



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 09-23

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 Squaxin Island Tribe desires to enter into an agreement with the Fourpoints Communication, LLC., to the term of the lease; and

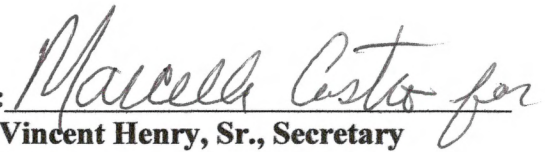
**NOW THEREFORE BE IT RESOLVED AND ENACTED By the Council as Follows:** The attached agreement between the Squaxin Island Tribe and the Fourpoints Communication, LLC. is approved, and the Chairman, Dave Lopeman, or in his absence the Vice-Chairman, Arnold Cooper, is hereby authorized to execute the agreement with Fourpoints Communication, LLC.

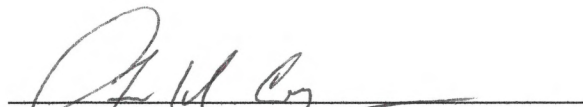
*The lease -  
should not  
be signed at  
this time.*

**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 29<sup>th</sup> day of January, 2009, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
**David Lopeman, Chairman**

Attested by:   
\_\_\_\_\_  
**Vincent Henry, Sr., Secretary**

  
\_\_\_\_\_  
**Arnold Cooper, Vice Chairman**

UNITED STATES DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs

Lease No. \_\_\_\_\_  
Cont. No. \_\_\_\_\_  
Allot Nos. \_\_\_\_\_

**GROUND LEASE**

1. Parties.

THIS GROUND LEASE AGREEMENT (the "Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 ("Date of Agreement") by and between The United States of America, Trustee, in Trust for the Squaxin Island Tribe (the "Lessor") whose address is 10 SE Squaxin Lane, Shelton, Washington 98584, and Fourpoints Communications, LLC (the "Lessee"), a limited liability company, whose address is 22737 72nd Avenue South, Suite C-101, Kent, Washington 98032 as provided under 25 U.S.C. § 415, as implemented by Part 162 – Leasing and Permitting – of the Code of Federal Regulations, Title 25, and amendments thereto, which are incorporated herein by reference.

2. Description.

For and in consideration of rents, covenants, and agreements hereinafter set out, the Lessor hereby leases to the Lessee the following described premises:

A portion of the real property beneficially owned by Lessor (the "Property") and legally described on Exhibit A attached hereto. The leased premises is an area measuring 60 by 40 feet together with reasonable access thereto (the "Premises"). The Premises are shown outlined on Exhibit A attached hereto.

The Premises is 2400 square feet, more or less, of the Property which is located in Mason County on the Squaxin Island Reservation.

3. Definitions.

- A. "Secretary" means the Secretary of the Interior or his authorized representative, delegate, or successor.
- B. "Gross Receipts" means all amounts due the Lessee for use of the Premises, provided that "Gross Receipts" shall not include the actual reimbursed cost of physically modifying the billboard structure to accommodate the display of abnormally sized advertisements.
- C. "Approved Encumbrance" means an encumbrance approved by the Secretary, the Lessor, and sureties, if any, in the manner provided herein. "Encumbrancer" means the owner and holder of an approved encumbrance.



- D. "Effective Date" means the date this Lease is approved by the Secretary.
- E. "Digital Advertising Slot" means the fixed interval of 6 to 10 seconds that an advertiser uses to display one or more advertising messages on an LED billboard.

4. Term.

- A. The initial term of this Lease shall be twenty five (25) years, commencing on the date the Lease has been approved by the Secretary, all necessary permits for the construction of the Advertising Sign (defined in Section 8 below) have been obtained, and the construction of the sign is complete (the "Commencement Date"). The time between the Commencement Date and the Expiration Date is the "Lease Term".
- B. Hold Over. Upon the last day of the Lease Term, Lessee must surrender possession to Lessor and must not remain in possession of or hold over on the Premises without Landlord's prior consent. In the event Tenant holds over the Premises after the last day of the Lease Term with Landlord's consent, then the rent shall be as referenced in Section 5 hereof, and all other provisions of this Lease, except those relating to the Option, shall apply during any period of hold over, and a month-to-month tenancy shall be in effect. The resultant month-to-month tenancy shall terminate if written notice of termination is given by either party to the other not later than twenty (20) days prior to the end of any monthly term, in which event Tenant shall surrender the Premises to Lessor at midnight on said last day of the month.

5. Rent.

The Lessee, in consideration of the foregoing, covenants and agrees to pay to Lessor the following amounts as rent for the Premises, in the following manner:

- A. Lessee agrees to reimburse the Squaxin Island Tribe the reasonable cost of securing any appraisal, environmental review, or other payment to a third party required to obtain the Secretary's approval of this Lease. Payment is due within thirty days of the Effective Date or ten days after the Tribe provides a statement of charges to the Lessee, whichever date is later.
- B. During the Lease Term, Lessee shall pay rent equal to (1) four thousand one hundred sixty-six and 67/100 dollars (\$4,166.67) per month ("Minimum Rent"), and (2) thirty percent (30%) of the annual Gross Receipts ("Percentage Rent"), to the extent such Percentage Rent exceeds the amount of Minimum Rent payable for the same period.
- C. Lessee shall pay to Lessor in advance the Minimum Rent for the first year of the Lease Term, in the amount of fifty thousand and 00/100 dollars (\$50,000.00), on or before the Commencement Date. Thereafter, Minimum Rent will be paid monthly on or before the last day the month preceding the month for which rent is due.
- D. The Secretary acknowledges that because one year's rent under this Lease is being paid in advance no surety bond will be required in connection with this Lease.



- E. Percentage Rent, if any, shall be calculated and paid within thirty (30) days of the end of each year of the Lease Term. Within thirty (30) days after the end of each year of the Lease Term and within thirty (30) days of the expiration of this Lease, Lessee shall provide Lessor a schedule of the aggregate Gross Receipts collected for the preceding year of the Lease Term and a calculation of the aggregate amount of Percentage Rent payable based on such aggregate annual amounts. In the event the amount of Minimum Rent paid with respect to the quarter year of the Lease Term is less than the aggregate amount of Percentage Rent due for such year of the Lease Term, Lessee shall pay Lessor the amount by which the aggregate Percentage Rent exceeds the Minimum Rent.
- F. Annual Inflation Adjustment to Minimum Rent. Annually, within thirty days of each anniversary of the Commencement Date, the Minimum Rent shall be adjusted as follows, provided that the annual amount of Minimum Rent shall never be less than fifty thousand and 00/100 dollars (\$50,000.00):

$$\$50,000.00 * CPI_{Current} / CPI_{Effective} = \text{Adjusted Annual Minimum Rent}$$

where:

- $CPI_{Current}$  is the CPI for the month preceding the month of the anniversary date of the Commencement Date; and
- $CPI_{Effective}$  is the CPI for the month preceding the month of the Effective Date.

The base for computing the adjustment is the United States Department of Labor Statistics Consumer Price Index (CPI) for all urban consumers for the United States (U.S. City Average).

- G. If any monthly payment of rent is unpaid by the date that is ten (10) days after the date on which such payment was due, then the amount due shall bear interest at twelve percent (12%) per annum from the date it was due until paid, together with a late charge of \$50.00 per day. This provision shall not be construed to relieve Lessee from the obligation of making each rent payment at the time and in the manner herein specified.

H. Summary of Rents

Annual Minimum Rent:	\$50,000.00
Monthly Minimum Rent:	\$4,166.67
Percentage Rent:	30%

6. Accounting and Audits.

Any duly authorized representative of the United States Government, or any qualified accounting agent or agents appointed by the Lessor, shall have access to and the right to examine and audit any pertinent records of the Lessee and the Lessee's tenants relating to this Lease during the normal business hours of any working day. In the event the Lessor

should cause an audit of the Lessee's pertinent books, documents, papers, and records by a Certified Public Accountant, licensed in the State of Washington, in conformity with standard accounting procedure and, if such audit reveals error as a result of which the Lessor has been paid less than ninety-eight (98%) percent of the amount to which Lessor is entitled for any reporting period covered by the audit, then the expense of such audit shall be borne by the Lessee; otherwise, it shall be borne by the Lessor. Upon approval by the Secretary or his authorized representative, the audit so performed shall be binding upon both the Lessor and the Lessee.

Lessee shall, for a period of seven (7) years after submission to Lessor or the Secretary of any such report, keep safe and intact all of Lessee's records, books, accounts, and other data which in any way bear upon or are required to justify in detail any such report, and Lessee shall insert a provision in any sublease requiring similar retention of records.

7. Liens, Taxes, Utilities.

Lessee shall not permit to be enforced against the Premises, or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee, including without limitation any lien arising out of any personal property tax obligation incurred by Lessee with respect to its improvements on the Premises, and Lessee shall discharge all such liens before any action is brought to enforce the same.

8. Purpose of the Lease.

Lessee shall use the Premises for the purpose of providing access to and constructing, erecting, maintaining and/or operating one painted, printed, illuminated, and/or electrical advertising sign on a mono-pole, two-sided, back-to-back Billboard, including necessary supporting structures, devices, and connections, visible to Highway 101, not to exceed 1200 square feet per face (the "Advertising Sign"), and the display of advertising signs affixed thereto. Lessor shall have the right to use any portion of the Premises so long as such use does not interfere with Lessee's use of the Premises for the Advertising Sign.

9. Lessor Use of Advertising Sign.

Lessee shall permanently designate one Digital Advertising Slot ("Slot") per face for use by the Lessor to advertise Squaxin Island Tribe activities and enterprises. In addition, Lessee shall make available to the Lessor up to two (2) additional Slots per face for use by the Lessor when these Slots are not occupied by advertisers as determined by the Lessee. Lessee shall maintain first right to use all Slots, other than the two Slots permanently designated to the Lessor, for advertisers it designates and may reclaim unused Slots made available to the Lessor as necessary to display advertising for its clients.

Lessor agrees that the Digital Advertising Slots it uses will not be used for advertising any competitor of the Lessee or any of the Lessee's clients currently advertising on the Advertising Sign, unless Lessor receives the advance, express, written permission of the Lessee.

10. Completion of Development.

Subject to the terms of Section 32 (force majeure), the Lessee shall complete the full improvement and development of the Premises by completing construction and installation of the Advertising Sign in accordance with this Lease within one hundred eighty (180) days following the Effective Date. If, without an intervening Force Majeure Event and without an unreasonable delay by the Squaxin Island Tribal Council or the Squaxin Island Planning Department in granting a conditional permit or other confirmation that the Advertising Sign will comply with the Squaxin Island zoning and other requirements, the Lessee fails to complete full development within such period, then the Lessee shall pay to the Lessor the Minimum Rent for the first year and an additional \$50.00 for each day after the 180 day period the Advertising Sign remains unfinished and unavailable for advertising; provided however, said \$50.00 per day penalty shall not continue to accrue after a termination of this Lease.

Lessee must, before the expiration of the 180 day period, obtain a conditional permit or other confirmation from the Squaxin Island Tribal Council and Squaxin Island Planning Department that the Advertising Sign will comply with Squaxin Island zoning and other requirements.

11. Surrender of Premises.

The Lessee hereby agrees that at the termination of this Lease, by normal expiration or otherwise, including without limitation any termination under Section 35 of the Lease, Lessee will peaceably and without legal process, deliver up the possession of the Premises herein described and remove all improvements and restore the land to its original condition within 90 days of lease termination, provided that when an improvement is anchored in concrete footings, lessee need only restore the land to a depth of one and one-half (1.5) meters, or a lesser depth if on inspection by the Tribe it agrees such depth is sufficient to accommodate foreseeable future development of the Premises .

12. Unlawful Use.

The Lessee agrees not to use or cause to be used any part of the Premises for any unlawful conduct or purpose.

13. Construction, Maintenance, Alteration and Repairs.

All improvements placed on the Premises shall be constructed in a good and workman-like manner and in compliance with all applicable laws and building codes. The Lessee shall have the right at any time during the term of this Lease to make limited alterations and additions and to any repair to any improvement on or placed upon the Premises; provided, however, that no single alteration, addition or remodeling of any improvement involving an expenditure in excess of Five Hundred Thousand Dollars (\$500,000.00), shall take place without the prior written consent of the Lessor and the Secretary.



14. Indemnification.

Neither the Lessor nor the United States Government, nor their officers, agents, and employees, shall be liable for any loss, damage, or injury of any kind whatsoever to the person or property of the Lessee or sublessee or any other person whomsoever, caused by any use of the Premises, or by any defect in any structure constructed, erected or installed thereon, or arising from any accident, fire, or other casualty occurring on the Premises or from any other cause whatsoever other than in the case of each of the foregoing for loss, damage or injury ("Damages") resulting from the negligence or willful misconduct of Lessor or the United States Government or any of their respective officers, agents or employees; and Lessee, as a material part of the consideration for this Lease, hereby waives on Lessee's behalf all claims against Lessor and/or the United States Government, and agrees to indemnify, defend and hold Lessor and/or the United States Government free and harmless from liability for all claims for any loss, damage, or injury arising from the use of Premises by Lessee, together with all costs and expenses in connection therewith other than in the case of each of the foregoing, Damages resulting from the negligence or willful misconduct of Lessor or the United States Government or any of their respective officers, agents or employees; provided, however, that the foregoing waiver and indemnity shall not be applicable to any claim for just compensation, relocation costs and benefits, and violations of Lessee's civil rights. Notwithstanding anything in this Agreement to the contrary, neither Lessor nor Lessee shall be liable for any consequential, incidental or indirect damages (including, but not limited to, lost profits, revenues or lost business opportunities, whether or not such party was aware or should have been aware of the possibility of these damages) or punitive, special, exemplary or other damages that are not direct damages except if, and only to the extent that, the indemnified party is otherwise required to pay such damages to a third party as a result of a third party claim against such indemnified party that is otherwise covered by an indemnifying party's indemnification obligation under this Section 14.

15. Commercial General Liability Insurance.

At all times during the term of this lease, Lessee shall carry a commercial general liability insurance policy in the amount of Two Million Dollars (\$2,000,000.00) per occurrence, Five Million Dollars (\$5,000,000.00) in the aggregate annually, for personal injury and property damage. Said policy shall be written on an "occurrence" basis by a company authorized to issue insurance in the State of Washington, and shall insure both Lessee and Lessor, as their interests may appear. A copy of said policy shall be furnished to the Secretary and to the Squaxin Island Tribe.

16. Sublease, Assignment, Transfer.

The Lessee shall not, unless hereinafter expressly authorized, sublease, assign, or transfer this Lease, or any right to or interest in this Lease or any of the improvement on the Premises, without the prior written approval of the Lessor, sureties pursuant to C.F.R. sec. 162.610(a) and the Secretary, and no such sublease, assignment, or transfer shall be valid or binding without said approval, and then only upon the condition that sublessee, assignee, or other successor in interest, excepting an approved Encumbrancer under

conditions herein set forth, shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. If the Lessee attempts to make any such sublease, assignment, or transfer, except as aforesaid, such action shall be deemed a breach of this Lease, excepting that an Encumbrancer, as herein set forth, may enforce its rights in the manner hereinafter provided. Neither the Lessor nor the Secretary shall unreasonably withhold approval of any sublease, assignment, or transfer, and shall either approve or state the reasons for disapproval within thirty (30) days after the sublease, assignment, or transfer is submitted to the Secretary for approval.

17. Leasehold Encumbrance.

This Lease, or any right to or interest in this Lease or any of the improvements on the Premises, may be encumbered with the written approval of the Lessor and the Secretary. No such encumbrance shall be valid without said approval, but such approval shall not be unreasonably withheld.

18. Default and the BIA.

Time is declared to be of the essence of this Lease

- A. If Lessee is determined to be in default of any of the provisions of the Lease the BIA shall send to Lessee and its sureties a notice of violation within five(5) business days of the determination. The notice of violation must be provided by certified mail, return receipt requested.
- B. Within ten (10) business days of the receipt of a notice of violation, the Lessee must:
  - i) Cure the violation and notify the BIA in writing that the violation has been cured;
  - ii) Dispute the BIA determination that a violation has occurred and/or explain why the BIA should not cancel the Lease; or
  - iii) Request additional time to cure the violation.
- C. Should the Lessee not cure a violation of the Lease within the requisite time period, BIA shall consult with the Indian landowners as appropriate to determine whether:
  - i) The Lease should be canceled by the BIA under paragraph (c) of 25 C.F.R. 162.619 and 162.620- 162.621;
  - ii) The BIA should invoke any other remedies available to it under the Lease;
  - iii) The Squaxin Island Tribe wishes to invoke any remedies available to them under the Lease;
  - iv) The Lessee should be granted additional time in which to cure the violation.

Should the BIA decide to grant Lessee additional time in which to cure a violation, the Lessee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

- D. Should the BIA decide to cancel the Lease the BIA will send the Lessee and its sureties a cancellation letter within five (5) business days of that decision. The cancellation letter must be sent to the Lessee in writing, return receipt requested. The BIA will also provide actual notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:
- i) Explain the grounds for cancellation;
  - ii) Notify the Lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the Lease;
  - iii) Notify the Lessee of its right to appeal and indicate the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and
  - iv) Order the Lessee to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

19. Default/ Remedies:

Notwithstanding anything to the contrary herein or in Section 18, the Lessor shall have the right to exercise independently any of following rights in the case of a material default or breach by Lessee.

19.1 Material Default or Breach by Lessee

The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

- A. Any failure by Lessee to pay the rent (as set forth in Section 5) or any other amounts required to be paid under this Lease, where such failure continues for five (5) business days after written notice thereof by Lessor to Lessee;
- B. Any failure by Lessee to perform any other obligation of Lessee under this Lease, where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee; provided that if the nature of the default or breach is such that the same cannot reasonably be cured within such thirty (30) day period, then Lessee shall not be in material default or breach if Lessee shall within such period commence such cure and thereafter diligently prosecute the same to completion; or,
- C. The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed



within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within sixty (60) days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

- D. The Lessee has given the Lessor false or misleading information or representations.
- E. Any lawsuit or lawsuits are filed against Lessee that in aggregate amount exceed available insurance coverage by \$500,000 or more.
- F. Any judgments or arbitration awards are entered against Lessee, or settlement agreements are executed by lessee, that exceed available insurance coverage by \$500,000 or more.
- G. Any government authority takes action that the Lessor in good faith believes materially adversely affects the Lessee's ability to pay.
- H. A material adverse change occurs, or is reasonably likely to occur, in the Lessee's business condition (financial or otherwise), operations, properties, or prospects, or ability to the pay rent (a "Material Adverse Change").

#### 19.2 Remedies for Material Default or Breach by Lessee

In the event of any such material default or breach by Lessee, Lessor may terminate this Lease by giving Lessee written notice thereof, in which event Lessee shall immediately pay to Lessor a sum equal to the amount of Lessor's costs, expenses, losses and damages occasioned thereby, such as expenses of reletting and collection (including, but not limited to, attorneys' fees, real estate commissions and reasonable costs of renovation and alteration of the Premises required to restore the Premises and the amount by which the rent and other amounts due or to become due under this Lease for the balance of the term exceed the amount of rent Lessor collects from reletting of the Premises, if any, for the same period.

#### 19.3 Remedies Cumulative

The rights and remedies of Lessor under any other provisions of this Lease are cumulative and do not modify or change the rights of the BIA in Section 18 above but are rather in addition to all other rights and remedies afforded to Lessor by law.

#### 20. Default by Lessor:

Except as otherwise specifically provided herein, if Lessor should be in material default in the performance of any of its obligations under this Lease, which material default continues for a period of more than thirty (30) days after receipt of written notice from Lessee specifying such material default or if such material is of a nature to require more than thirty (30) days for remedy and Lessor shall fail to commence such cure within thirty (30) days after notice from Lessee or proceed diligently thereafter to cure, then

Lessee may, in addition to any other remedy available at law or in equity at its option upon written notice, terminate this Lease, or may incur any expense necessary to perform the obligation of Lessor specified in such notice and deduct such expense from the rents or other charges next becoming due.

21. Warranties

The Lessee makes the following representations and warranties that at the Effective Date:

- A. In each jurisdiction in which the Lessee does business, it is properly licensed, in good standing, and, where required, in compliance with the fictitious name statutes.
- B. There is no lawsuit, tax claim, or other dispute pending or threatened against the Lessee, which if lost, would impair the Lessee's financial condition or ability to pay its obligations under this Agreement.
- C. The Lessee possesses all permits, memberships, franchises, contracts, and licenses required, and all trademark rights, trade name rights, patent rights, and fictitious name rights necessary to enable it to conduct the business in which it is now engaged, and Lessee is in compliance with all applicable tribal, state and federal laws.
- D. The Lessee is not in default on any material lease, loan, commitment, contract, instrument, or other obligation.
- E. The Lessee has obtained, and maintained in effect, the insurance required by this Agreement.

22. No Partnership; Operation of Businesses.

Regardless of the fact that the rent to be paid hereunder may be based on a percentage of the income generated by the Premises, Lessee and Lessor are not in partnership with one another.

23. Lessee's Obligations.

While the Premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligations of its sureties, are to the United States as well as to the Lessor.

24. Payments and Notices.

All notices, payments, and demands shall be sent to the parties hereto at the addresses herein recited or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified mail. Service of any notice or demand shall be deemed complete ten (10) days after mailing or on the date actually received, whichever occurs first. Copies of all notices and demands shall be sent to the Secretary in care of the Office of the Bureau of Indian Affairs at the address set forth herein.

25. Lease Binding.

This Lease and the covenants, conditions, and restrictions herein shall extend to and be binding upon the successors, heirs, assignment, executors, and administrators of the parties hereto.

26. Interest of Member of Congress.

No member of, or delegate to, Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise herefrom; but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

27. Validity.

This Lease, and any modification or amendment to this Lease, shall not be valid or binding upon either party hereto until approved by the Secretary.

28. Termination of Federal Trust.

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the Property by issuance of a fee patent or otherwise during the term of the Lease. However, such termination shall not serve to abrogate this Lease. The Lessor and the Lessee and its surety or sureties shall be notified of any such change in the status of the Property.

29. Dispute Resolution.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Seattle, Washington, or at such place as agreed to in writing by the parties, before an arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

The arbitrator may, in the Award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

Prior to the appointment of the arbitrator, and within 10 days from the date of commencement of the arbitration, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and



statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrators. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The pendency of a mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

30. Agreements for Utilities.

Lessee shall have the right to enter into agreements with public utility companies and the State of Washington, or any of its political subdivisions, to provide utility services, including electricity and other utilities necessary to the full enjoyment of the Premises as a lighted Advertising Sign and the development thereof in accordance with the provisions of this Lease, providing no such agreement shall cover land not included in this Lease, and further provided that such agreement shall not be for a period of time longer than the term of this Lease and shall expire by its own terms as of the termination of this Lease. Upon entering into such an agreement, the Lessee shall furnish to the Secretary executed copies thereof, together with a plat or diagram showing the true location of the utility lines to be constructed in accordance therewith.

31. Tax Immunity.

Nothing herein contained in this Lease shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust or restricted Indian property or any interest thereon.

32. Force Majeure.

Whenever under this instrument a time is stated within which or by which original construction, repairs, or reconstruction of said improvements shall be completed, and if during such period a general or sympathetic strike or lockout, war or rebellion, act of God or some other event occurs beyond Lessee's power to control, the period of delay so caused shall be added to the period allowed therein for the completion of such work.

33. Hold Harmless and Compliance with Law.

- A. Lessee shall hold Lessor harmless from all damages to person or property by reason of accidents resulting from the negligent acts of Lessee's agents, employees, or others employed in the construction, maintenance, repair, or removal of its Advertising Sign on or from the Property.

- B. The obligations of the Lessee and its sureties to the Tribe will also be enforceable by the United States, so long as the land remains in trust or restricted status;
- C. The obligations of the Lessee and its sureties to the United States will also be enforceable by the Tribe, so long as the land remains in trust or restricted status;
- D. The Lessee will comply with all applicable Federal, tribal, state and local laws, ordinances, rules, regulations and other legal requirements.

34. Termination of Lease by Lessee.

This Lease shall continue in full force and effect for its term; provided, however, that Lessee shall have the right, after the first anniversary of the Effective Date, to terminate this Lease as of the end of any month if, (i) during the preceding twelve (12) month period, the average amount of monthly Gross Receipts was less than Seven Thousand Five Hundred Dollars (\$7,500.00), and Lessee made good faith efforts to obtain Gross Receipts. Upon termination (a) Lessee shall remove all improvements, excluding any foundations (except as provided in Section 11 above), and restore the Premises to their original condition within thirty (30) days of such termination.

35. Obstruction of Advertising Sign; Additional Right of Termination.

- A. Lessor agrees that it, its tenants, agents, employees, or any other persons acting in its behalf, shall not place, or cause to be placed, or maintain any object on the Property, or on any contiguous parcels controlled by Lessor, any improvements that obstruct the view of Lessee's Advertising Sign. If, in violation of the preceding sentence, the view of any portion of Lessee's Advertising Sign is obstructed or impaired by Lessor, or if for any reason the necessary permits by the appropriate authority for the construction, erection, and display of said Advertising Sign, including but not limited to the Squaxin Island Tribal Council and Squaxin Island Planning Department, are not approved and issued within 180 days after the Effective Date of this Lease, the Lessee may, at its option, terminate this Lease.
- B. If vehicular traffic on Highway 101 between State Route 108 and Hurley Waldrip Rd is diverted or rerouted, or the Advertising Sign is obstructed from view, or the value of the Advertising Sign is materially diminished for any other reason, including, but not limited to, as a result of a Force Majeure Event (as defined below), then Lessee's obligation to pay Minimum Rent shall be abated during and for the entire period of such diversion, obstruction or other diminution in value and, if such diversion, obstruction or diminution in value shall continue for more than six (6) months, in addition to any other rights or remedies available to Lessee, Lessee or Lessor may terminate this Lease on thirty (30) days written notice to the other parties without further obligation other than obligations which have accrued prior to and remain unsatisfied at the time of termination. For purposes hereof, a "Force Majeure Event" shall mean any act of God, fire, casualty, war, enemy act, terrorist act, strike or work stoppage, labor unrest, act or decree of government or any federal, state, local, public or administrative authority, or any other event beyond the control of Lessee.



- C. If Lessee is prevented from illuminating the signs on the Advertising Signs for any reason including, but not limited to, as a result of a Force Majeure Event, then the amount of Minimum Rent payable during the period that such condition continues to exist shall be reduced on a pro rata basis by fifty percent (50%). If such condition exists for more than three (3) months, in addition to any other rights or remedies available to Lessee or Lessor, Lessee or Lessor may terminate this Lease on thirty (30) days written notice to the other parties without further obligation other than obligations which have accrued prior to and remain unsatisfied at the time of termination.
- D. If it shall be unlawful to maintain outdoor advertising signs at the Premises and/or on the Advertising Sign by reason of applicable legislation, or other governmental restriction or regulation or otherwise, Lessee may terminate this Lease on ten (10) days prior written notice to Lessor, without any further obligations of Lessee to Lessor other than for obligations that have accrued but remain unsatisfied at the time of termination.

36. Quiet Enjoyment

Lessor covenants that if Lessee performs all of its obligations under this Lease, Lessee may peaceably and quietly enjoy the Premises and the Advertising Sign.

37. Ownership of Advertising Sign.

Lessee is, and shall remain, the owner of the Advertising Signs to be placed on the Premises and has the right to remove the same at the termination of this Lease. Lessee has the equal but separate right to compensation paid by any federal, state, or local authority for the removal of the advertising signs.

38. Ownership of Premises.

The Lessor represents that it is the beneficial owner of the Premises and has the authority to make and enter into this Lease.

39. Heirs, Assigns, and Successors.

This Lease is binding upon the heirs, assigns and successors of both Lessor and Lessee. No assignment of this Lease shall be effective without prior BIA and Lessor approval.

40. Use of Sign by Competitors

Lessee agrees that the Advertising Sign will not be used to display the advertising of any competitor of the Squaxin Island Tribe and its enterprises, including without limitation competitors of the Little Creek Casino Resort, the Skookum Creek Tobacco Co., Inc., and Island Enterprises, Inc., unless Lessee receives the advance, express, written permission of the Squaxin Island Tribe.



41. Limited Waiver of Sovereign Immunity

Notwithstanding any other provision(s) to the contrary, nothing in this Lease shall be construed as or deemed a waiver of the sovereign immunity of the Squaxin Island Tribe except as specifically stated in this Section 41:

The Squaxin Island Tribe expressly waives its sovereign immunity from suit with respect to the obligations and indebtedness that arise out of or relate to the Lease, provided that the waiver of sovereign immunity expressed herein is limited as follows:

- A. The waiver of sovereign immunity expressed herein is limited to Fourpoints Communications, LLC;
- B. The waiver of sovereign immunity expressed herein is limited to the obligations explicitly specified in the Lease;
- C. The waiver of sovereign immunity expressed herein is limited to the net unrestricted revenues of the Squaxin Island Tribe; and
- D. The waiver of sovereign immunity expressed herein is limited to the jurisdiction of the federal courts of the Western District of Washington.

42. Notices to Parties.

All notices, payments, and demands shall be sent to the parties hereto at the addresses below or to such addresses as the parties may hereafter designate in writing. Notices and demands shall be sent by certified mail, return receipt requested. Service of any notice or demand shall be deemed complete on the date actually received, or if receipt is refused, on the date of refusal. Copies of all notices and demands shall be sent to the Secretary in care of the Office of the Bureau of Indian Affairs at the address set forth herein.

To Lessor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Lessee:

Fourpoints Communications  
\_\_\_\_\_  
22737 72<sup>nd</sup> Ave S, Suite C-101  
\_\_\_\_\_  
Kent, WA 98032  
\_\_\_\_\_

United States Department of Interior  
Bureau of Indian Affairs

Puget Sound Agency

2707 Colby Avenue, Suite 1101

Everett, WA 98201

43. Encumbrance of Property by Lessor.

Lessor agrees that any liens placed on the Property by Lessor shall be made subordinate to this Lease.

44. Recordation.

This Lease or a memorandum with respect hereto may be recorded by Lessee or by anyone acting through, under, or on behalf of Lessee.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS THEREOF, the parties hereto have hereunto set their hands.**

LESSEE:

\_\_\_\_\_ Date: \_\_\_\_\_  
Fourpoints Communications, LLC  
Donald E. MacCord  
President

LESSOR:

\_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name)  
(Title)

The within Lease, consisting of 21 pages is hereby approved.

APPROVED BY:

\_\_\_\_\_ Date: \_\_\_\_\_

UNITED STATES DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Superintendent, Puget Sound Agency

\_\_\_\_\_ (Print Name)









**Exhibit A: Legal Description and Sign Location**

**Section 2.36.095 of the Squaxin Island Tribal Code shall be amended to read as follows:**

**2.36.095 Enterprise revenue distribution.**

A. Gaming Revenue Distribution. Revenues distributed from gaming enterprise revenues will be distributed, except as provided in subsection B of this section, as follows:

1. Up to the first fifteen (15) percent as determined by the Squaxin Island Tribal Council will be set aside for distribution to eligible tribal members as per capita payments.

2. The remainder at a minimum of eighty-five (85) percent will be apportioned with the following formula:

a. Fifteen (15) percent of the revenue will be deposited into interest bearing account(s) to create a long-term account from which the interest income can be utilized for tribal needs. The account will be managed based on the prudent investment standard and managed by the Tribal Finance Department.

b. Fifteen (15) percent of the revenue will be used for the purchase of land that is not directly related to programmatic or enterprise needs. The Tribal Council may apportion such revenues between the on-Island and off-Island sub-accounts; provided, such monies shall be apportioned so as to ensure that the on-Island sub-account maintains a balance of, and is replenished as necessary to maintain a balance of, no less than five hundred thousand dollars (\$500,000.00). Off-Island properties would include purchases in the "Kamilche corridor," habitat conservation areas, and culturally sensitive sites. These properties could be managed properties with rents applied back to the fund or allowed to remain as purchased.

c. Thirty-five (35) percent of the revenue will be used for government projects and programs. An approximate equal proportion of funds will be for projects and programs. Allocations for these expenditures will be developed by the budget process for adoption by the Tribal Council on an annual basis.

d. Thirty-five (35) percent of the revenue will be used for economic development administered by Island Enterprises, Inc. (IEI). Expenditures for economic development will require Tribal Council approval through an annual operating plan developed by IEI.

B. Up to one million dollars (\$1,000,000.00) per year in net gaming revenues distributed from gaming enterprises shall be exempt from the allocation herein with up to five hundred thousand dollars (\$500,000.00) distributed as per capita payments and the remainder distributed for special projects and programs, in amounts determined by the Tribal Council.

C. Other Economic Enterprise Distributions. Revenues distributed from economic enterprises coordinated by Island Enterprises, Inc. (IEI) will be distributed as follows:

1. Cigarette excise taxes will be distributed as follows:

a. Fifteen (15) percent will be distributed to eligible tribal members as per capita payments with seventy-five (75) percent distributed to seniors apportioned monthly and twenty-five (25) percent distributed to nonseniors apportioned annually, except that for FY2005 the amount will be set at two hundred fifteen dollars (\$215.00) and one hundred ten dollars (\$110.00) respectively and in the future, unless there are extenuating circumstances, not fall below these amounts. ~~(((beginning in FY2006 the above figures will be a combination of excise and profits).))~~ The minimum distributions set by this subsection 2.36.095(C)(1)(a) may be met with a combination of excise tax distributions under this subsection, profit distributions under subsection 2.36.095(C)(2), and distributions under Section 11 of the Squaxin Island Sign Ordinance.



- b. Eighty-five (85) percent of the revenue will be used for economic development administered by Island Enterprises, Inc. (IEI). Expenditures for economic development will require Tribal Council approval through an annual operating plan developed by IEI.
- 2. Profits will be distributed by the following formula beginning in FY2006:
  - a. Each economic venture will establish and maintain a retained earnings balance before further distributions occur. This will generally be set at six months operating expenses, special retained earnings may be set aside for specific purposes, such as expansion.
  - b. Fifteen (15) percent as determined will be distributed to eligible tribal members as per capita payments with seventy-five (75) percent distributed to seniors apportioned monthly and twenty-five (25) percent distributed to nonseniors apportioned annually.
  - c. Fifteen (15) percent of the revenue will be deposited into interest bearing account(s) to create a long-term account from which the interest income can be utilized for tribal needs. The account will be managed based on the prudent investment standard and managed by the Tribal Finance Department.
  - d. Twenty (20) percent of the revenue will be used for government projects and programs with the portion created by tobacco operations earmarked for education programs. Specific allocations for these funds will be developed by this budget process for adoption by the Tribal Council on an annual basis.
  - e. Fifty (50) percent will be used for economic development administered by Island Enterprises, Inc. (IEI). Expenditures for economic development will require Tribal Council approval through an annual operating plan developed by IEI.

**The Squaxin Island Sign Ordinance as described below shall be adopted as a new chapter in the Squaxin Island Tribal Code:**

Squaxin Island Sign Ordinance

**Sec. 1.** Signs not in conformance with this Chapter shall be prohibited.

**Sec. 2.** Signs identifying or advertising the location of governmental or enterprise facilities of the Squaxin Island Tribe or the availability of products or services at such facilities shall be permitted.

**Sec. 3.** Traffic and directional signs installed by a governmental entity shall be permitted.

**Sec. 4.** Signs in furtherance of the public safety shall be permitted, including “no trespassing,” “exit,” and “pedestrian crossing” signs, as well as signs warning of hazardous conditions.

**Sec. 5.** Signs providing legal notices required by law shall be permitted.

**Sec. 6.** Temporary signs advertising temporary activities, such as those advertising the availability of premises for rent, elections, construction signs, and garage sales shall be permitted, so long as signs are removed when the purpose for which the signs were erected has ended.

**Sec. 7.** One free-standing sign and no more than two signs attached to the principal structure may be erected for each commercial or industrial use of a property. Signs permitted under this section shall not exceed 12 feet in height or three hundred square feet in size, except by conditional permit.

**Sec. 8.** No sign shall be permitted that obstructs the vision of any motorist traveling or entering a public or private right-of-way, or that in any way constitutes a traffic hazard.

**Sec. 9.** No sign, temporary or otherwise, shall be allowed on a utility pole.

**Sec. 10.** Signs otherwise prohibited under this Chapter may be approved by conditional permit. A person seeking approval to display a sign shall provide to the Squaxin Island Planning Department a proposal that provides at a minimum:

- A. A description of the proposed sign's location, size, design, use, and method of construction;
- B. An analysis of the sign's effect on area property values and the profitability of surrounding businesses, including an analysis of the consistency of the proposed sign use with existing area design schemes;
- C. An analysis of the environmental impact;
- D. An analysis of any detriment to the scenic and natural beauty of the location;
- E. An analysis of the effect on the safety of motorists and others;
- F. Proof that the permission of the landowner to erect the sign has been obtained; and
- G. Any additional information requested by the Squaxin Island Planning Department.

The Squaxin Island Planning Department shall review the proposal and any materials provided and present a recommendation to the Squaxin Island Tribal Council. The Squaxin Island Tribal Council shall review the design proposal and grant or deny the conditional permit under such conditions it concludes are appropriate.

**Sec. 11.** Any profits received from third parties by the Tribe or its enterprises for the display of signs located on property owned by the Tribe or its enterprises shall be allocated as follows:

- A. Fifty (50) percent will be distributed to eligible seniors as per capita payments to be apportioned monthly;
- B. Twenty five (25) percent will be used for government projects and programs. Specific allocations for these funds will be established under the Budget Ordinance
- C. Twenty five (25) percent will be used for economic development administered by Island Enterprises, Inc. (IEI). Expenditures for economic development will require Tribal Council approval through the annual operating plan developed by IEI.

**Sec. 12.** If any part of this Chapter is held to be unenforceable, the remaining parts shall remain in full force and effect.