Claim. Furthermore, without intending in any way to limit the Amended Loan Agreement to arbitrate, to the extent any Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Claim. This provision is a material inducement for the parties entering into the Amended Loan Agreement. The filing of a court action is not intended to constitute a waiver of the right of the any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

The Council further waives any right it may have to a jury trial under any proceeding related to the Amended Loan Agreement or any other documents related thereto.

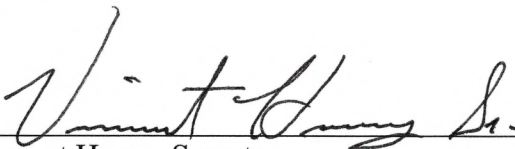
Section 7. Bank Instruction Authority. In and by this Resolution and until revised by subsequent action of the Tribal Council, the Tribal Council authorizes on behalf of the Tribe the taking of advances, making of repayments or for the designation of the optional LIBOR Rate under Section \_\_\_ of the First Amendment to the Loan Agreement upon written instruction of one

individual, whose true signature appears opposite his or her name, from each category of signatories listed below:

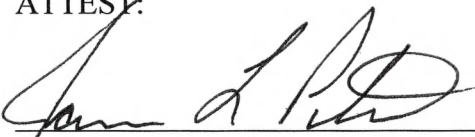
<u>Name</u>	<u>Title</u>	<u>Signature</u>
Elected Tribal Officials		
James L. Peters	Chairman	
Andy Whitener	Vice-Chairman	
Russell Harper	Treasurer	
Gaming Enterprise Officials		
Joseph Calabrese	Chief Executive Officer	
Cameron Goodwin	Chief Financial Officer	

CERTIFICATION

I, Vincent Henry Sr, hereby certify that the above Resolution was duly enacted by the Squaxin Island Tribal Council on January 2, 2007; a quorum being present with a vote of 5 for, 0 against, \_\_\_\_\_ abstaining, 1 not voting.

  
\_\_\_\_\_  
Vincent Henry, Secretary  
Squaxin Island Tribe

ATTEST:

  
\_\_\_\_\_  
James L. Peters, Chairman  
Squaxin Island Tribal Council

This FIRST AMENDMENT TO BUSINESS LOAN AGREEMENT ("First Amendment") is made and entered into as of December 26, 2006, by and between **Bank of America, N.A.** (the "Bank") and the **Squaxin Island Tribe** (the "Borrower").

RECITALS

A. The Bank and the Borrower entered into a Business Loan Agreement dated as August 1, 2006 (the "Loan Agreement").

B. In the Loan Agreement the Bank (i) agreed to provide a term loan in the amount of \$10,331,000.00 for the purpose of financing the construction of an 18-hole championship golf course, and (ii) also agreed to provide a reducing, revolving line of credit in the amount of \$40,000,000, with the availability period ending June 1, 2011, with the right to increase the total commitment to \$50,000,000, in \$5,000,000 increments, for the purpose of for the purpose of financing (A) a non-smoking casino remodel project, (B) a hotel room expansion, (C) an events center, (D) a wastewater reclamation facility, and (E) tribal capital projects including (1) construction of a cigarette factory; (2) infrastructure work for a Washington State Department of Transportation interchange, (3) construction of a water and sewer project; and (4) development of a parking lot.

C. The Borrower now requests a portion of the commitment increase to be exercised, and the Borrower and the Bank wish to make certain other amendments to the Loan 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:

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

2. Amendments. Unless amended by this Section, all other terms and provisions of the Loan Agreement, as amended, are retained and remain in full force and effect. The following sections of the Loan Agreement, as amended, are hereby amended as follows:

(a) The Borrower hereby exercises its option to increase, as previously agreed, the Commitment to \$45,000,000, pursuant to Section 2.1(a)(i) of the Loan Agreement.

(b) Section 2.6 of the Loan Agreement is amended to read as follows:

1.6 Applicable Margin. *The Applicable Margin shall be the following amounts per annum, based upon the ratio of Funded Debt to EBITDA (determined in accordance with Section 9.3 of this Agreement, as set forth in the most recent compliance certificate received by the Bank as required in Section 9.2(e)); provided, however, that, until the date the first compliance certificate is received by the Bank after the end of an Interest Period, such amounts shall be those indicated for pricing level 5 set forth below:*

Pricing Level	Funded Debt/ EBITDA	Applicable Margin (in percentage points per annum)		Commitment Fee
		LIBOR +	Base Rate +	
1	≤ 1.50x	1.75%	0.75%	0.25%
2	>1.50x but ≤ 2.00x	2.00%	1.00%	0.375%
3	>2.00x but ≤ 2.50x	2.25%	1.25%	0.375%
4	>2.50x but ≤ 3.00x	2.50%	1.50%	0.50%
5	>3.00x but ≤ 3.50x	2.75%	1.75%	0.50%

The Applicable Margin shall be in effect from the date the most recent compliance certificate or financial statement is received by the Bank until 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 Margin 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.

(c) Subsection 9.2(b) of the Loan Agreement is amended to read as follows:

(b) Within 45 days of the end of each month (including the last month in each fiscal year), monthly financial statements of the Borrower's Gaming Enterprise, certified and dated by an authorized financial officer of the Borrower. These financial statements may be Borrower prepared and shall be prepared on a consolidated basis.

(d) The first paragraph of Section 9.3 of the Loan Agreement is amended to read as follows:

9.3 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:

- Through 06/30/07..... 3.5 to 1
- 09/30/07 ..... 3.0 to 1
- 12/31/07 through 09/30/08..... 2.75 to 1
- 12/31/08 through 06/30/09..... 2.50 to 1
- 09/30/09 through 03/31/10..... 2.25 to 1
- 03/31/10 to the Maturity Date..... 2.00 to 1

3. Effectiveness of Amendment. The amendments contained in this First Amendment shall become effective upon the date of delivery of and compliance by the Borrower with, the following:

(a) This First Amendment duly executed by the Borrower and the Bank.

(b) A copy of the resolution of the Tribal Council of the Borrower authorizing the execution, delivery and performance of this First Amendment and any other instrument or agreement executed by the Borrower in connection with this First Amendment (collectively, the "Amendment Documents") along with a certification of the officers of the Tribal Council which identifies the officer or officers of the Borrower authorized to execute the Amendment Documents and certifies specimens of each such officer's signature and such officer's incumbency in such offices.

(c) The Borrower shall have paid the Bank any costs and expenses of the Bank in connection with this First Amendment, including the fees of legal counsel to the Bank.

(d) The Borrower shall have satisfied such other conditions as specified by the Bank in connection with the Loan Agreement as previously amended and this First Amendment.

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

(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 First Amendment (i) all of the representations and warranties contained in the Loan Agreement as previously amended 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 Loan Agreement, and (ii) there will exist no event of default under the Loan Agreement, as amended by this First Amendment on such date.

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

(i) require any consent or approval not heretofore obtained of the membership of the Borrower or of any security holder or creditor;

(ii) violate or conflict with any provision of any ordinance or other laws of the Borrower;

(iii) 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 violate any law or applicable to the Borrower; or

(iv) 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 the Borrower is a party or by which the Borrower or any of its property is bound or affected.

(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 obligations of the Borrower under the Loan Agreement, as amended.

5. Affirmation of Loan Agreement, Further References, Affirmation of Security Interests The Bank and the Borrower each acknowledge and affirm that the Loan Agreement, as hereby amended, are hereby ratified and confirmed in all respects and all terms, conditions and provisions of the Loan Agreement, except as amended by this First Amendment, shall remain unmodified and in full force and effect. All references in any document or instrument to the Loan Agreement are hereby amended and shall refer to the Loan Agreement as amended by this First Amendment. The Borrower confirms to the Bank that the obligations of the Borrower under the Loan Agreement, as amended, are and continue to be secured by the security interests granted by the Borrower under the Security Agreement, and all other terms, conditions, provisions, agreements, requirements, promises, obligations, duties, covenants and representations of the Borrower under the Loan Agreement are hereby amended and shall refer to the Loan Agreement as amended by this First Amendment and are hereby ratified and affirmed in all respects by the Borrower.

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

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

8. Successors. This First 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.



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

10. Choice of Law. This First Amendment shall create the rights and remedies that would apply and shall be governed by and construed in accordance with the laws of the State of Washington (without regard to principles of conflict of laws), including the Washington Uniform Commercial Code.

11. Waiver of Exhaustion of Tribal Remedies. The Borrower consents and agrees that it shall not be necessary in any litigation or arbitration or dispute resolution proceedings pertaining to the transactions described in the Loan Agreement or this First Amendment that there first be any deferral to or exhaustion of remedies in the Tribal Court of the Squaxin Island Tribe (in its judicial or governmental capacity, the "Tribe"), any other tribal court or dispute resolution tribunal, or the Council. The Council agrees for itself and on behalf of the Tribe not to assert that the Tribal Court of the Tribe or any other courts or dispute resolution tribunals created by the Tribe, including but not limited to the Council itself, shall have jurisdiction as an adjudicative tribunal over any case or controversy or proceeding pertaining to said transaction or this First Amendment unless the same is initiated by or consented to in writing by Bank.

12. Choice of Venue; Submission to Jurisdiction. The Borrower consents and agrees that the United States District Court for the Western District of Washington, the United States Claims Court (in actions that would be within its jurisdiction where the United States is the only defendant), the federal appellate courts, and the Washington courts of general jurisdiction, including their appellate courts, shall have jurisdiction in any dispute regarding the transactions or subject matter or proceedings described in this First Amendment. This consent and agreement will not extend to any other transactions or subjects. If it is determined that the foregoing court does not enjoy proper jurisdiction, then the Borrower consents to suit to compel or enforce arbitration in any federal or tribal court of competent jurisdiction, including the Squaxin Island Tribal Court.

13. Waiver of Sovereign Immunity, Arbitration and Waiver of Jury Trial. The waiver of sovereign immunity, arbitration and waiver of jury trial provisions in Sections 12.4 and 12.5 of the Loan Agreement are hereby incorporated by reference.

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

SQUAXIN ISLAND TRIBE  
By   
Title Chairman

BANK OF AMERICA, N.A.  
By \_\_\_\_\_  
Title \_\_\_\_\_