

Downstream Development Authority of the Quapaw Tribe of Oklahoma  
Supplement to Minutes dated 4/29/15.  
Email Poll

Roll Call:	John Berrey, Chairman	Present
	Larry Ramsey, Secretary	Present
	Ranny McWatters, Treasurer	Present
	Marilyn Rogers, Member	Present
	Tamara Reeves, Member	Present

An email poll was conducted on Friday May 15, 2015.

All,

Attached are the loan documents for the Pavilion, as well as the resolution authorizing the loan.

Please let me know your vote.

Vote:

John Berrey	Yes	Ranny McWatters	Yes
Marilyn Rogers	Yes	Larry Ramsey	Yes
Tamara Reeves	Yes		

5 yes, 0 no, 0 abstaining, 0 absent

Motion Carries.

## LOAN AGREEMENT

Between

Quapaw Tribe of Oklahoma (O-Gah-Pah),  
a federally recognized Indian tribe  
as Borrower,

and

International Bank of Commerce,  
as Lender

dated as of ~~April~~ May \_\_\_\_\_, 2015

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## **LOAN AGREEMENT**

THIS LOAN AGREEMENT (as amended, supplemented or otherwise modified from time to time, this “Agreement”) is made as of ~~April~~ May \_\_\_\_\_, 2015 between **Quapaw Tribe of Oklahoma (O-Gah-Pah)**, a federally recognized Indian tribe (“Borrower”), and **International Bank of Commerce**, a Texas state banking association (together with any permitted successors and assigns, “Lender”).

Borrower and Lender agree as follows:

### **ARTICLE 1** **DEFINITIONS**

Unless the context requires otherwise, capitalized terms used but not defined in this Agreement have the following meanings:

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms “controlling,” “controlled by” and “under common control with” have correlative meanings.

“Application for Advance” means a written application executed by a Responsible Official of Borrower (and such other parties as Lender requires) on a form approved by Lender specifying by name, current address, and amount all parties to whom Borrower is obligated as of the date thereof for labor, materials, or services supplied for the Project and all other expenses incident to the Loan, the Real Property, and the construction of the Project, whether or not specified in the Budget, requesting an advance for the payment of such items and containing a sworn affidavit of a Responsible Official of Borrower before a notary public to the effect that all statements, invoices, bills, and other expenses incident to the Project, whether or not specified in the Budget, have been or will be paid in full with the proceeds of the requested advance, including all retainage that the Project is, and accompanied by schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents as Lender requests.

“BIA” means the Bureau of Indian Affairs of the United States Department of the Interior.

“Borrower” means Quapaw Tribe of Oklahoma (O-Gah-Pah), a federally recognized Indian tribe.

“Budget” means a maximum overall budget for the Project as it may be modified from time to time pursuant to Section 5.2(b). As of the date hereof, the overall Budget is in the form of the attached Exhibit A.

“Business Day” means any day other than Saturday, a Sunday or a day on which banking institutions in Tulsa, Oklahoma are authorized by law, regulation or executive order to remain closed.

“Change Orders” means any order, direction, authorization or amendment, whether written or verbal, which authorizes, directs or approves a material change, after the date of this Agreement, in

the Plans and Specifications, any Construction Contract, the Construction Schedule, the Budget or any of the other Construction and Development Documents.

“Claims” means any liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, utility charges, costs, fees, expenses and disbursements (including, without limitation, reasonable legal fees and expenses and costs of investigation) of any kind and nature whatsoever.

“Construction Contract” means any contract relating to work performed or to be performed for the Project executed or to be executed by Borrower.

“Construction Contractor” means any contractor who is a party to a Construction Contract.

“Construction and Development Documents” means, collectively, each Construction Contract, the Plans and Specifications, the Budget and all permits, licenses, approvals, consents, governmental approvals and authorizations, tests, studies, reports, architect’s contracts, design contracts, bonds and other documents and instruments governing, or obtained or entered into in connection with, the construction of the Project.

“Construction Schedule” means a construction schedule in a form approved by Lender showing a trade-by-trade breakdown of the estimated periods of commencement and completion of the construction of the Project after the Effective Date.

“Default” means any event or occurrence that, with notice or the passage of time, or both, would constitute an Event of Default.

“Effective Date” means the date on which the conditions specified in Section 4.1 are satisfied or waived by Lender in accordance with this Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, and any regulations issued pursuant thereto, as amended or replaced and as in effect from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with such Borrower within the meaning of Section 414(b) or (c) of the Code.

“Event of Default” means any of the events specified in Section 9.1.

“Excusable Delay” means any delay in completion of the Project due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather, moratorium or any other cause whatsoever beyond the reasonable control of Borrower.

“Federal Courts” has the meaning given to it in Section 10.18(c).

“Governing Documents” means, collectively, as to any Person, the articles or certificate of incorporation and bylaws, any shareholders agreement, certificate of formation, limited liability company agreement, partnership agreement or other formation, organization, or constituent documents of such Person including, with respect to Borrower, the Governing Resolution.

“Governing Resolution” has the meaning assigned to such term in Section 6.6 of this Agreement.

“Governmental Authority” means the government of the United States of America or the government of Borrower, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Hazardous Substances” means any substance, material or waste that is or becomes designated or regulated as “toxic,” “hazardous,” “pollutant,” or “contaminant” or a similar designation or regulation under any federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including without limitation petroleum or natural gas.

“Indemnatee” means Lender and its Affiliates, and each of their respective successors, permitted assigns, permitted transferees, invitees, contractors, servants, employees, officers, directors, shareholders, partners, participants, representatives, agents, designees, and/or nominees.

“Inspecting Professional” means Lender’s inspector, or a third-party professional employed by Lender, for the purpose of, among other things, reviewing the Plans and Specifications, the quality of construction of the Project, the Construction Contracts, the Budget, all Change Orders and all other Construction and Development Documents.

“Lease” means the Lease Agreement dated on or about ~~April~~May, 2015 between Borrower, as lessor, and Lessee, as lessee, covering the improvements on the Real Property (including the Project) and other personal property related to the Project as described therein.

“Lease Documents” means the Lease and the Letter Agreement.

“Lender” means International Bank of Commerce, a Texas state banking association, and its successors and assigns under this Agreement.

“Lessee” means the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), a wholly-owned unincorporated instrumentality of Borrower.

“Letter Agreement” has the meaning given to it in Section 4.1(h).

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

“Loan” has the meaning given to it in Section 2.1.

“Loan Documents” means this Agreement, the Note, the Security Agreement and any other documents, guarantees, instruments or agreements executed and delivered by Borrower or its Affiliates now or in the future in connection with this Agreement or the Loan.



“Material Adverse Effect” means a material adverse condition or material adverse change in or affecting (i) Borrower’s or Lessee’s business, assets, liabilities, property, condition (financial or otherwise), results of operations, prospects, value or management; (ii) the validity or enforceability of any of the Loan Documents; (iii) the validity or enforceability of any of the Lease Documents, or (iv) Lender’s rights or remedies under the Loan Documents or the Lease Documents.

“Note” means the promissory note made by Borrower to Lender in the maximum aggregate amount of the Loan, as amended from time to time, and any notes given in renewal, substitution, or exchange.

“Oklahoma State Courts” has the meaning assigned to such term in Section 10.18(c).

“Patriot Act” has the meaning assigned to such term in Section 10.21.

“Pavilion” means the Borrower’s existing pavilion facility on the Real Property and the property described in the Security Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, statutory trust, unincorporated organization, limited liability company, tribe or government (including any agency, component or political subdivision thereof) or other entity.

“Plans and Specifications” means the plans and specifications relating to the Project as a whole, as modified or amended by any Change Orders accepted by Lender.

“Project” means the renovation, expansion and equipping of the Pavilion.

“Project Cost” means the total of the amounts set forth on the Budget (as adjusted from time to time pursuant to this Agreement) of all costs, expenses and fees required to construct the Project.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Real Property” means the real property described on the attached Exhibit B.

“Responsible Official” means, when used with reference to any Person, any member of senior management of such Person and, in the case of Borrower, includes the Chairman or any Vice Chairman of Borrower’s Tribal Business Committee. Any document or certificate that is signed or executed by a Responsible Official of a Person will be conclusively presumed to have been authorized by all necessary, corporate, tribal, partnership and/or other action on the part of such other Person.

“Security Agreement” means the Security Agreement by Borrower in favor of Lender of even date herewith.

“Stored Materials” means building materials or furnishings that have not yet been incorporated into the Project.

## ARTICLE 2 THE LOAN

**Section 2.1 Loan Amount.** Lender agrees to provide an advancing construction term loan facility to Borrower in the aggregate amount of \$5,100,000.00 (the “Loan”), consisting of two advances as described further in Section 2.3.

**Section 2.2 Purpose.** Borrower shall use the proceeds of the Loan solely for Project Costs and, to the extent Project Costs are less than the amount of the Loan, to pay or reimburse Borrower for costs and expenses related to the completion of the parking lot to be utilized in part for the Pavilion.

**Section 2.3 Advances.** Subject to the terms and conditions of this Agreement, Lender shall make the Loan available to Borrower in two advances: (i) the initial advance in the amount of ~~[\$4,200,000.00]~~ \$4,480,691.01 made on or about the Effective Date, subject to the satisfaction of the conditions precedent set forth in this Agreement, to reimburse Borrower for Project Costs incurred and paid prior to the date of such advance, as reflected in the Budget, and (ii) the final advance in the amount of \$619,308.99 to reimburse Borrower for all the remaining Project Costs and for other purposes described in Section 2.2.

**Section 2.4 Repayment of Loan.** The Loan will be evidenced by, and Borrower will repay the Loan in accordance with, the Note. Interest will accrue on the principal amount of the Loan as described in the Note, except as otherwise provided in this Agreement. Borrower must make all payments required by the Note and, if Borrower fails to do so, Borrower must pay such late charges or accelerated interest rates specified in the Note or any other Loan Documents. Amounts repaid under the Loan may not be re-borrowed.

**Section 2.5 25 U.S.C. § 81.** Lender and Borrower acknowledge and agree that the Loan Documents do not encumber Indian lands, as that term is used in 25 U.S.C. § 81, and, therefore, the Loan Documents are valid without approval of the Secretary of the United States Department of the Interior or a designee under 25 U.S.C. § 81.

## ARTICLE 3 FEES AND EXPENSES

**Section 3.1 Loan Servicing Fee.** Borrower agrees to pay a one-time, up-front loan servicing fee of \$51,000.00. This fee is due on the date of this Agreement.

**Section 3.2 BIA Premium Fee.** Borrower agrees to pay the BIA premium fee of ~~two percent (2%) of the amount of the Loan~~ \$91,800.00. This fee is due on the date of this Agreement. Borrower shall reimburse Lender any other amounts incurred by Lender as a result of or arising from the BIA’s guarantee of the Loan.

**Section 3.3 Waiver Fee.** If Lender, at its discretion, agrees to waive or amend any terms of this Agreement, Borrower will, at Lender’s option, pay Lender a fee for each waiver or amendment in an amount advised by Lender at the time Borrower requests the waiver or amendment. Nothing in this Section 3.3 obligates Lender to agree to any waiver or amendment requested by Borrower, and Lender may impose additional requirements as a condition to any waiver or amendment.

**Section 3.4 Expenses.** Borrower agrees to repay Lender upon demand for expenses that include, but are not limited to, filing, recording and search fees, appraisal fees, title report fees, documentation fees, and similar items.

**Section 3.5 Reimbursement of Costs.** Borrower agrees to reimburse Lender for any expenses it incurs in preparing this Agreement and any agreement or instrument required by this Agreement, including, attorneys' fees, including any out-of-pocket expenses, including without limitation, fees and expenses of consultants to Lender related to the preparation, arrangement, negotiation and closing of the Loan and those related to the ongoing administration of the Loan or to preparation or negotiation of any amendments, waivers or other documentation related to this Agreement. Borrower will pay such costs and expenses whether or not the Loan is fully advanced or disbursed. Borrower and Lender agree Borrower is not responsible for legal fees (exclusive of out-of-pocket expenses) in excess of \$27,500.00 for preparing the Loan Documents to be executed and delivered by Borrower under Section 4.1.

**Section 3.6 Additional Costs.** Borrower will pay Lender, on demand, for Lender's costs or losses directly related to the Loan arising from any statute or regulation, or any request or requirement of a regulatory agency which is applicable to all state banking associations or a class of all state banking associations. The costs and losses will be allocated to the Loan in a manner determined by Lender, using any reasonable method. These costs include any reserve or deposit requirements, and any capital requirements relating to Lender's assets and commitments for credit.

## **ARTICLE 4 CONDITIONS**

**Section 4.1 Conditions Precedent to Closing and Initial Advance.** Lender's obligations to disburse the Loan proceeds as and for the initial advance and to perform its other obligations under this Agreement are expressly conditioned upon satisfaction of the following conditions precedent, each of which exists for the Lender's sole benefit and may be waived only by Lender in its discretion:

(a) Authorization. Lender's receipt of Borrower's Governing Documents certified to be true and correct by an appropriate official of Borrower, together with one or more certificates of an appropriate official of Borrower, in form and content acceptable to Lender, certifying:

(i) as to the resolutions of Borrower's Tribal Business Committee, duly authorizing the execution, delivery and performance by Borrower of each Loan Document to which Borrower is or will be a party;

(ii) as to the incumbency and signature of persons authorized to execute and deliver Loan Documents on Borrower's behalf;

(iii) as to the accuracy of all Borrower's representations and warranties in the Loan Documents and the absence of any Default or Event of Default; and

(iv) that no labor controversy, litigation, arbitration or governmental investigation or proceeding is pending or, to the knowledge of Borrower, threatened against Borrower or Lessee that could reasonably be expected to have a Material

Adverse Effect or that in Lender's reasonable judgment would or could reasonably be expected to, enjoin, prohibit, limit or restrain the making of the Loan.

(b) Construction Items. Lender's receipt and approval of each of the following items:

(i) All inspection and test reports made by or for Borrower or Lessee relating to the Real Property.

(ii) The Budget.

(iii) A certified list from Borrower of all Construction Contracts relating to the Project that Borrower has executed or intends to execute pertaining to any of the Project that is not completed as of the Effective Date.

(iv) A title status report acceptable to Lender pertaining to the Real Property.

(v) Any searches for judgments and Liens in respect of Borrower and its Property required by Lender.

(vi) Copies of all of the Construction and Development Documents that have been executed as of the Effective Date.

(vii) The Plans and Specifications. Without waiving the requirement that the Plans and Specifications must be acceptable to Lender, among other things, the Plans and Specifications must contain all detail necessary for the construction of the Project.

(viii) All invoices and receipts reflecting payment of the Project Costs for which Borrower seeks reimbursement from the initial advance.

(ix) Such other items or documents as Lender requires.

(c) Fees. Payment of all fees required under ARTICLE 3.

(d) Representations and Warranties. The continued accuracy and completeness of Borrower's representations and warranties under the Loan Documents.

(e) No Defaults. The absence of any Default or Event of Default.

(f) Delivery of Loan Documents. Borrower's due execution and delivery to Lender of this Agreement, the Note, all other Loan Documents to which Borrower is a party and all other certificates, agreements and instruments required by Lender, each in form and content satisfactory to Lender.

(g) BIA Guaranty. Lender's receipt of a guaranty of 90% of the unpaid principal balance of the Loan from the BIA pursuant to 25 C.F.R. Part 103 and Lender's satisfaction that all conditions precedent to the BIA guaranty have been satisfied.

(h) Lease Documents. The execution and delivery of the Lease by all parties thereto, in form and content acceptable to Lender, and a signed letter agreement among Borrower, Lender, and Lessee, in form and content acceptable to Lender, directing Lessee to make payment of rent due under the Lease directly to Lender while the Loan remains outstanding, and addressing such other matters as Lender requires (the “Letter Agreement”).

(i) Insurance. Evidence of the insurance coverage required by Section 7.11.

(j) Security Agreement. A security agreement from the Authority granting to Lender a first priority lien and security interest in and to all personal property located in or used in conjunction with the Project or any portion thereof.

(k) Legal Opinion. Written opinions from Borrower’s legal counsel, covering such matters as Lender requires. The legal counsel and the terms of the opinions must be acceptable to Lender.

(l) Inspection. Completion satisfactory to Lender of an inspection of the Plans and Specifications, each Construction Contract, such other of the Construction and Development Documents as Lender requires, and the Project, by Lender and such other professionals and consultants as Lender shall require (including, without limitation and if Lender shall so require, the Inspecting Professional).

(m) License. The granting by Borrower of a gaming financier license and any other required license to Lender or, alternatively, Lender’s determination (made in its sole discretion) that such license is not required.

(n) Due Diligence. Lender’s completion, to its satisfaction, of all legal and other due diligence regarding Borrower, Lessee and the Project.

(o) Permits and Licenses. Borrower has provided Lender true and correct copies of all permits and licenses required to operate the Pavilion.

**Section 4.2 Conditions Precedent to Final Advance**. Lender’s obligation to make the final advance of Loan proceeds shall be subject to fulfillment of each of the following conditions precedent on or before the date six (6) months after the date of this Agreement, to the satisfaction of Lender at the time of such advance:

(a) Continued Satisfaction of General Conditions. The continued satisfaction of all conditions provided in Section 4.1.

(b) No Material Adverse Effect. The absence of any Material Adverse Effect.

(c) Draw Package. Borrower shall have delivered to Lender the following at least ten (10) Business Days before the requested date of the advance:

(i) an Application for Advance;

(ii) a certification from the Borrower in form acceptable to Lender certifying that:

(A) the request for payment is correct and that all work on the Project has been done in substantial compliance with the Plans and Specifications, as modified by any permissible or approved Change Orders; and

(B) there has been no material deviation from the cost of construction of the Project, except as authorized by permissible or approved Change Orders;

(iii) Borrower's and the Inspecting Professional's certification to Lender (or, in the Lender's sole discretion, a determination by Lender) that (i) construction of the Project has been completed in a good and workmanlike manner, in accordance with applicable requirements of all Governmental Authorities and in accordance with the Plans and Specifications, and that the Project can be occupied or utilized and operated for its intended purpose, and (ii) the furniture, fixtures and equipment necessary to utilize and operate the Project for its intended purpose, along with a detailed description of all such furniture, fixtures and equipment and its acquisition cost;

(iv) appropriate approvals from (i) all Governmental Authorities regarding completion of the Project, which approvals shall be evidenced by an irrevocable certificate of occupancy for the Project; and (ii) all other Governmental Authorities having jurisdiction over the contemplated use, operation and occupancy of the Project;

(v) all invoices and receipts reflecting payment of the Project Costs for which Borrower seeks reimbursement or which Borrower seeks to pay with proceeds from such final advance; and

(vi) unconditional lien waivers and releases from those Construction Contractors as are required by Lender, covering all work, labor and materials provided by such Construction Contractor, and if required by Lender, Borrower shall have provided to Lender executed AIA Form G706 (Contractor's Affidavit of Payments of Debts) and AIA Form G706A (Contractor's Affidavit of Release of Liens), or other documents satisfactory to Lender.

(d) Other Documentation. Borrower's delivery to Lender of any other documentation reasonably required by Lender.

(e) Inspections. Lender's completion of all inspections of the Project as Lender requires (including without limitation an inspection by the Inspecting Professional).

**Section 4.3 Objections by Lender.** If Lender objects to an item (or portion thereof) included in the Application for Advance, then Lender shall promptly notify Borrower of Lender's specific objection(s) and will be relieved of any obligation to disburse Loan proceeds for that item (or portion thereof) until five (5) Business Days after Borrower cures the objection(s) with evidence satisfactory to Lender that such item is correct and due.

**Section 4.4 Effect of Request for Final Advance.** Borrower's request for the final advance shall constitute, without the necessity of specifically containing a written statement, a representation and warranty by Borrower that (i) all of the representations and warranties in the Loan Documents are true and correct, and (ii) no Event of Default or Default has occurred and is continuing.

**Section 4.5 Lender's Inspections.** Throughout the course of construction of the Project, Lender has the right to employ, at Borrower's sole cost and expense, an inspector or inspectors, including without limitation the Inspecting Professional, who shall review, as agent for Lender, all Construction and Development Documents and all construction activities undertaken in regard to the Project.

## **ARTICLE 5 USE OF ADVANCES; CHANGE ORDERS; BUDGET ISSUES**

### **Section 5.1 Use of Advances; Limitations of Advances.**

(a) Approved Uses. Borrower shall use the Loan only for the payment of or reimbursement for Project Costs. Nothing contained in this Agreement or the other Loan Documents shall be construed as imposing upon Lender any obligation to monitor how advances of Loan proceeds are used by Borrower or any other party. Except as specifically set forth and itemized in the Budget, Borrower may not use advances of Loan proceeds to pay or reimburse itself for development, management, leasing, promotional or other similar fees that are payable to Borrower or Affiliates of Borrower, even if they constitute Project Costs.

(b) Payment of Interest and Other Amounts. After a Default or an Event of Default, Borrower hereby authorizes Lender to disburse Loan proceeds to pay interest accrued on the Loan and to pay taxes, insurance premiums and other charges, notwithstanding that Borrower may not have requested an advance of such amount. Lender may make such advances notwithstanding the fact that the Loan is not "in balance" or that a Default or an Event of Default exists. Such advances shall be added to the outstanding principal balance of the Note. The authorization hereby granted shall be irrevocable and no further direction or authorization from Borrower shall be necessary for Lender to make such advances. However, the provisions of this Section 5.1(b) shall not prevent Borrower from paying interest from its own funds.

### **Section 5.2 Change Orders; Other Budget Related Requirements; Excess Project Costs.**

(a) Changes and Change Orders.

(i) Borrower will not change or in any manner cause or seek a change in any laws, requirements of Governmental Authorities or obligations created by private contracts and leases which now or hereafter may significantly affect the Project without the prior written consent of Lender.

(ii) Each Change Order must be submitted to Lender for review. Proposed Change Orders shall be submitted to Lender on a form acceptable to Lender

containing such information as to the nature, scope and cost of such Change Order as Lender may require, together with a marked copy of the portion of the Plans and Specifications affected by the proposed Change Order. Borrower shall not be required to obtain Lender's approval of any individual proposed Change Order if the aggregate cost of all Change Orders after the date of this Agreement (including the proposed Change Order and all prior Change Orders issued) does not exceed \$100,000.00.

(iii) Whether or not Lender's approval is required for any Change Order, Change Order information must still be submitted to Lender.

(b) Budget Revisions. All material modifications to the Budget will be evidenced by a new Budget (or other supplemental documentation) and shall not be effective until approved by Lender. At Lender's request, Borrower agrees to provide Lender with copies of all Construction Contracts, purchase orders, bills of sale and other agreements relating to the Project so that Lender can verify all costs set forth in the Budget.

(c) Stored Materials. Notwithstanding anything to the contrary in this Agreement, Lender shall not have any obligation to make advances of Loan proceeds for Stored Materials, and Borrower may not use advances of Loan proceeds to pay or reimburse itself for Stored Materials, unless (a) Borrower has good title to the Stored Materials and has furnished satisfactory evidence of such title to Lender, to the extent required by Lender, (b) the Stored Materials are components in a form ready for incorporation into the Project and will be so incorporated within a period of forty-five (45) days from the date of the advance for the Stored Materials, (c) the Stored Materials are in Borrower's possession and are satisfactorily stored on the Real Property or at such other location as Lender may approve, in each case with adequate safeguards to prevent commingling with materials for other projects, (d) the Stored Materials are protected and insured against loss, theft and damage in a manner and amount satisfactory to Lender, (e) the Stored Materials have been paid for in full or will be paid for in full from the funds to be advanced, (f) all lien rights and claims of the supplier of the Stored Materials have been released or will be released upon payment with the advanced funds, and (g) following the advance for the Stored Materials, the aggregate amount of advances for Stored Materials that have not yet been incorporated into the Project will not exceed Fifty Thousand Dollars (\$50,000.00).

(d) Payment of Excess Project Costs. As a material condition of the Loan, Borrower shall pay all Project Costs in excess of the maximum principal amount of the Loan. Notwithstanding the foregoing, Lender may (but shall not be obligated to) disburse borrowings for the payment of interest and the payment of expenses, charges, costs, fees, and other amounts pursuant to Section 5.1(b), even if the undisbursed portion of the Loan is not sufficient to complete and operate fully the Project and to pay all Project Costs.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

Borrower makes the following representations and warranties as of the date of this Agreement and as of the date of each advance of the Loan:



**Section 6.1 Organization of Borrower.** Borrower is federally recognized as an Indian Tribe pursuant to a determination of the Secretary of the Interior, and as an Indian Tribal government pursuant to Sections 7701(a)(40)(A) and 7871(a) of the Internal Revenue Code. Borrower has the right to own and lease the improvements located on the Real Property and the Project to Lessee, to execute and deliver each of the Loan Documents and Lease Documents and to perform its obligations thereunder.

**Section 6.2 Organization of Lessee.** Lessee is a wholly owned instrumentality of Borrower. Lessee has full power and authority to lease the improvements located on the Real Property and the Project from Borrower, to execute and deliver each of the Lease Documents and to perform its obligations thereunder.

**Section 6.3 Authorization.** The Loan Documents are within Borrower's powers, have been duly authorized by all necessary tribal or government action on the part of Borrower, and do not conflict with the Borrower's Governing Documents.

**Section 6.4 Enforceability.** Each Loan Document constitutes Borrower's legal, valid and binding agreement, enforceable against Borrower in accordance with its terms, and any instrument or agreement required under this Agreement or in connection with the Loan, when executed and delivered, will be similarly legal, valid, binding and enforceable, except as the enforcement thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as the ability to waive exhaustion of tribal court remedies may be limited by applicable law.

**Section 6.5 Lease Documents.** The Lease Documents are within the powers of each of Borrower and Lessee, have been duly authorized by each of Borrower and Lessee, and do not conflict with the Governing Documents of either Borrower or Lessee. The Lease Documents do not conflict with any law, agreement, or obligation by which either Borrower or Lessee is bound.

**Section 6.6 Governing Resolution.** The Resolution Delegating Authority to the Quapaw Tribal Business Committee to Speak and Act in Behalf of the Quapaw Tribe of Indians (the "Governing Resolution"), approved by the Secretary of the Interior of the United States, the Borrower's tribal council (as referred to in the Governing Resolution), and the Commissioner for Indian Affairs, was duly and validly adopted by the Borrower, is the Borrower's only Governing Resolution, and is Borrower's valid and governing law.

**Section 6.7 Tribal Business Committee.** The Quapaw Tribal Business Committee referred to in the Governing Resolution is Borrower's governing body, and all members of the Quapaw Tribal Business Committee are validly serving.

**Section 6.8 Good Standing.** To the extent required by law, Borrower is qualified to do business and is in good standing under the laws of each jurisdiction in which it is required to be qualified by reason of the location or the conduct of its business.

**Section 6.9 No Conflicts.** Neither this Agreement nor any other Loan Document conflicts with any law, agreement or obligation by which Borrower is bound.

**Section 6.10 Financial Information.** All financial and other information that has been or will be supplied to Lender is sufficiently complete to give Lender accurate knowledge of Borrower's financial condition, including all material contingent liabilities. Borrower does not have any material liability or material obligations of or affecting the Borrower not reflected or disclosed in financial statements provided to Lender or to be provided under Section 7.2. Since the date of the most recent financial statements provided to Lender, there has been no Material Adverse Effect. Borrower's fiscal years begins on October 1 and ends on September 30.

**Section 6.11 Lawsuits; Regulations.** There is no lawsuit, tax claim or other dispute pending or threatened against Borrower or Lessee which, if lost, would impair (a) either of their respective financial conditions, (b) Borrower's ability to repay the Loan, or (c) Lessee's ability to make payments under the Lease. The Borrower is not subject to regulation under any law limiting or regulating its ability to incur indebtedness for money borrowed or to otherwise pay and perform its obligations under the Loan Documents in accordance with their respective terms.

**Section 6.12 Property.** Borrower has good and valid title to all Property reflected in all financial statements provided to Lender or to be provided under Section 7.2, other than immaterial items of Property subsequently sold or disposed of in the ordinary course of business, free and clear of all Liens other than Liens expressly permitted by this Agreement.

**Section 6.13 ERISA.** Without admitting the applicability of ERISA to the Borrower, and without waiving the sovereign immunity of the Borrower with respect to ERISA, neither the Borrower nor any ERISA Affiliate maintains, contributes to or is required to contribute to any "employee pension benefit plan" that is subject to Title IV of ERISA (if ERISA were applicable to the Borrower).

**Section 6.14 Permits, Licenses.** Borrower and Lessee possess all approvals, permits, memberships, franchises, contracts and licenses required, and all trademark rights, trade name rights, patent rights and fictitious name rights necessary, to enable them to conduct their respective operations and to construct and operate the Project.

**Section 6.15 Other Obligations.** Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation.

**Section 6.16 No Event of Default.** There is no Default or Event of Default.

**Section 6.17 Insurance.** Borrower has obtained, and maintained in effect, the insurance coverage required in the "Covenants" section of this Agreement.

**Section 6.18 Environmental Matters.** To its knowledge, Borrower is not in violation of any health, safety, or environmental law or regulation regarding Hazardous Substances, and is not the subject of any claim, proceeding, notice, or other communication regarding Hazardous Substances.

**Section 6.19 Disclosure.** No written statement made by or on behalf of Borrower to Lender in connection with this Agreement, or in connection with any Loan advance, contains any untrue statement of a material fact or omits a material fact necessary in order to make the statement made not misleading in light of all the circumstances existing at the date the statement was made.

**Section 6.20 Tax Liability.** The Borrower has filed all tax returns which are required to be filed, and has paid, or made provision for the payment of, all taxes required to be paid with respect to the periods, Property or transactions covered by said returns, or pursuant to any assessment received by Borrower, except such taxes, if any, as are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established and maintained.

**Section 6.21 Employee Matters.** There are no disputes presently subject to grievance procedure, arbitration or litigation under any collective bargaining agreements, employment contracts or employee welfare or incentive plans to which the Borrower is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to Borrower's knowledge, jurisdictional disputes or organizing activities occurring or threatened, in each case, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**Section 6.22 Access; Utilities.**

(a) All roads necessary for the Project's intended purpose have been completed and the necessary rights of way therefor have been acquired by Borrower.

(b) All utilities, services and facilities necessary for the Project are and will continue to be available at or within the boundaries thereof when needed.

(c) Borrower possesses all rights and interests in property (including the Project and rights of ingress to and egress thereto and therefrom) and all material rights or contracts necessary for the construction, installation, completion, operation and maintenance of the Projects as contemplated by this Agreement.

(d) The public has access to the Project over tribal, federal, state or county publicly open highways or by way of an easement for access to premises.

**Section 6.23 Impact of Tribal Laws.** Borrower's laws do not directly or indirectly limit or otherwise adversely affect Lender's ability to timely collect all amounts due under this Agreement, the Note and the other Loan Documents.

**Section 6.24 No Referendum.** No challenge (including by referendum or initiative) of any action of the Quapaw Tribal Business Committee or any of Borrower's other instrumentalities or agencies (including Lessee) taken in connection with the approval, authorization, execution and delivery of any Loan Document, any Lease Document or the application of the proceeds of the Loan is threatened or pending which would reduce the Borrower's or Lessee's obligations under the Loan Documents or the Lease Documents or impair the enforceability of the Loan Documents or the Lease Documents or Lender's rights thereunder or cause a Material Adverse Effect.

**Section 6.25 In Balance.** The total Project Costs unpaid to date do not exceed ~~[\$900,000.00]~~ \$700,000.00.

## ARTICLE 7 COVENANTS

Until Lender is repaid in full and no credit is available to Borrower hereunder:

**Section 7.1    Use of Proceeds.** Borrower agrees to use the Loan solely to pay Project Costs (or to finance Project Costs previously paid) in accordance with the terms of this Agreement.

**Section 7.2    Financial Information.** Borrower shall provide or cause to be provided, on a consolidated basis, the following financial information and statements in form and content acceptable to Lender, and such additional information as reasonably requested by Lender from time to time:

(a)    Within one hundred twenty (120) days of the fiscal year end, Borrower's and Lessee's annual financial statements, in form and content satisfactory to Lender. These financial statements must be audited (with an unqualified opinion) by a certified public accountant acceptable to Lender.

(b)    Within forty-five (45) days of the period's end (including the last period in each fiscal year), quarterly financial statements, in form and content satisfactory to Lender (including without limitation balance sheets, income statements and cash flow statements), for Borrower, including comparisons of: (i) the current period to the corresponding period in the prior year and to the budget for the current fiscal year; and (ii) the year-to-date to the corresponding period in the prior year and to the budget for the current fiscal year.

(c)    Promptly, upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent or received by Borrower or Lessee to or from Borrower's or Lessee's auditors.

(d)    Simultaneously with the delivery of the financial statements in accordance with (a) and (b), above, a compliance certificate in substantially the form of the attached Exhibit C by Borrower, signed by its manager, setting forth whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any Default or Event of Default under this Agreement and, if any Default or Event of Default exists, specifying its nature and the action Borrower is taking (or proposes to take) with respect to the Default or Event of Default.

(e)    Promptly upon Lender's request, such other books, records, statements, lists of property and accounts, budgets, forecasts or reports material to the financial condition of Borrower or Lessee as Lender reasonably requests.

**Section 7.3    Change in Fiscal Year.** Borrower will not change the dates on which its fiscal year begins and ends, as specified in Section 6.10.

**Section 7.4    Notices to Lender.** Borrower will promptly notify Lender in writing of:

(a)    any lawsuit against Borrower or Lessee seeking damages of over One Million Dollars (\$1,000,000.00) in excess of any insurance coverage;

(b)    any substantial dispute between Borrower and any Governmental Authority;

(c)    any Default or Event of Default;

(d) any Material Adverse Effect, or any other potential impairment of Borrower's ability to repay the credit;

(e) the receipt of any written notice or communication regarding:

(i) any material threatened or pending investigation or enforcement action by any Governmental Authority or any other claim relating to health, safety, the environment, or any Hazardous Substances with regard to Borrower's or Lessee's property, activities, or operations relating to the Real Property; or

(ii) the realistic possibility that Hazardous Substances in substantial amounts exist on or under all or a portion of the Real Property, not to include substances in commercially available amounts regularly used in the operation of the improvements located on the Real Property; or

(f) any change in Borrower's or Lessee's name, legal structure, or principal place of business.

**Section 7.5 Books and Records.** Borrower will maintain adequate books and records.

**Section 7.6 Audits and Inspections.** Borrower will allow Lender and its agents to inspect the Project and the Real Property, and examine, audit, and make copies of books and records, at any reasonable time. If any of Borrower's properties, books, or records is in the possession of a third party, Borrower authorizes that third party to permit Lender or its agents to have access to perform inspections or audits and to respond to Lender's requests for information concerning such properties, books and records.

**Section 7.7 Compliance with Laws.** Borrower will comply with the laws, regulations, and orders of any government body with authority over Borrower's properties and activities, including without limitation the following, to the extent such laws are applicable to Borrower: (a) the Flood Disaster Protection Act of 1973 (P.L. 93-234; 87 Stat. 975), (b) the National Environmental Policy Act of 1969 (P.L. 92-190; 42 U.S.C. 4321), (c) Executive Order 11514, (d) any other pertinent environmental regulations, and (e) Archeological and Historic Preservation Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Archeological and Historic Preservation Act of May 24, 1974 (P.L. 93-291; 88 Stat. 174), relating to the preservation of historical and archeological data.

**Section 7.8 Cooperation.** Borrower will take any action reasonably requested by Lender to carry out the intent of this Agreement.

**Section 7.9 Maintenance of Property.** Borrower shall maintain, preserve and protect all of the improvements on the Real Property in good order and condition, subject to wear and tear in the ordinary course of business, and not permit any waste of its Property, except that the failure to maintain, preserve and protect a particular item of Property that is not of significant value, either intrinsically or to Borrower's operations will not constitute a violation of this covenant.

**Section 7.10 Establishment of ERISA Plans.** Borrower shall not establish or become obligated to make contributions with respect to any employee pension plan or other defined benefit

plan or trust for the benefit of its employees that is subject to Title IV of ERISA without Lender's prior written consent.

**Section 7.11 Insurance.**

(a) Borrower, at its expense, shall obtain and deliver to Lender evidence satisfactory to the Lender of policies of insurance providing the following coverages, either by Borrower or Lessee, relating to the Project:

(i) Commercial general liability insurance with limits of not less than \$1,000,000.00 per occurrence combined single limit and \$2,000,000.00 in the aggregate for the policy period, or in whatever higher amounts as may be required by Lender from time to time by notice to Borrower, and extended to cover: (A) Contractual Liability assumed by Borrower with defense provided in addition to policy limits for indemnities of the named insured, (B) if any of the Project is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the Project that may be subcontracted, (C) Broad Form Property Damage liability, (D) Products & Completed Operations for coverage, such coverage to apply for two years following completion of construction, (E) waiver of subrogation against all parties named additional insured, (F) severability of interest provision, and (G) Personal Injury & Advertisers Liability.

(ii) Automotive Liability including coverage on owned, hired, and non-owned automobiles and other vehicles, if used in connection with the Project, with Bodily Injury and Property Damage limits of not less than \$1,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.

(iii) Umbrella/Excess Liability in excess of Commercial General Liability, Automobile Liability and Employers' Liability coverages which is at least as broad as these underlying policies with a limit of liability of \$5,000,000.00.

(iv) All-Risk Property (Special Cause of Loss) Insurance on the Project in an amount not less than the full insurable value on a replacement cost basis of the Project and personal property related thereto. During the construction period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" with no coinsurance requirement and shall contain a provision granting the insured permission to occupy prior to completion. Such policy shall not contain an exclusion for terrorist losses. However, if such an exclusion exists in the All-Risk policy, a separate Terrorism policy covering Certified Acts of Terrorism must be evidenced to Lender in an amount equal to the full replacement cost of the Project. This policy must also list Lender as mortgagee and loss payee.

(v) Workers' compensation/occupational injury benefits and employer's liability insurance in accordance with the applicable laws of the jurisdiction in which Borrower is obligated to pay compensation to employees engaged in the performance of the work. The policy limit under the Employer's Liability insurance section shall not be less than \$1,000,000.00 for any one accident.

(vi) If the Real Property, or any part thereof, lies within a “special flood hazard area” as designated on maps prepared by the Department of Housing and Urban Development, a National Flood Insurance Association standard flood insurance policy, plus insurance from a private insurance carrier if necessary, for the duration of the Loan in the amount of the full insurable value of the Project.

(vii) Builder’s Risk insurance on the Project in an amount not less than 100% of the estimated maximum price to construct the Project under the General Contract.

(viii) “Contractor’s Liability” insurance for the Project in an amount not less than \$5,000,000.00.

(b) All insurance policies required above (i) be issued by an insurance company licensed to do business in Oklahoma having a rating of “A” VIII or better by A.M. Best Co., in Best’s Rating Guide, (ii) name “International Bank of Commerce, any and all subsidiaries as their interest may appear” as additional insureds on all liability insurance and as loss payee on all All-Risk Property insurance, (iii) be endorsed to show that Borrower’s insurance shall be primary and all insurance carried by Lender in strictly excess and secondary and shall not contribute with Borrower’s insurance, name Lender as an additional insured on all liability and workers’ compensation insurance, (iv) provide that, notwithstanding any contrary agreement between Borrower and the insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered, materially amended or allowed to be reduced in the scope or limits of coverage without at least thirty (30) days’ prior written notice to Lender, (v) contain a “non-imputation” endorsement providing that proceeds of the insurance policy will be paid to Lender regardless of any act, omission, failure or defect by or of Borrower, (vi) be evidenced by a certificate of insurance to be provided to and held by Lender that sets forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage, (vii) include either policy or binder numbers on the Accord form, and (viii) be in form and amounts otherwise acceptable to Lender.

**Section 7.12 Performance of Obligations.** Borrower shall perform all of its obligations under the terms of each agreement, contract, lease, indenture, instrument or undertaking to which the Borrower is a party or by which it or its Property is bound, except where non-performance could not, individually or in the aggregate, result in a Material Adverse Effect.

**Section 7.13 Preservation of Existence.** Borrower shall do all things necessary to maintain Borrower’s existence as a federally recognized Indian tribe under 25 C.F.R. Part 83 and as an Indian Tribal government pursuant to IRC Sections 7701(a)(40)(A) and 7871(a).

**Section 7.14 Government Approvals.** Borrower shall take all actions necessary to apply for and obtain any authorization, consent or approval required to authorize, permit or render enforceable any amendment, modification or supplement to the Loan Agreement.

**Section 7.15 Transactions With Affiliates.** Borrower shall not enter into any transaction of any kind with any of its affiliates other than (a) transactions with affiliates utilizing customary use of employment and bid preferences in accordance with Borrower’s law or policy in effect on the date hereof, and (b) other transactions on terms that are at least as favorable to Borrower as would be the case in an arm’s length transaction between unrelated parties of equal bargaining power.

## **Section 7.16   Construction and Project Covenants.**

(a)     Compliance With Laws; Governmental Approvals. Borrower will comply, and will cause the Project to comply, with all laws, ordinances, rules, regulations or other requirements of all Governmental Authorities having jurisdiction over the Project or its construction, including all applicable building, zoning and use laws, ordinances, requirements, rules and regulations, and will furnish Lender with reports of any material violations or official searches for violations of any such requirements established by such Governmental Authorities. Borrower will comply, and will cause the Project to comply, with all applicable restrictive covenants and obligations created by private contracts and leases which affect ownership, construction, equipping, fixturing, use or operation of the Project. Borrower will obtain and deliver to Lender all governmental or regulatory approvals, orders, consents, permits, authorizations and licenses required for each stage of the construction, use, occupancy and operation of the Project on or before the date that such approvals are required to be obtained.

(b)     Lender Inspections.

(i)     Lender and its representatives or agents shall have the right at all reasonable times during the regular business hours (and at any time in the event of an emergency) to enter upon the Real Property and inspect the work of construction to determine that the same is in conformity with the Plans and Specifications and all of the requirements hereof. The fees of the Inspecting Professional, if retained by Lender, shall be consistent with those inspections for comparable construction projects. All such inspections and reviews shall be paid from the Loan proceeds (to the extent budgeted in the Budget) or by Borrower, as applicable, when incurred. If Lender incurs additional inspection, review or advance expense beyond those established in the Budget (such as inspections and reviews of the Project and the work performed prior to the first advance of Loan funds), Borrower shall reimburse Lender for the reasonable cost of such services within a reasonable time after Lender's request; provided, however, that Lender shall not be required to undertake such inspections or reviews. Borrower shall indemnify, defend and hold Lender harmless for all claims and damages arising from Lender and its Inspecting Professional's entry on the Premises, except for claims and damages arising from the gross negligence or willful misconduct of Lender or its Inspecting Professional.

(ii)    Borrower understands and agrees that (A) said inspections and reviews are for the sole purpose of protecting the Loan advances, (B) such inspections may be superficial and general in nature, primarily to inform Lender of the progress of construction of the Project, (C) Borrower shall have no recourse whatsoever against Lender, any Inspecting Professional or any other Person performing or supplying any such inspection or review arising from the findings, conclusions or other contents of or results from such inspections or reviews, (D) the making of any such inspections or reviews shall not create or impose any responsibility or liability of Lender for the quality of construction or for the compliance of the Project with the Plans and Specifications or any Governmental Authority requirements, and (E) Borrower shall not be entitled to rely on any such inspections or reviews as constituting Lender's approval, satisfaction or acceptance with respect to materials, workmanship, conformance to the Plans and Specifications



or otherwise. If, in the course of Borrower's own inspections of the construction, Borrower determines that the quality of the Project or any requirements of the construction financed hereby are being performed in a manner not satisfactory to Borrower, Borrower shall immediately notify Lender in writing describing the construction that Borrower believes to be unsatisfactory, provided that the receipt of any such notice from Borrower shall not result in any liability or responsibility on the part of the Lender in regard to any of the matters raised by Borrower. Without limiting the foregoing, Borrower shall permit Lender and/or Lender representatives to examine and copy all books and account records and other papers relating to the Real Property and the Project, and Borrower will cause all Contractors, Subcontractors and materialmen to cooperate with Lender's representatives to enable them to perform their function under this Agreement.

(iii) If any Lender's representative in its reasonable judgment determines that any work or materials fail to conform to the approved Plans and Specifications or sound building practices, or that they otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold advances until the matter is corrected. If this occurs, Borrower shall promptly correct the work to Lender's satisfaction. No such action by Lender shall affect Borrower's obligation to complete the Project on or before the Completion Date.

(c) Commence and Continue Construction; Maintenance of Project.

(i) Borrower acknowledges and agrees that (A) construction of the Project will proceed in compliance with the requirements of the Construction and Development Documents, (C) construction shall continue with diligence and continuity, in compliance with the Construction Schedule, in order that Substantial Completion shall occur on or before the Completion Date, subject to Excusable Delay and (C) in the event Loan proceeds are not sufficient to complete construction of the Project, Borrower shall provide from other sources all funds necessary for Substantial Completion to occur on or before the Completion Date, subject to Excusable Delay.

(ii) All construction shall be free and clear of defects in, and liens or claims for liens for, materials supplied or labor or services performed in connection with the Project. The Project shall be in substantial conformity with the Plans and Specifications and will not encroach on any other real estate, easements, building lines or setback requirements.

(iii) Borrower shall keep the Project in good condition and repair. Except as provided in the Plans and Specifications, Borrower will not remove, demolish, or substantially alter all or a portion of the Project. Borrower shall repair and promptly restore in a good and workmanlike manner any part of the Project damaged or destroyed from any cause whatsoever and shall pay when due all claims for labor performed and materials furnished in connection therewith. Borrower shall comply with all Construction and Development Documents and shall not permit any material non-compliance with the Construction and Development Documents.

(d) Correction of Defects. Within five (5) days after notice thereof, Borrower will proceed with diligence to correct all defects in the Project and any departure from the

Plans and Specifications that has not been deemed approved, or that is not permitted without approval. A Loan advance does not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defect or departure from the Plans and Specifications.

**Section 7.17 Banking Relationship.** Borrower will, and will encourage the Lessee and Quapaw Casino to, give the Lender every opportunity to retain the primary banking relationship with Downstream Casino Resort and the Quapaw Casino, at competitive rates within the industry.

**Section 7.18 Additional Negative Covenants.** Borrower will not, without Lender's written consent, amend, supplement, modify, or in any way alter, or consent to any amendment, supplementation, modification, or alteration of, the Lease.

## **ARTICLE 8 HAZARDOUS SUBSTANCES**

### **Section 8.1 Indemnity Regarding Hazardous Substances.**

(a) Borrower will indemnify, release, and hold each Indemnitee harmless from and from any Claim related to this Agreement that directly or indirectly arises out of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance.

(b) This indemnity will apply whether the Hazardous Substance is on, under or about Borrower's property or operations or property leased to Borrower.

(c) Borrower's indemnification obligations under this Section 8.1 will survive Borrower's repayment of the Loan and any other credit extended to Borrower by Lender (whether under this Agreement or otherwise).

## **ARTICLE 9 EVENTS OF DEFAULT**

**Section 9.1 Events of Default.** Each of the following is an "Event of Default" under this Agreement:

(a) Failure to Pay. Borrower fails to make a payment required under this Agreement, the Note or any other Loan Document when due after any applicable cure period.

(b) False Information. Borrower provides or has provided Lender false or misleading information or representations.

(c) Bankruptcy. Borrower files a bankruptcy petition, a bankruptcy petition is filed against Borrower, Borrower makes a general assignment for the benefit of creditors, or if a receiver is appointed for Borrower or the Collateral. The Event of Default will be deemed cured if any bankruptcy petition filed against Borrower is dismissed within a period of forty-five (45) days after the filing, but such cure opportunity will be terminated upon the entry of an order for relief in any bankruptcy case arising from such a petition.

(d) Judgments. Any judgments or arbitration awards are entered against Borrower, or Borrower enters into any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of One Million Dollars (~~\$1,000.00~~\$1,000.00) or more in excess of any insurance coverage.

(e) Government Action. Any Governmental Authority takes action that Lender reasonably believes could result in a Material Adverse Effect.

(f) Default Under Lease; Lessee's Failure to Pay Lender. Any default or event of default under the Lease, regardless of whether such default or event of default is attributable to Borrower or to Lessee, or Lessee fails to make payments or rents due under the Lease directly to Lender as required by the Letter Agreement or otherwise defaults under the Letter Agreement.

(g) Substantial Completion By Completion Date. Borrower fails to complete the Project on or before the Completion Date, subject to extension for Excusable Delays.

(h) Material Adverse Effect. A Material Adverse Effect occurs, or is reasonably likely to occur. If, in Lender's opinion, the Material Adverse Effect is capable of being remedied, the Material Adverse Effect will not be considered an Event of Default for a period of 30 days after the date on which Lender gives written notice of the Material Adverse Effect to Borrower.

(i) Default under Loan Documents. Any Borrower default occurs under any of the Loan Documents, or any such agreement or document is no longer in effect. If, in Lender's opinion, the default is capable of being remedied, the default will not be considered a default for a period of thirty (30) days after the date on which Lender gives written notice of the breach to Borrower.

(j) Termination. The Lease terminates or expires.

(k) Other Breach Under Agreement. Borrower fails to meet the conditions of, or fails to perform any obligation under, any term of this Agreement not specifically referred to in this Section 9.1. If, in Lender's opinion, the breach is capable of being remedied, the breach will not be considered an Event of Default under this Agreement for a period of thirty (30) days after the date on which Lender gives written notice of the breach to Borrower.

**Section 9.2 Remedies Upon Event of Default.** Upon the occurrence of an Event of Default, Lender may, at Lender's option, require Borrower to repay the outstanding balance of the Loan (i) in regard to any Event of Default in Section 9.1(c), (g), (h), (i), or (k) immediately, upon ~~without~~ without prior notice ~~of,~~ and (ii) in regard to any other Event of Default, thirty (30) days or more after Lender provides Borrower notice of such Event of Default. In addition, if an Event of Default occurs, Lender will have all rights, powers and remedies available under any Loan Document, as well as all rights and remedies available at law or in equity. Lender will retain all such rights, powers, and remedies, even if it makes any advance after an Event of Default. Any waiver of a Default or Event of Default under this Agreement, and any consent by Lender to any deviation from the terms of this Agreement, must be in writing to be enforceable against Lender. If Lender waives an Event of Default, Lender may enforce a later Event of Default. If an Event of Default occurs

under Section 9.1(c), then the entire debt outstanding under this Agreement and the other Loan Documents will automatically be due immediately.

## **ARTICLE 10 MISCELLANEOUS**

**Section 10.1 GAAP.** Except as otherwise stated in this Agreement, all financial information provided to Lender and all financial covenants will be made under generally accepted accounting principles, consistently applied.

**Section 10.2 Attorneys' Fees.** In any dispute arising under this Agreement, each party thereto shall be responsible for the payment of its own costs, including attorney fees. Notwithstanding the foregoing or anything else to the contrary in this Agreement, however, if the Loan is finally determined to be in default, and Lender seeks to enforce and/or collect the sums due and owing on the Loan, Borrower shall pay the reasonable attorney fees and costs incurred by the Lender in its collection efforts.

**Section 10.3 One Agreement.** This Agreement and any related Loan Document, collectively:

- (a) represent the sum of the understandings and agreements between Lender and Borrower concerning the Loan;
- (b) replace any prior oral or written agreements between Lender and Borrower concerning the Loan; and
- (c) are intended by Lender and Borrower as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any conflict between this Agreement and any other Loan Document, this Agreement will prevail.

**Section 10.4 Counterparts.** This Agreement and any other Loan Document may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, will be deemed an original but all such counterparts will constitute but one and the same agreement.

**Section 10.5 Waiver of Confidentiality.** Borrower authorizes Lender to discuss the Borrower's financial affairs, tax treatment and business operations with any accountants, auditors, business consultants, or other professional advisors employed by the Borrower, and authorizes such parties to disclose to Lender such financial and business information or reports (including management letters) concerning Borrower as Lender requests.

**Section 10.6 Indemnification.**

- (a) Borrower will indemnify, release, and hold each Indemnitee harmless for and from any Claims relating to or arising directly or indirectly out of:
  - (i) this Agreement or any other Loan Document;

(ii) the Loan or any other credit extended or committed by Lender to Borrower under this Agreement; and

(iii) any litigation or proceeding related to or arising out of this Agreement, any other Loan Document, the Loan, or any such other credit.

(b) This indemnity will survive repayment of Borrower's obligations to Lender under this Agreement. All sums due to Lender under this Section 10.6 are obligations of Borrower, due and payable immediately without demand.

(c) Notwithstanding the foregoing, Borrower shall not be required to indemnify any Indemnitee for any Claim arising from or loss resulting from the gross negligence or willful misconduct of any Indemnitee.

**Section 10.7 No Future Commitment.** Borrower acknowledges that Lender has made no commitment to extend any additional credit to Borrower or to continue the credit provided under this Agreement after this Agreement expires or is terminated.

**Section 10.8 Maximum Rate of Interest.** In no event will the amount or rate of interest due and payable under this Agreement exceed the maximum amount or rate of interest allowed by applicable law, and if any payment in excess of such amount or rate is made by Borrower or received by Lender, the excess sum will be credited as a payment of principal or will be refunded to Borrower, at Lender's option. It is the parties' express intent that Borrower not pay, and Lender not receive, directly or indirectly, interest in excess of that allowed by applicable law.

**Section 10.9 Notices.** All demands, notices and other communications under this Agreement must be in writing and will be deemed to have been duly given when personally delivered or one Business Day after being sent by overnight delivery service or three days after being deposited in the mail, certified mail postage prepaid, or when sent by facsimile transmission, if confirmed by mechanical confirmation and if a copy thereof is promptly thereafter personally delivered, sent by overnight delivery service or so deposited in the mail, addressed to Borrower or Lender at the address set forth below, or at such other address as is designated in writing by the applicable party:

(i) if to Borrower:

Quapaw Tribe of Oklahoma (O-Gah-Pah)  
PO Box 765  
Quapaw, OK 74363-0765  
Attention: Tribal Business Committee

with a copy to:

Stephen R. Ward, General Counsel  
Quapaw Tribe of Oklahoma (O-Gah-Pah)  
c/o Conner & Winters, LLP  
4000 One Williams Center  
Tulsa, OK 74172-0148  
Facsimile: (918) 586-8698

(ii) if to Lender:

International Bank of Commerce  
2250 E. 73<sup>rd</sup> Street, Suite 200  
Tulsa, Oklahoma 74136  
Attention: Andrew J. Levinson, President

**Section 10.10 Severability.** Whenever possible, each provision of this Agreement is to be interpreted so as to be effective and valid, but if any provision of this Agreement is prohibited by, or invalid under the law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any part of this Agreement is deemed to be unenforceable, the rest of the Agreement may still be enforced.

**Section 10.11 Successors and Assigns; Participation.** This Agreement is binding on Borrower's and Lender's successors and assignees. Borrower may not assign this Agreement without Lender's prior consent. Lender may sell participations in or assign the Loan, and may exchange financial information about Borrower with actual or potential participants or assignees. If a participation is sold or the Loan is assigned, the purchaser will have the right of set-off against Borrower.

**Section 10.12 Lender Pledges.** Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement or the other Loan Documents to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment will release Lender from any of its obligations under this Agreement or substitute any such pledgee or assignee for Lender as a party to this Agreement.

**Section 10.13 No Third-Party Beneficiaries.** Other than as set forth in Section 10.11, nothing in this Agreement or the other Loan Document creates any right in any non-party to such Agreement or Loan Document (other than the permitted successors and assigns of Lender and Borrower), and the Loan Document will not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

**Section 10.14 Brokers.** None of the parties has engaged or authorized any broker, finder, investment banker or other third party to act on its behalf, directly or indirectly, as a broker, finder, investment banker, agent or any other like capacity in connection with this Agreement or the transactions contemplated hereby.

**Section 10.15 Schedules and Exhibits.** This Agreement's Schedules, Annexes and Exhibits, along with all attachments referenced in any of such items, are fully incorporated into and made part of this Agreement.

**Section 10.16 Headings; Table of Contents.** Section headings and the table of contents used in this Agreement (including the Schedules, Exhibits and Annexes hereto) are for convenience of reference only and will not affect the construction of this Agreement.

**Section 10.17 Interpretation.** In this Agreement and each other Loan Document, unless the context otherwise requires; (a) any term defined by reference to another instrument or document has the meaning given to it in such instrument or document regardless of whether such other

instrument or document remains in effect; (b) singular words include the plural and vice versa; (c) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such Loan Document; (d) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute; (e) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document unless expressly stated to the contrary; (f) a reference to a party to a document includes that party's successors and permitted assigns; and (g) references to "**including**" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis does not apply to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

**Section 10.18 Governing Law; Sovereign Immunity Waiver and Consent to Jurisdiction.**

(a) THE LAWS OF THE STATE OF OKLAHOMA GOVERN THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THE LOAN DOCUMENTS, WITHOUT REGARD TO OKLAHOMA CHOICE OF LAW RULES. FEDERAL LAW GOVERNS THE CONSTRUCTION AND INTERPRETATION OF THE BORROWER'S LIMITED WAIVER OF IMMUNITY.

(b) No waiver of the immunity of the Borrower from unconsented suit shall be granted hereunder except as expressly set forth herein. Borrower hereby fully and irrevocably grants a limited waiver of the sovereign immunity solely for the purpose of permitting the Lender to enforce the Loan Agreement, the other Loan Documents and the Lease Documents.

(c) Borrower agrees to irrevocably and unconditionally submit, for itself and its property, to the exclusive jurisdiction of (i) in the first instance, the United States District Court, Northern District of Oklahoma, and any appellate court from which any appeals therefrom are available ("Federal Courts"), in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, or (ii) if the Federal Courts lack or decline jurisdiction, to the courts of the State of Oklahoma sitting in the City of Tulsa, County of Tulsa, and any appellate court from which any appeals therefrom are available ("Oklahoma State Courts"), and Borrower and Lender irrevocably and unconditionally agree that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties to this Agreement agrees that a final judgment in any such action or proceeding may be enforced by any court of competent jurisdiction. Borrower expressly waives, to the fullest extent it may legally and effectively do so, any right it has now or in the future to require any suit, arbitration, legal process or enforcement proceeding be considered or heard first in any tribal court or forum of Borrower, whether because of the doctrine of exhaustion of tribal remedies or as a matter of comity or abstention.

(d) Borrower and Lender each agree to irrevocably and unconditionally waive, to the fullest extent it may legally and effectively do so, any objection to which either is entitled (whether now or in the future) to the laying of venue of any suit, action or proceeding arising

out of or relating to this Agreement in any Federal Court or Oklahoma State Court. Borrower and Lender each agree to, and hereby do, irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) Each party hereto agrees to irrevocably consent to service of process in the manner provided for notices in this Agreement. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

(f) For the purposes of this Agreement, each of the parties hereto agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Notwithstanding anything to the contrary in this Section 10.18, nothing in this Agreement limits the ability of any party to move to compel arbitration or move to stay or dismiss a lawsuit in favor of arbitration, and Borrower's waiver of sovereign immunity expressly extends to such actions and to any such arbitration.

**Section 10.19 WAIVER OF JURY TRIAL.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, BORROWER AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 10.20 ARBITRATION.** LENDER AND BORROWER FURTHER AGREE, NOTWITHSTANDING THE CONSENT TO THE JURISDICTION OF THE COURTS DESCRIBED IN SECTION Section 10.18 AS FOLLOWS:

(a) ANY DISPUTE (INCLUDING WITHOUT LIMITATION DISPUTES INVOLVING CONSUMER-RELATED CLAIMS AND/OR COMMERCIAL CLAIMS) HEREUNDER SHALL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN EFFECT AT THE TIME OF FILING BEFORE A SINGLE NEUTRAL ARBITRATOR SELECTED BY THE AMERICAN ARBITRATION ASSOCIATION



FROM AMONG TWO NOMINATIONS TO BE MADE BY EACH OF BORROWER AND LENDER. FAILURE OF ANY ARBITRATOR TO DISCLOSE ALL FACTS WHICH MIGHT TO AN OBJECTIVE OBSERVER CREATE A REASONABLE IMPRESSION OF THE ARBITRATOR'S PARTIALITY, AND/OR MATERIAL ERRORS OF LAW SHALL BE GROUNDS [IN ADDITION TO ALL OTHERS] FOR VACATUR OF AN AWARD RENDERED PURSUANT TO THIS AGREEMENT.

(b) THE PARTIES AGREE THAT (i) NO ARBITRATION PROCEEDING HEREUNDER SHALL BE CERTIFIED AS A CLASS ACTION OR PROCEED AS A CLASS ACTION, OR ON A BASIS INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC, OTHER CUSTOMERS OR POTENTIAL CUSTOMERS OR PERSONS SIMILARLY SITUATED AND (ii) NO ARBITRATION PROCEEDING HEREUNDER SHALL BE CONSOLIDATED WITH, OR JOINED IN ANY WAY WITH, ANY OTHER ARBITRATION PROCEEDING.

(c) THE AWARD OF THE ARBITRATOR SHALL BE FINAL, AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION. THE ARBITRATION AWARD SHALL BE IN WRITING AND SPECIFY THE FACTUAL AND LEGAL BASIS FOR THE AWARD. UPON THE REQUEST OF ANY PARTY, THE AWARD SHALL INCLUDE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(d) ARBITRABLE DISPUTES INCLUDE ANY AND ALL CONTROVERSIES OR CLAIMS BETWEEN THE PARTIES OF WHATEVER TYPE OR MANNER, INCLUDING WITHOUT LIMITATION, ANY CLAIM ARISING OUT OF OR RELATING TO THE NOTE, ALL PAST, PRESENT AND/OR FUTURE CREDIT FACILITIES AND/OR AGREEMENTS INVOLVING THE PARTIES, ANY TRANSACTIONS BETWEEN OR INVOLVING THE PARTIES, AND/OR ANY ASPECT OF ANY PAST OR PRESENT RELATIONSHIP OF THE PARTIES, WHETHER BANKING OR OTHERWISE, SPECIFICALLY INCLUDING ANY ALLEGED TORT COMMITTED BY ANY PARTY.

(e) THE PARTIES SHALL ALLOW AND PARTICIPATE IN DISCOVERY IN ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE FOR A PERIOD OF ONE HUNDRED TWENTY (120) DAYS AFTER THE FILING OF THE ORIGINAL RESPONSIVE PLEADING. DISCOVERY MAY CONTINUE THEREAFTER AS AGREED BY THE PARTIES OR AS ALLOWED BY THE ARBITRATOR. UNRESOLVED DISCOVERY DISPUTES SHALL BE BROUGHT TO THE ATTENTION OF THE ARBITRATOR BY WRITTEN MOTION FOR PROPER DISPOSITION, INCLUDING RULING ON ANY ASSERTED OBJECTIONS, PRIVILEGES, AND PROTECTIVE ORDER REQUESTS AND AWARDED REASONABLE ATTORNEY'S FEES TO THE PREVAILING PARTY.

(f) IN THE EVENT THE AGGREGATE OF ALL AFFIRMATIVE CLAIMS ASSERTED EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), EXCLUSIVE OF INTEREST AND ATTORNEY'S FEES, OR UPON THE WRITTEN REQUEST OF ANY PARTY, (1) PRIOR TO THE DISSEMINATION OF A LIST OF POTENTIAL ARBITRATORS, THE AMERICAN ARBITRATION ASSOCIATION

SHALL CONDUCT AN IN PERSON ADMINISTRATIVE CONFERENCE WITH THE PARTIES AND THEIR ATTORNEYS FOR THE FOLLOWING PURPOSES AND FOR SUCH ADDITIONAL PURPOSES AS THE PARTIES OR THE AMERICAN ARBITRATION ASSOCIATION MAY DEEM APPROPRIATE, (A) TO OBTAIN ADDITIONAL INFORMATION ABOUT THE NATURE AND MAGNITUDE OF THE DISPUTE AND THE ANTICIPATED LENGTH OF HEARINGS AND SCHEDULING; (B) TO DISCUSS THE VIEW OF THE PARTIES ABOUT ANY TECHNICAL AND/OR OTHER SPECIAL QUALIFICATIONS OF THE ARBITRATORS; AND (C) TO CONSIDER, WHETHER MEDIATION OR OTHER METHODS OF DISPUTE RESOLUTION MIGHT BE APPROPRIATE, AND (2) AS PROMPTLY AS PRACTICABLE AFTER THE SELECTION OF THE ARBITRATORS, A PRELIMINARY HEARING SHALL BE HELD AMONG THE PARTIES, THEIR ATTORNEYS AND THE ARBITRATORS. WITH THE AGREEMENT OF THE ARBITRATORS AND THE PARTIES, THE PRELIMINARY HEARING MAY BE CONDUCTED BY TELEPHONE CONFERENCE CALL RATHER THAN IN PERSON. AT THE PRELIMINARY HEARING THE MATTERS THAT MAY BE CONSIDERED SHALL INCLUDE, WITHOUT LIMITATION, A PREHEARING SCHEDULING ORDER ADDRESSING (A) EACH PARTY'S DUTY TO SUBMIT A DETAILED STATEMENT OF CLAIMS, DAMAGES AND/OR DEFENSES, A STATEMENT OF THE ISSUES ASSERTED BY EACH PARTY AND ANY LEGAL AUTHORITIES THE PARTIES MAY WISH TO BRING TO THE ATTENTION OF THE ARBITRATORS; (B) RESPONSES AND/OR REPLIES TO THE PLEADINGS FILED IN COMPLIANCE WITH SUBPART 2(A); (C) STIPULATIONS REGARDING ANY UNCONTESTED FACTS; (D) EXCHANGE AND PREMARKING OF ALL DOCUMENTS WHICH EACH PARTY BELIEVES MAY BE OFFERED AT THE FINAL ARBITRATION HEARING; (E) THE IDENTIFICATION AND AVAILABILITY OF WITNESSES, INCLUDING EXPERTS, AND SUCH ADDITIONAL MATTERS REGARDING WITNESSES INCLUDING THEIR BIOGRAPHIES AND A SHORT SUMMARY OF THEIR EXPECTED TESTIMONY, (F) WHETHER A STENOGRAPHIC OR OTHER OFFICIAL RECORD OF THE PROCEEDINGS SHALL BE MAINTAINED; AND (G) THE POSSIBILITY OF UTILIZING MEDIATION OR OTHER ALTERNATIVE METHODS OF DISPUTE RESOLUTION.

(g) FOR PURPOSES OF THIS PROVISION, "THE PARTIES" MEAN BORROWER AND LENDER, AND EACH AND ALL PERSONS AND ENTITIES SIGNING THIS AGREEMENT OR ANY OTHER AGREEMENTS BETWEEN OR AMONG ANY OF THE PARTIES AS PART OF THIS TRANSACTION. "THE PARTIES" SHALL ALSO INCLUDE INDIVIDUAL PARTNERS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR REPRESENTATIVES OF ANY PARTY TO SUCH DOCUMENTS, AND SHALL INCLUDE ANY OTHER OWNER AND HOLDER OF THIS AGREEMENT.

(h) THE PARTIES SHALL HAVE THE RIGHT TO INVOKE SELF- HELP REMEDIES (SUCH AS SET-OFF, NOTIFICATION OF ACCOUNT DEBTORS, SEIZURE AND/OR FORECLOSURE OF COLLATERAL, AND NON-JUDICIAL SALE OF PERSONAL PROPERTY AND REAL PROPERTY COLLATERAL) BEFORE, DURING OR AFTER ANY ARBITRATION AND/OR REQUEST ANCILLARY OR PROVISIONAL JUDICIAL REMEDIES (SUCH AS GARNISHMENT, ATTACHMENT, SPECIFIC PERFORMANCE, RECEIVER, INJUNCTION OR RESTRAINING ORDER,

AND SEQUESTRATION) BEFORE OR AFTER ANY ARBITRATION. THE PARTIES NEED NOT AWAIT THE OUTCOME OF THE ARBITRATION BEFORE USING SELF-HELP REMEDIES. USE OF SELF-HELP OR ANCILLARY AND/OR PROVISIONAL JUDICIAL REMEDIES SHALL NOT OPERATE AS A WAIVER OF EITHER PARTY'S RIGHT TO COMPEL ARBITRATION. ANY ANCILLARY OR PROVISIONAL REMEDY WHICH WOULD BE AVAILABLE FROM A COURT AT LAW SHALL BE AVAILABLE FROM THE ARBITRATOR, INCLUDING INJUNCTION AND RESTRAINING ORDERS.

(i) THE PARTIES AGREE THAT ANY ACTION REGARDING ANY CONTROVERSY BETWEEN THE PARTIES SHALL EITHER BE BROUGHT BY ARBITRATION, AS DESCRIBED HEREIN, OR BY JUDICIAL PROCEEDINGS, BUT SHALL NOT BE PURSUED SIMULTANEOUSLY IN DIFFERENT OR ALTERNATIVE FORMS. A TIMELY WRITTEN NOTICE OF INTENT TO ARBITRATE PURSUANT TO THIS AGREEMENT STAYS AND/OR ABATES ANY AND ALL ACTION IN A TRIAL COURT, SAVE AND EXCEPT A HEARING ON A MOTION TO COMPEL ARBITRATION AND/OR THE ENTRY OF AN ORDER COMPELLING ARBITRATION AND STAYING AND/OR ABATING THE LITIGATION PENDING THE FILING OF THE FINAL AWARD OF THE ARBITRATORS. ALL REASONABLE AND NECESSARY ATTORNEY'S FEES AND ALL TRAVEL COSTS SHALL BE AWARDED TO THE PREVAILING PARTY ON ANY MOTION TO COMPEL ARBITRATION AND MUST BE PAID TO SUCH PARTY WITHIN TEN (10) DAYS OF THE SIGNING OF THE ORDER COMPELLING ARBITRATION.

(j) ANY PARTY SEEKING TO ARBITRATE SHALL SERVE A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ANY AND ALL OPPOSING PARTIES WITHIN THREE HUNDRED SIXTY (360) DAYS AFTER DISPUTE HAS ARISEN. A DISPUTE IS DEFINED TO HAVE ARISEN ONLY UPON RECEIPT OF SERVICE OF JUDICIAL PROCESS, INCLUDING SERVICE OF A COUNTERCLAIM, FAILURE TO SERVE A WRITTEN NOTICE OF INTENT TO ARBITRATE WITHIN THE TIME SPECIFIED ABOVE SHALL BE DEEMED A WAIVER OF THE AGGRIEVED PARTY'S RIGHT TO COMPEL ARBITRATION OF SUCH CLAIM. THE ISSUE OF WAIVER PURSUANT TO THIS AGREEMENT IS AN ARBITRABLE DISPUTE.

(k) ACTIVE PARTICIPATION IN PENDING LITIGATION DURING THE THREE HUNDRED SIXTY DAY (360) DAY NOTICE PERIOD, WHETHER AS PLAINTIFF OR DEFENDANT, IS NOT A WAIVER OF THE RIGHT TO COMPEL ARBITRATION. ALL DISCOVERY OBTAINED IN THE PENDING LITIGATION MAY BE USED IN ANY SUBSEQUENT ARBITRATION PROCEEDING.

(l) ANY ARBITRATOR SELECTED SHALL BE KNOWLEDGEABLE IN SOPHISTICATED FINANCIAL TRANSACTIONS OF SIMILAR SIZE AND NATURE TO THE LOAN, AND IN FEDERAL INDIAN LAW. EACH OF THE PARTIES SHALL PAY AN EQUAL SHARE OF THE ARBITRATION COSTS, FEES, EXPENSES, AND OF THE ARBITRATORS' FEES, COSTS AND EXPENSES.

(m) ALL STATUTES OF LIMITATIONS WHICH WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY AND ALL CLAIMS ASSERTED IN ANY

ARBITRATION PROCEEDING HEREUNDER AND THE COMMENCEMENT OF ANY ARBITRATION PROCEEDING TOLLS SUCH STATUTES OF LIMITATIONS.

(n) IN ANY ARBITRATION PROCEEDING SUBJECT TO THIS PROVISION, THE ARBITRATORS, OR MAJORITY OF THEM, ARE SPECIFICALLY EMPOWERED TO DECIDE (BY DOCUMENTS ONLY, OR WITH A HEARING, AT THE ARBITRATORS' SOLE DISCRETION) PRE-HEARING MOTIONS WHICH ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION.

(o) THIS ARBITRATION PROVISION SHALL SURVIVE ANY TERMINATION, AMENDMENT, OR EXPIRATION OF THE AGREEMENT IN WHICH THIS PROVISION IS CONTAINED, UNLESS ALL OF THE PARTIES OTHERWISE EXPRESSLY AGREE IN WRITING.

(p) THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT EVIDENCES A TRANSACTION INVOLVING INTERSTATE COMMERCE. THE FEDERAL ARBITRATION ACT SHALL GOVERN THE INTERPRETATION, ENFORCEMENT, AND PROCEEDINGS PURSUANT TO THE ARBITRATION CLAUSE OF THIS AGREEMENT.

(q) IN ANY ARBITRATION HEREUNDER, EACH PARTY SHALL BE SOLELY RESPONSIBLE FOR THE PAYMENT OF ITS OWN COSTS OF THE ARBITRATION, INCLUDING ATTORNEY FEES AND OTHER COSTS.

(r) NEITHER THE PARTIES NOR THE ARBITRATORS MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT PRIOR WRITTEN CONSENT OF ALL PARTIES AND/OR COURT ORDER.

(s) VENUE OF ANY ARBITRATION PROCEEDING HEREUNDER SHALL BE IN TULSA COUNTY, OKLAHOMA.

**Section 10.21 Patriot Act.** Borrower acknowledges that, as required by USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), Lender will obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Patriot Act.

*[SIGNATURE PAGES BEGIN ON NEXT PAGE]*

THIS LOAN AGREEMENT is made by Borrower and Lender as of the date first written above.

**“BORROWER”**

**QUAPAW TRIBE OF OKLAHOMA,**  
**(O-Gah-Pah)**, a federally recognized Indian tribe

By: \_\_\_\_\_  
John L. Berrey, Chairman  
Quapaw Tribal Business Committee

THIS LOAN AGREEMENT is made by Borrower and Lender as of the date first written above.

**“LENDER”**

**INTERNATIONAL BANK OF COMMERCE,**  
a Texas state banking association

By: \_\_\_\_\_  
Andrew J. Levinson, President - Tulsa

**Exhibit A**

**Budget**



August 20, 2014

Downstream Casino Resort  
69300 East Nee Road  
Quapaw Ok, 74363

The following budget narrative is a compilation of the pavilion expansion and associated work around the expansion.

\*Pavilion Expansion \$3,500,000

Includes approximately 12,000 square feet of event space  
with an additional 7,000 square feet of support space, pre function,  
And additional restrooms

\*Fixtures and Equipment for pavilion expansion \$500,000

Includes added banquet tables and equipment,  
sound equipment, and special event lighting

\*Design fees for upgrades and parking \$35,000

\*Event Storage Building \$100,000

30x40 storage facility to house equipment

\*Event Parking Lot \$250,000

84 space split level parking lot for added

\*Screen wall separation between pool and parking lot \$50,000

\*Existing Pavilion Upgrades \$115,000

Upgrades include touch up of existing floor finish, added  
Windows on the south side of the building, new doors and wall  
Finishes and painting.

\*Refinishing of the pool deck and wood structures \$160,000

\*Refinishing and upgrades to the vertical wall surfaces

Adjoining the pool \$120,000



\*Loan and document fees \$100,000

\*Construction contingency \$170,000

The total budget for the associated work is \$5,100,000. Design is still progressing for many of the items listed and will be forwarded once they are complete.

If you need any further breakdown or clarification of cost, please let me know

Please call if you have any questions

Sincerely,

Chris Roper  
Construction Manager  
Quapaw Services Authority

## Exhibit B

### Real Property Description

A tract of land lying in the Southwest Quarter of the Northwest Quarter (SW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ ) and Lot 10 of Section 17, Township 29 North, Range 25 East, Ottawa County, Oklahoma, being more particularly described as follows:

**COMMENCING** at a Bureau of Land Management (BLM) aluminum disk found for the southwest corner of said Lot 10; thence by bearing based on Oklahoma State Plane North Zone (3501), NAD1983, N03°59'25"W, 899.24 feet to the **POINT OF BEGINNING**;

**Thence** N53°08'14"E, 58.51 feet; **Thence** 49.35 feet along an 81.00 foot radius curve to the right, having a delta angle of 34°54'25" and a chord bearing N70°35'26"E for 48.59 feet; **Thence** N88°02'39"E, 178.25 feet; **Thence** S01°57'21"E, 14.42 feet; **Thence** N88°02'39"E, 37.65 feet; **Thence** S01°36'42"E, 131.28 feet; **Thence** S46°59'55"W, 91.88 feet; **Thence** N43°52'47"W, 36.42 feet; **Thence** N30°53'24"W, 19.08 feet; **Thence** N42°50'45"W, 32.82 feet; **Thence** S80°32'39"W, 71.35 feet; **Thence** N43°11'46"W, 70.91 feet; **Thence** N58°06'19"W, 81.41 feet to the **POINT OF BEGINNING** and containing **39,911 square feet or 0.92 acres** of land.

Also:

A tract of land lying in Lot 10 of Section 17, Township 29 North, Range 25 East, Ottawa County, Oklahoma, being more particularly described as follows:

**COMMENCING** at a Bureau of Land Management (BLM) aluminum disk found for the southwest corner of said Lot 10; thence by bearing based on Oklahoma State Plane North Zone (3501), NAD1983, N30°24'21"E, 808.32 feet to the **POINT OF BEGINNING**;

**Thence** N01°48'48"W, 103.72 feet; **Thence** S87°55'59"W, 62.96 feet; **Thence** N01°57'53"W, 47.97 feet; **Thence** N88°02'07"E, 4.72 feet; **Thence** S62°09'09"E, 21.27 feet; **Thence** 100.74 feet along a 123.84 foot radius non-tangent curve to the left, having a delta angle of 46°36'35", a chord bearing N89°54'03"E for 97.99 feet; **Thence** 0.66 feet along a 1.61 foot radius curve to the left, having a delta angle of 23°32'09" and a chord bearing N54°49'42"E for 0.66 feet; **Thence** N43°03'37"E, 59.85 feet; **Thence** S47°00'14"E, 47.06 feet; **Thence** N43°02'11"E, 2.27 feet; **Thence** S46°56'23"E, 43.37 feet; **Thence** S01°57'36"E, 125.55 feet; **Thence** N81°56'59"W, 35.09 feet; **Thence** S08°03'37"W, 21.76 feet; **Thence** N81°56'23"W, 130.51 feet to the **POINT OF BEGINNING** and containing **28,152 square feet or 0.62 acres** of land. *Based on a survey on the ground by CJW Transportation Consultants, LLC, OK PLS Number 1866.*



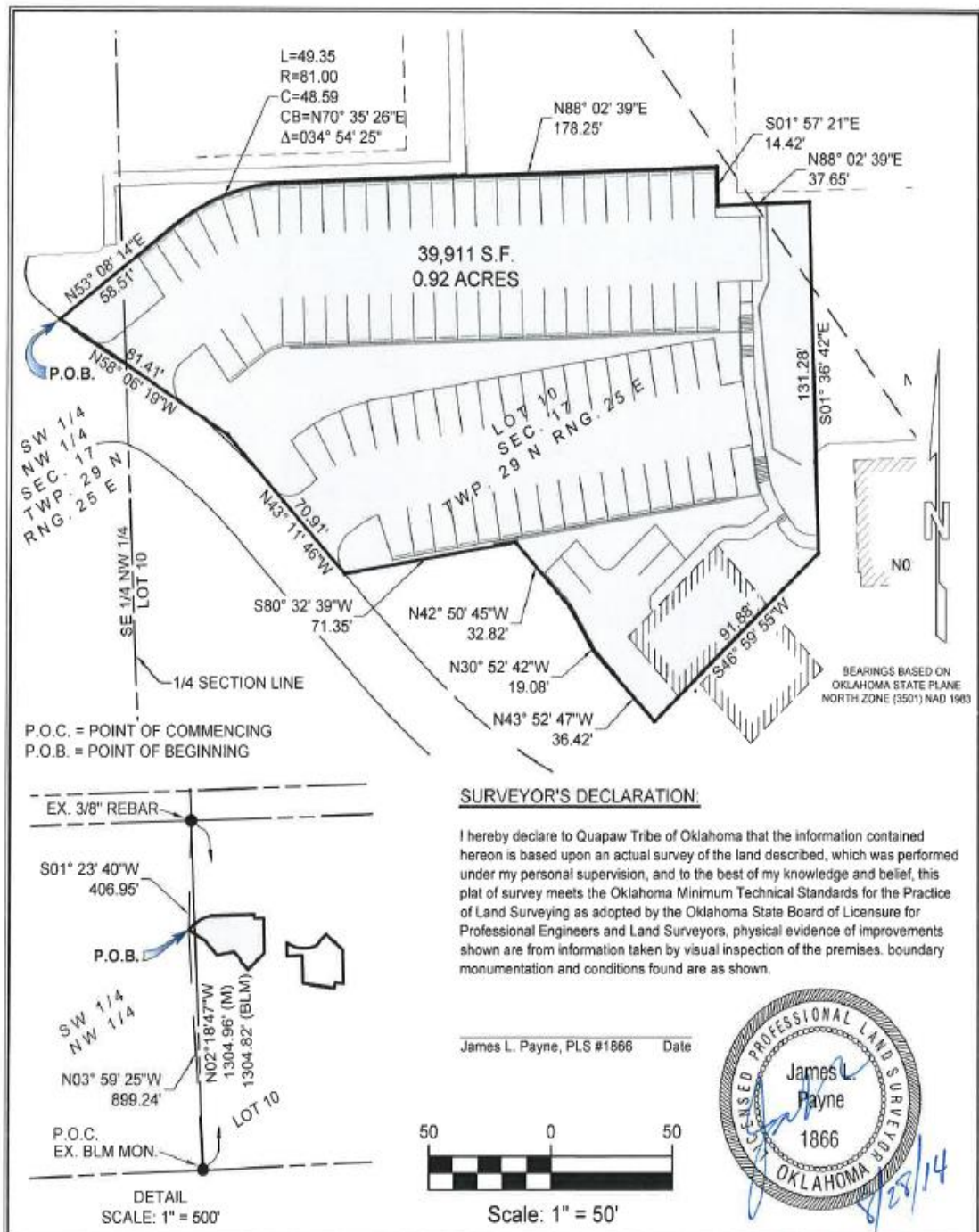


EXHIBIT "B"

FOR

DOWNSTREAM CASINO

LEASE TRACTS

LOT 10 OF SECTION 17

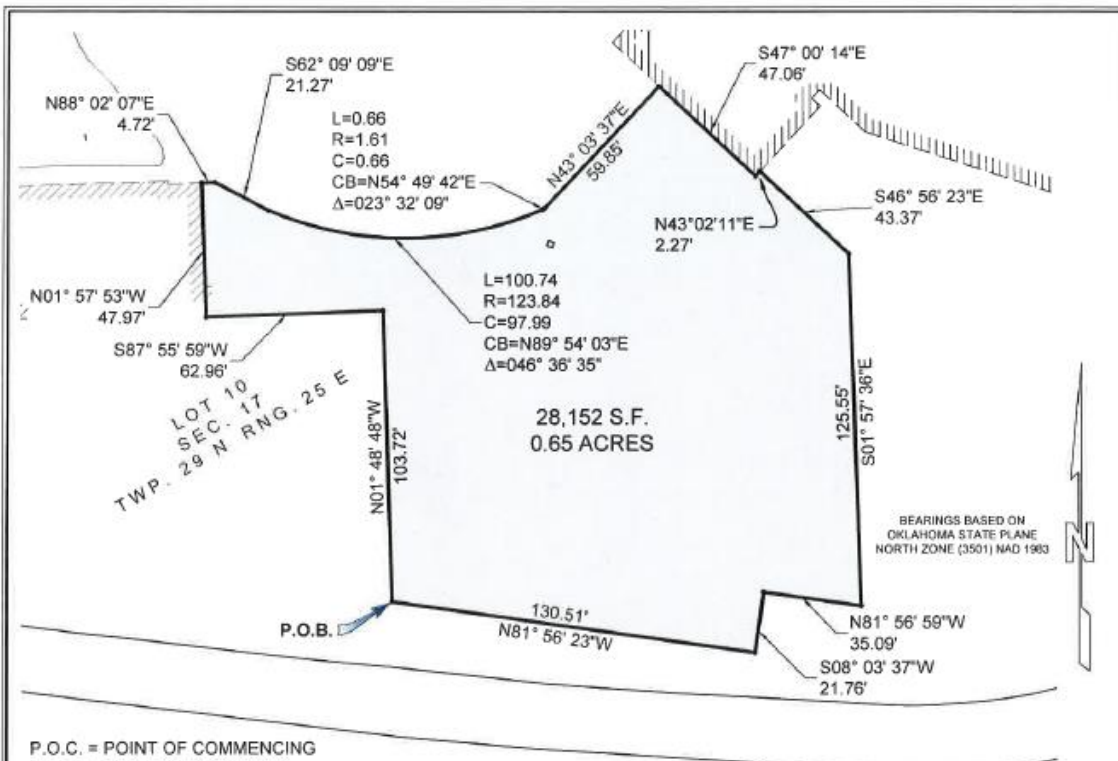
TWP. 29 NORTH, RANGE 25 EAST

OTTAWA COUNTY, OKLAHOMA

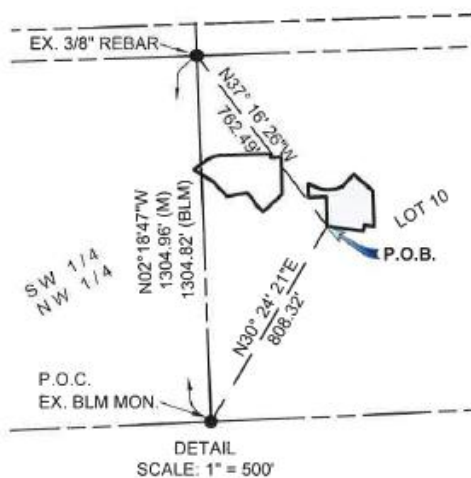
SHEET 1 OF 2  
CJW PROJECT No. 14081

**CJW**

CJW Transportation Consultants, L.L.C.  
5051 S. National Avenue  
Springfield, MO 65810  
Tel: 417.889.3400  
Fax: 417.889.3402  
www.GoCJW.com



P.O.C. = POINT OF COMMENCING  
P.O.B. = POINT OF BEGINNING



#### SURVEYOR'S DECLARATION

I hereby declare to Quapaw Tribe of Oklahoma that the information contained hereon is based upon an actual survey of the land described, which was performed under my personal supervision, and to the best of my knowledge and belief, this plat of survey meets the Oklahoma Minimum Technical Standards for the Practice of Land Surveying as adopted by the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors, physical evidence of improvements shown are from information taken by visual inspection of the premises, boundary monumentation and conditions found are as shown.

James L. Payne, PLS #1866 Date



#### EXHIBIT "B"

#### FOR DOWNSTREAM CASINO

LEASE TRACTS  
SW 1/4 OF THE NW 1/4 & LOT 10  
SECTION 17, TWP. 29 NORTH, RANGE 25 EAST  
OTTAWA COUNTY, OKLAHOMA

SHEET 2 OF 2  
CJW PROJECT No. 14081



CJW Transportation Consultants, L.L.C.  
5051 S. National Avenue  
Springfield, MO 65810  
Tel: 417.889.3400  
Fax: 417.889.3402  
www.GoCJW.com

**Exhibit C**

**Form of Compliance Certificate**

To: International Bank of Commerce

This certificate is delivered in compliance with Section 7.2(d) of the Loan Agreement dated as of 2015 (the “Agreement”), between Quapaw Tribe of Oklahoma (O-Gah-Pah), a federally recognized Indian tribe (“Borrower”), and International Bank of Commerce, a Texas state banking association (“Lender”). Capitalized terms used but not otherwise defined in this Certificate have the meanings given to them in the Agreement.

The undersigned certifies, represents and warrants that, to the best of his or her knowledge: (i) Borrower has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in the Loan Documents and Lease Documents to which it is a party to be observed, performed or satisfied by it; and (ii) Borrower has no knowledge of any Default or Event of Default except as specified in this certificate.<sup>1</sup>

**QUAPAW TRIBE OF OKLAHOMA,**  
**(O-Gah-Pah),** a federally recognized Indian tribe

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

<sup>1</sup> If a default has occurred and is continuing as of the date of the applicable Compliance Certificate, the text of clause (ii) should be replaced with a statement of the nature of the default and the action which Borrower has taken or proposes to take with respect to it.

## Loan Guarantee Agreement

This Loan Guarantee Agreement ("Agreement") is entered into between the United States Department of the Interior ("Department"), and International Bank of Commerce, a Texas state banking association ("Lender"), as of the date established below. The Agreement governs the Lender's use of loan guarantees obtained from the Department under the Loan Guarantee, Insurance and Interest Subsidy Program, 25 U.S.C. §§ 1481 *et seq.* and 1511 *et seq.*, and 25 CFR Part 103 (the "Program").

1. Except as specified by statutes or regulations governing the Program, or as otherwise specified in this Agreement, the Department will guarantee payment of the Lender's loss on any loan made to a qualified Borrower, to the extent reflected on a valid Loan Guarantee Certificate issued under the Program.
2. The Lender must comply at all times with statutes and regulations governing the Program, and with the terms of this Agreement (collectively, the "Program Terms"). The Department may change the Program Terms from time to time, but if it does, Lender compliance must correspond only with Program Terms in effect on the date of each Loan Guarantee Certificate issued, unless and until the Lender specifically adopts subsequent Program Terms in writing. The Lender also must comply at all times with the Conditions of Approval attached to the Loan Guarantee Certificate for each specific loan.
3. The Department may approve the Lender under any of three different classifications, depending on factors such as the number of loans the Lender makes under the Program, the total principal balance of the Lender's Program loans, the number of years the Lender stays involved with the Program, the relative benefits and opportunities the Lender gives to Indian business efforts through the Program, and the Lender's overall compliance with Program requirements. A Lender approved by the Department under this Agreement may designate itself a "Department of the Interior Approved Lender." Upon completing three years with an average outstanding principal balance of \$2,000,000 in Program-guaranteed loans, a Lender with a satisfactory record of Program compliance may request approval from the Department for the designation "Department of the Interior Preferred Lender." After five years maintaining a minimum outstanding balance of \$2,000,000 in Program-guaranteed loans and/or a superior record of enhancing economic opportunities for Indian businesses, a Department of the Interior Preferred Lender with a satisfactory record of Program compliance may request approval from the Department for the designation "Department of the Interior Performance Lender." The Department's approval of a Lender extends only to the distinct legal entity of the Lender seeking approval, and does not extend to any parent entities, subsidiaries, or affiliates of the Lender. Execution of this Agreement does not authorize the

Lender to issue loans insured under the Program; insured loans are subject to a separate Loan Insurance Agreement.

4. In the event the Lender undergoes (a) a change in corporate structure; (b) a merger with any other entity; or (c) any legal proceeding in which substantially all of its assets may be subject to disposition through laws governing bankruptcy, insolvency, or receivership, this Agreement will be deemed suspended as of the date of change or the commencement of the legal proceeding. The Lender, or its successor in interest, must enter into a new Agreement with the Department in order to secure new loan guarantees under the Program.
5. During the term of this Agreement, and for such time thereafter as the Lender may hold one or more Loan Guarantee Certificates under the Program, the Lender agrees to allow representatives or agents of the Department to inspect the Lender's records concerning any and all loans guaranteed under the Program at any reasonable time, including any time during the Lender's normal business hours. The Lender agrees to supply whatever information the Department may request, as long as it reasonably relates to any Department-guaranteed loan or the Lender's participation in the Program. For example, the Department may ask for copies of all organizational documents of the Lender, including amendments, since those documents may bear upon the Lender's qualification to continue participating in the Program.
6. Except as otherwise specified in the Conditions of Approval for a specific loan, the Lender must submit loan transaction history reports quarterly, within 30 days after March 31, June 30, September 30, and December 31 of each year.
7. The Department usually will prepare a Loan Guarantee Certificate for delivery to the Lender on the loan closing date. In some cases, however, the Department may issue and deliver a Loan Guarantee Certificate either before or after the loan closes. Absent a specific written agreement to the contrary, a Loan Guarantee Certificate issued before the loan closing becomes void if closing does not occur before 90 days after the date of the Loan Guarantee Certificate.
8. Unless consent is specifically withdrawn in whole or in part in writing, this Agreement authorizes the Department and its agents to identify and discuss the Lender and its representatives, and any Program related transaction involving the Lender and its representatives, in audio, visual and/or written materials and in public presentations of a promotional, educational, or evaluative nature. Upon request, the Lender agrees to diligently seek approval from its Program borrowers for the use of the Borrower's and the Borrower's representative's identity and fundamental transaction details for similar use by the Department, including details that might otherwise be prohibited from disclosure under the Privacy Act, 5 U.S.C. § 552a *et seq.*



9. When a Program guarantee relates significantly to commercial construction and/or renovation, the lender agree to post a sign identifying the Department as a source of financial assistance during the period of construction or renovation. The Department will provide all necessary signage upon request.
10. Except as expressly indicated in writing by a duly authorized Department official, the Department bears no responsibility for any failure of the Lender to comply with Program Terms or any applicable Conditions of Approval, regardless of the circumstances.
11. Except as expressly indicated by Program Terms or any applicable Conditions of Approval, the Lender should direct all correspondence with the Department concerning the Program to the Credit Office Service Center serving the area in which the Borrower's business is located. In particular, the Lender must direct the following requests and notifications to the appropriate Credit Office Service Center: (a) all requests for loan guarantee (25 CFR § 103.12); (b) all requests for loan modification approval (25 CFR § 103.34); (c) all loan transfer notifications (25 CFR §§ 103.28, 103.29); (d) all notices of Borrower default (25 CFR § 103.35); (e) all notices electing a remedy (25 CFR § 103.36); and (f) all claims for loss (25 CFR § 103.73). The Lender may seek guidance from the Credit Office Service Center serving the Borrower's business area with respect to fulfilling any Program requirements. The Lender must send loan guarantee premium payments (25 CFR § 103.19) to the Loan Accounting Section.
12. This Agreement remains in effect unless and until otherwise indicated under the Program Terms, or until either party provides the other with written notice that it wishes to withdraw from this Agreement as of a stated future date. The Department may terminate this Agreement for cause at any time, without prior notice to the Lender. Termination of this Agreement will not, in and of itself, affect any outstanding Loan Guarantee Certificates held by the Lender.
13. By executing this Agreement, the Lender represents to the Department that it meets or exceeds the basic requirements for making guaranteed loans under the Program, including without limitation the requirements specified at 25 CFR § 103.10.

This Agreement is effective as of the latest of the dates specified by the signature lines below:

Date: August 4, 20 14

International Bank of Commerce,  
Lender: a Texas state banking association  
ABA No.: 303072793  
Tax ID No.: 74-1541057

By: 

3 Andrew J. Levinson,  
Senior Vice President



Title: \_\_\_\_\_

Date: March 20, 20 15

United States Department of the Interior

By: M. Abaca-Aranda  
Title: Actg. Division Chief  
Capital Investment

**Paperwork Reduction Act Statement:** This form is covered by the Paperwork Reduction Act. It is used to establish the respective rights and responsibilities of the respondent and the Federal government. The information is provided by respondents to obtain or retain a benefit. In compliance with the Paperwork Reduction Act of 1995, as amended, the collection has been reviewed by the Office of Management and Budget and assigned a number and an expiration date. The number and expiration date are at the top right corner of the form. An agency may not sponsor or conduct, and a person is not required to respond to, a request for information collection unless it displays a currently valid OMB Control Number. The public reporting burden is estimated to average **2 hours per respondent**. This includes the time needed to understand the requirements, gather the information, complete the form, and submit it to the Department. Comments regarding the burden or other aspects of the form may be directed to the Indian Affairs Information Collection Clearance Officer, Office of Regulatory Affairs – Indian Affairs, 1849 C Street, NW, MS-4141, Washington, DC 20240.

**Privacy Act Statement (5 U.S.C. 552(a)):** The authority for collecting this information is 25 U.S.C. 1511. The information will be used to administer the Loan Guarantee, Insurance and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.* Disclosures of this information may be made to track and record payments and unpaid balances and provide information on payments made for paying interest subsidy, credits obtained, service loans made, and premiums paid by Lenders, and for the other routine uses described by system of record notice, BIA-13, Loan Management and Accounting System.

## RESOLUTION NO. 05\_\_15-A

### **A RESOLUTION APPROVING CERTAIN DOCUMENTATION FOR A LOAN BY INTERNATIONAL BANK OF COMMERCE TO THE QUAPAW TRIBE FOR AN EXPANSION OF THE PAVILION AT THE DOWNSTREAM CASINO RESORT**

**WHEREAS**, the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the “Authority”), is an unincorporated entity wholly owned by the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the “Tribe”), a federally recognized Indian nation; and

**WHEREAS**, the Authority was created under the laws of the Tribe and authorized to develop, construct, manage, and operate the Downstream Casino Resort (the “Resort”) and to engage in gaming pursuant to Tribal, federal, and state law on the Indian lands of the Tribe within the original Quapaw Reservation, as established as a homeland for the Quapaw Nation by the Treaty of May 13, 1833, *Quapaw Code* Title 17, § 101 *et seq.*; and

**WHEREAS**, the Authority is expressly authorized to exercise its powers in the best interest of the Tribe, and to enter into agreements relating to gaming and other operations at the Resort; and

**WHEREAS**, the Authority has been undertaking a project to expand and upgrade the existing Pavilion at the Resort in order to enhance the opportunities for the Resort to attract meetings, conventions, shows, musical shows, and other similar events (the “Project”), which expansion is planned to further enhance the growth and development of the Resort; and

**WHEREAS**, the Quapaw Tribe has obtained a commitment by the International Bank of Commerce (“IBC”) to provide a loan for the Project with a 20-year term in the amount of Five Million One Hundred Thousand Dollars (\$5,100,000), with a floating interest rate in the amount of the prime rate, as published in the Wall Street Journal, plus one-half percent (0.50%) (hereinafter the “IBC Loan”), and which Loan will be secured by payments by the Resort on a lease of the new portion of the Pavilion facility; and

**WHEREAS**, IBC has obtained a guarantee for up to ninety percent (90%) of the Loan through the Loan Guarantee, Insurance, and Interest Subsidy Program of the United States Department of the Interior; and

**WHEREAS**, the documentation for the IBC Loan includes certain documents which require the Authority’s approval, including (i) a Lease Agreement between the Authority and the Quapaw Tribe relating to the new Pavilion facility, and (ii) a Letter Agreement between the Authority and the Tribe and IBC under which the Tribe commits to use the proceeds of the Lease to pay the sums due and owing by the Tribe under the IBC Loan (collectively these documents are referred to as the “Authority Lease Documents”); and

**WHEREAS**, the Authority desires to approve and/or ratify the Project and also to approve the Authority Lease Documents, copies of which in final or near-final form have been made available to the members of the Authority.

**NOW, THEREFORE BE IT RESOLVED THAT** the Authority finds and determines as follows:

**1. Findings.** The Authority finds and determines that: (i) the recitals in this Resolution are true and correct in all material respects; (ii) the Authority has full power and authority to adopt this Resolution; and (iii) the Authority's adoption of this Resolution is consistent with the laws of the Tribe.

**2. Approval of the Project.** The Authority hereby finds and affirms that the Project and the arrangements for repayment to the Tribe of the sums due and owing under the Authority Lease Documents are in the best interests of the Tribe.

**3. Approval of the Authority Lease Documents.** The Authority hereby (i) approves the form of each of the Authority Lease Documents and (ii) authorizes and directs the Chairman of the Authority or any other officer of the Authority to execute and deliver such Authority Lease Documents, and to execute any additional certificates and other documents as are required from the Authority to conclude the IBC Loan and the Authority Lease Documents, and further to take or cause to be taken any other actions necessary to complete the requirements imposed on the Authority for a closing of the IBC Loan and/or the Authority Lease Documents.

**4. Repealer.** Any resolutions or other actions of the Authority, or any of the officers, employees, or agents, of the Authority, whether written, unwritten, or established by tradition that are in effect and are in conflict with or inconsistent with the terms of this Resolution or the transactions contemplated herein are hereby to such extent repealed and annulled, and this Resolution shall supersede the same.

**5. Nonimpairment of the Tribe's and the Authority's Obligations.** Neither the Authority nor any of its officers, principals, agents and employees, shall take any actions, without the written consent of all parties, to modify, amend, or in any manner impair the obligations of contracts entered into by the Authority or the Tribe or other parties in furtherance of the financing of the IBC Loan through the Authority Lease Documents, which shall include the Tribe's and the Authority's obligations under the IBC Loan Documents and/or the Authority Loan Documents.

**6. Miscellaneous.** If any provision of this Resolution or the application of any provision of this Resolution is held to be invalid, the remainder of the Resolution shall not be affected with respect to the same. This Resolution shall become effective as of the date and time of its passage and approval by the Authority.

[Certification Follows on the Next Page.]

## CERTIFICATION

The foregoing resolution of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) was presented and duly adopted at a regular meeting of the Authority on May \_\_\_\_, 2015, with a vote reflecting \_\_\_\_ yes, \_\_\_\_ no, \_\_\_\_ abstaining, and \_\_\_\_ absent.

---

John L. Berrey, Chairman  
Downstream Authority

---

Larry J. Ramsey, Secretary  
Downstream Authority

## PROMISSORY NOTE

\$5,100,000.00

May \_\_, 2015

FOR VALUE RECEIVED, the **Quapaw Tribe of Oklahoma (O-Gah-Pah)**, a federally recognized Indian tribe ("Borrower"), promises to pay to the order of **INTERNATIONAL BANK OF COMMERCE**, a Texas state banking association (together with any and all of its successors and assigns and/or any other holder of this Note, "Lender"), the principal sum of Five Million One Hundred Thousand and 00/100 Dollars (\$5,100,000.00), or such much thereof as has been advanced and is outstanding, in legal and lawful money of the United States of America, with interest as it accrues on the outstanding principal balance from each date of advance of principal until paid. This Promissory Note is executed pursuant to, and is the "Note" described in, the Construction and Permanent Loan Agreement dated as of April \_\_, 2015 between Borrower and Lender (as it may be amended, supplemented or restated from time to time, the "Loan Agreement"). Capitalized terms used but not defined in this Note have the meanings assigned to them in the Loan Agreement.

The interest rate applicable to the principal balance outstanding under this Note is the floating Prime Rate (as defined below) as of the date of this Note and as of each anniversary date of this Note or if such anniversary date is not a Business Day, then the next succeeding Business Day (the "Anniversary Date"), plus one-half of one percent (0.50%) per annum, but will not at any time exceed the Maximum Rate (as defined below). The interest rate effective as of the date of this Note is 4.25% per annum. The rate of interest due on this Note will be recomputed as of each Anniversary Date and then remain fixed until the next Anniversary Date.

Borrower shall make payments of all accrued but unpaid interest beginning May \_\_, 2015, and continuing on the \_\_\_\_ day of each calendar month thereafter through October \_\_, 2015. Commencing on November \_\_, 2015, and continuing on the \_\_\_\_ day of each month thereafter (each such payment date a "Payment Date") until April \_\_, 2036 (the "Maturity Date"), Borrower shall make payments of \$21,250.00 in principal plus all accrued but unpaid interest. Borrower shall pay all unpaid principal and accrued interest on the Maturity Date, if not previously paid in full. Amounts repaid under this Note may not be re-borrowed.

Borrower shall also make all other payments required by the Loan Agreement.

Lender shall apply each payment as of its scheduled due date and in the order of application as Lender elects in its sole discretion. **All payments shall be made to Lender by mailing payment to P.O. Box 26020, Oklahoma City, OK 73126-0020 or by delivering payment in person at 2250 E. 73rd Street, Tulsa, OK 74136.**

Borrower may prepay the principal of this Note in whole or in part at any time, without premium or penalty. Lender will apply sums paid in excess of the required monthly payment to reduce principal sums outstanding, but these principal reductions shall not relieve Borrower from its obligation to make payments on each Payment Date in the amount set forth above.

The "Prime Rate" for any day is a fluctuating rate of interest equal to the highest rate published from time to time in the "Money Rates" section of The Wall Street Journal as the prime rate for such day. If at any time The Wall Street Journal does not announce its prime rate, then the Prime Rate shall be another specific prime rate published from time to time by a nationally recognized financial institution or news source and selected by Lender.

Use of either the Wall Street Journal Prime Rate or any substitute rate is not to be construed as a warranty or representation that such rate is more favorable than another rate or index, that rates on other loans or credit facilities may not be based on other indices or that rates on loans to others may not be made below these rates.

Interest under this Note is calculated on a 360-day factor applied on a 365-day year or a 366-day year, in the event that the year is a leap year, on the unpaid principal to the date of each installment paid. Notwithstanding anything to the contrary contained in this Note or the other Loan Documents, at no time will the interest rate applicable to this Note exceed the Maximum Rate. The "Maximum Rate" is, on any day, the highest non-usurious rate of interest permitted by (i) Oklahoma Law or (ii) Federal Law, if and only if Federal Law permits a higher interest rate. If the calculation of interest on the principal sum of this Note results in the interest rate in effect under this Note exceeding the Maximum Rate, then such interest will be recalculated on the basis of the actual number of days elapsed in the period for which interest is being calculated and a year of 365 or 366 days, as applicable.

It is the parties' intention to comply with the applicable usury laws of the State of Oklahoma and of the United States of America. The parties do not intend to contract for, charge or receive any interest or other charge which is usurious, and by execution of this Note, Borrower agrees that Lender has no such intent. This Note, the other Loan Documents and all other agreements between Borrower and Lender or any other holder hereof, that are now existing or hereafter arising, whether written or oral, are hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity hereof, or otherwise, shall the amount paid, or agreed to be paid, to Lender or any other holder hereof for the use, forbearance or detention of the money to be due hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note or the debt evidenced by this Note, exceed the Maximum Rate, if applicable. If from any circumstance whatsoever fulfillment of any provisions hereof or other document, at the time performance of such provisions shall be due, shall involve transcending the valid limits prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate, and if from any such circumstance Lender or any other holder shall ever receive as interest or otherwise an amount which will exceed the Maximum Rate, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing hereunder or on account of any other principal indebtedness of Borrower to the holder and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof and such other indebtedness, such excess shall be refunded to Borrower. All sums paid and agreed to be paid to Lender or any other holder for the use, forbearance or detention of the indebtedness of Borrower shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the period until payment in full on this Note (or any renewals, extensions and rearrangement hereof) so that the actual rate of interest on account of the Indebtedness (and all renewals, extensions and rearrangements hereof) does not exceed the Maximum Rate. The terms and provisions of this paragraph shall control and supersede any other provision of this Note or the other Loan Documents.

To the extent allowed by law, as the late payment charge under this Note, should any payment not be made within thirty (30) days from the due date, Lender may in its sole discretion require Borrower to pay a one-time "late charge" per late payment equal to five percent (5%) of the amount of the past due principal and interest of such payment, with a minimum of \$10.00 and a maximum of \$1,500.00 per late payment. The "late charge" may be assessed without notice, and

shall be immediately due and payable. This provision is inapplicable if the outstanding indebtedness under this Note is accelerated in full.

Borrower shall pay all outstanding unpaid principal, all accrued and unpaid interest, and all fees accrued and unpaid late charges, and/or other charges incurred in this transaction by, or for the benefit of Borrower, that remain due and owing, on the Maturity Date.

If all or a part of the indebtedness represented by this Note is collected at law or in equity or in bankruptcy, receivership or other court proceedings or if this Note is placed in the hands of attorneys for collection after default, the Borrower and any endorser or guarantor hereof agree to pay hereunder, in addition to the principal and interest due and payable hereon, reasonable attorneys' fees, court costs and other collection expenses incurred by the holder hereof.

The Borrower and any endorser or guarantor hereof hereby waive presentment for payment, demand, notice of nonpayment, protest and notice of protest with respect to any payment hereunder and agree to any extension of time with respect to any payment due hereunder, to any substitution or release of the security or collateral described in the Security Agreement and to the addition or release of any party liable hereunder. No delay on the part of the holder hereof in exercising any rights hereunder shall operate as a waiver of such rights.

This Note and the indebtedness evidenced hereby shall be construed and enforced in accordance with and governed by the laws of the State of Oklahoma.

The undersigned, as the Borrower, and all others who are or who shall become parties primarily or secondarily liable on this Note, whether as endorsers, guarantors or otherwise, hereby agree that this Note may be renewed one or more times, the time for payment of this Note or any renewal Note extended, the interest rate or other terms of the indebtedness evidenced hereby changed, any party released, or any action taken or omitted with respect to any collateral security, including surrender of such security or failure to perfect any lien thereon, without notice or without releasing any of them, except as otherwise expressly agreed in writing, and the obligation of such party shall survive whether or not the instrument evidencing such obligation shall have been surrendered or canceled. All such parties waive presentment, demand for payment, protest and notice of nonpayment or dishonor and agree that failure of this holder to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance.

This Note is non-assumable by any successor to or assignee of Borrower without the prior approval in writing of the Lender. In the event Lender shall so approve such assumption, the terms of this Note shall be binding upon Borrower's successors and assigns. The terms of this Note shall inure to the benefit of Lender and its successors and assigns.

**BORROWER AGREES TO SECTIONS 10.18, 10.19 and 10.20 OF THE LOAN AGREEMENT, EACH OF WHICH IS EXPRESSLY INCORPORATED BY REFERENCE INTO AND MADE APPLICABLE IN ITS ENTIRETY TO THIS NOTE, INCLUDING WITHOUT LIMITATION, THE CONSENT TO EXCLUSIVE JURISDICTION, SOVEREIGN IMMUNITY WAIVER, AND WAIVER OF JURY TRIAL PROVISIONS. BORROWER'S WAIVER OF ITS RIGHT TO JURY TRIAL, AS SET FORTH IN THE LOAN AGREEMENT, IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY MADE BY BORROWER AND BORROWER REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE**

**THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER AUTHORIZES LENDER TO SUBMIT THIS NOTE IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF BORROWER'S WAIVER OF RIGHT TO TRIAL BY JURY. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

**BORROWER ACKNOWLEDGES EXECUTION OF THIS NOTE AND HAVING READ ALL OF ITS PROVISIONS AND BORROWER AGREES TO ITS TERMS.**

**NO ORAL AGREEMENTS. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

*[SIGNATURE PAGE ATTACHED]*



THIS PROMISSORY NOTE is dated and executed as of the date indicated on the first page.

**BORROWER:**

**QUAPAW TRIBE OF OKLAHOMA  
(O-Gah-Pah)**

By: \_\_\_\_\_  
John L. Berrey, Chairman  
Quapaw Tribal Business Committee

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made as of ~~April~~ May \_\_\_\_\_, 2015, between Quapaw Tribe of Oklahoma (O-Gah-Pah), a federally recognized Indian tribe ("Borrower"), and International Bank of Commerce, a Texas state banking association (together with any permitted successors and assigns, "Lender").

A. Borrower and Lender have entered into the Loan Agreement of even date herewith (the "Loan Agreement"), and it is a condition precedent to the effectiveness of the Loan Agreement and the extension of the Loan described therein from Lender to Borrower that Borrower execute and deliver to Lender a security agreement in substantially the form hereof.

B. Borrower wishes to grant security interests in favor of Lender as herein provided.

NOW, THEREFORE, Borrower and Lender agree as follows:

1. **Defined Terms.** All capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Loan Agreement.

2. **Collateral.** Borrower hereby grants to Lender a security interest in the following, whether now existing or hereafter acquired (collectively the "Collateral"):

(a) all Borrower's right, title and interest (including, without limitation, its residual interest under the Lease (as defined below) and any other lease of the same) in all goods, materials, supplies, chattels, furniture, fixtures, equipment, appliances, machinery, inventory and other personal property of any kind ~~purchased with the proceeds of the Loan Agreement~~, now owned or hereafter located at and used in connection with the Pavilion and whether stored on the Real Property or elsewhere, and including without limitation the goods and equipment described on the attached Exhibit A;

(b) all parts, accessions, additions and replacements of or to any of the foregoing;

(c) all accounts and general intangibles arising from or related to the Pavilion or the use or operation thereof;

(d) all insurance proceeds related to any of the foregoing; and

(e) all proceeds and products of any of the foregoing.

3. **Obligations.** The liens and security interests granted herein are given to secure the following, whether direct or indirect, absolute or contingent, matured or unmatured (collectively the "Secured Obligations"):

(a) prompt and full performance and payment of the Loan, all other obligations and indebtedness of Borrower to Lender under the Loan Agreement or the Note, and all obligations, indebtedness and liabilities evidenced by and/or arising in connection with the Loan Agreement, the Note or this Agreement (collectively, the "Loan Documents");

(b) all amounts that Lender may now or hereafter pay or advance at any time for taxes, levies, insurance or other protection with respect to the Collateral; and

(c) all costs and expenses that Lender may incur in perfecting, enforcing or protecting its rights with respect to the Collateral or any of the Secured Obligations, including filing fees and taxes, and reasonable attorneys' fees.

4. **Representations and Warranties.** Borrower represents and warrants to Lender that (a) Borrower is the sole, true and lawful owner of the Collateral and has the right to grant a security interest in the Collateral, (b) there are no advances, claims, liens, security interests or encumbrances against the Collateral except in favor of Lender and the rights of Lessee under the Lease, which rights are junior and inferior to Lender's rights under this Agreement, and (c) the execution and performance of this Agreement have been authorized by all necessary action on the part of Borrower.

5. **Borrower's Covenants.** Until the Secured Obligations have been indefeasibly paid and satisfied in full and Lender has no further commitment to extend credit under the Loan Documents, Borrower shall keep the Collateral free from any other lien, security interest or encumbrance, and to the extent deemed prudent business practice (to be determined in Borrower's good faith discretion), maintain the Collateral in good order and repair, use the Collateral in accordance with all laws, regulations and orders, safeguard and protect all Collateral, and not sell, lease, license, transfer or dispose of any of the Collateral; promptly advise Lender of any event or circumstance materially affecting the Collateral; pay when due all taxes and similar obligations that might result in a lien on the Collateral if not paid; and execute additional documents and take such other actions (at Borrower's expense) as Lender may reasonably request from time to time to implement or evidence the terms of this Agreement.

6. **Perfection and Protection of Collateral.** Borrower authorizes Lender to file financing statements describing the Collateral in all applicable filing offices. Borrower shall execute, obtain, deliver and (if applicable) file or record all financing statements, correction statements, consents, notices, acknowledgments and other documents, and take all other actions, that Lender may deem necessary or advisable to perfect or protect Lender's security interest in the Collateral against the interests of third parties. Borrower agrees to pay, on demand, all costs, taxes and fees payable in connection with any such filings, recordings, notices or other actions. Borrower shall give Lender at least thirty (30) days prior written notice before changing its name or structure or jurisdiction of organization, or moving the Collateral outside of the United States of America, and in each case shall (at Borrower's expense) promptly take all steps necessary or advisable to preserve continuously the perfection and priority of Lender's security interests in the Collateral.

7. **Records; Inspection.** Upon Lender's request, Borrower will deliver to Lender copies of such reports and information as to the Collateral as Lender may request (prior to an Event of Default, such request to be made no more than one time annually). Borrower shall maintain adequate books and records pertaining to the Collateral and shall permit Lender (during regular business hours) to visit and inspect any of the Collateral and to examine Borrower's books of record with respect to the Collateral (and if applicable, Lender's costs and expenses in connection therewith will be part of the Secured Obligations).

8. **Insurance.** Borrower shall maintain insurance reasonably satisfactory to Lender, insuring all of the Collateral against loss from fire, flood, theft and any other risks required by Lender, and shall provide Lender with satisfactory evidence of such insurance and the timely renewal thereof. All liability insurance policies shall name Lender as an additional insured, and all casualty insurance policies shall contain a lender's or mortgagee's loss payable provision acceptable to Lender (including provision to endeavor to provide thirty (30) days prior written notice to Lender of

any cancellation of coverage). If Borrower fails to furnish or maintain such insurance, Lender may pay premiums or obtain insurance of its interest only, and any amounts paid by Lender will become part of the Secured Obligations.

9. **Events of Default.** Any of the following events or conditions will be an “Event of Default” hereunder (and will be a “Default” pending any required notice and/or passage of time and/or other condition or grace period): (a) any “Event of Default” under the Loan Agreement; (b) Borrower fails to perform any term in this Agreement and such failure continues uncured for thirty (30) days after Borrower’s receipt of written notice specifying such failure; (c) Borrower becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition or has an involuntary petition filed or action commenced against it under the United States Bankruptcy Code or any similar federal or state law or becomes involved as a debtor in any foreign insolvency law; or (d) Borrower fails to perform its obligations under any other Loan Document after the expiration of any applicable cure or grace periods.

10. **Remedies.** Upon the occurrence of an Event of Default, Lender may declare the entire principal amount of all Secured Obligations then outstanding, including interest accrued thereon, to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, or other notice of default of any kind, all of which Borrower hereby expressly waives. Upon the occurrence of any Event of Default, Lender may also bring an action to protect or enforce its rights hereunder or under the other Loan Documents, or seek to collect and/or enforce the Secured Obligations by any lawful means, or exercise any or all of the rights and remedies available at law or in equity, including the rights and remedies of a secured party under the Uniform Commercial Code as in effect from time to time in the State of Oklahoma (the “UCC”). These remedies include the right and power to take possession of and/or disable the Collateral, wherever it may be found, and the right and power to sell, at public or private sale or sales, or otherwise dispose of or use all or any portion of the Collateral in any manner authorized or permitted under the UCC, in such order or manner as Lender may elect in its sole discretion. Lender shall not be required to prepare or process Collateral before disposition, or to make any warranties of title or otherwise to any person acquiring any of the Collateral. Upon Lender’s demand following the occurrence of an Event of Default, Borrower agrees to promptly de-install and assemble the Collateral, properly pack it for shipment, and deliver it (at Borrower’s expense) to such location in the United States of America as Lender may designate. Lender may, at its option, dispose of Collateral on credit terms, and, in such event, shall credit Borrower only with the amounts of cash proceeds actually received from time to time thereafter by Lender and applied to the Secured Obligations. *Except as otherwise provided in the Loan Agreement*, Lender may apply the proceeds of the Collateral toward payment of the Secured Obligations in such order or manner as Lender may elect in its sole discretion. Additionally, Lender may, without notice to Borrower, set off and apply any and all amounts owed by Lender to Borrower (if any) against the Secured Obligations, irrespective of whether or not demand has been made hereunder or whether such Secured Obligations may be unmaturing. All remedies provided to Lender herein are cumulative, in addition to all other remedies available to Lender at law or in equity or otherwise, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

11. **Borrower Waivers.** Except as expressly provided herein, and to the fullest extent permitted by law, Borrower hereby waives (a) presentment, demand and protest and notice of presentment, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any Loan Document; (b) notice prior to taking possession or control of the Collateral or any bond or security that might be required by any court before allowing Lender to exercise any of

Lender's remedies, including the issuance of an immediate writ of possession; (c) any marshaling of assets, or any right to compel Lender to resort first or in any particular order to any collateral or other entities before enforcing its rights as to the Collateral or pursuing Borrower for payment of the Secured Obligations; (d) the benefit of all valuation, appraisal and exemption laws; (e) notice of acceptance hereof; and (f) any claims and defenses based on principles of suretyship, including impairment of recourse and impairment of collateral.

12. **Lender's Limited Duties.** Lender shall have no liability or responsibility for any diminution in the value of the Collateral from any cause whatsoever, and shall be under no duty to collect any amount that may be or become due on any of the Collateral, to redeem or realize on Collateral or to remove any liens or to take any actions for the perfection, enforcement, collection or protection of Collateral, except to the extent, if any, that the UCC requires Lender to use reasonable care with respect to Collateral while in its possession.

13. **Defined Terms; UCC Terms.** All defined terms apply to both singular and plural forms, and all references to any gender include all other genders. Terms used in this Agreement that are defined in the UCC shall have the same meanings herein, except as otherwise provided herein. If a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9. References to agreements, documents or instruments hereunder shall include, where the context so requires, references to such agreements, documents and instruments as amended, supplemented or varied from time to time.

14. **Notices.** All notices and communications required under this Agreement shall be given and shall be effective as provided in the Loan Agreement.

15. **Successors and Assigns.** Borrower shall not assign its rights or delegate its duties under this Agreement. Borrower's covenants and agreements herein shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Lender may, at its option from time to time without consent of or notice to Borrower, sell, assign, grant a security interest in, or pledge its interest in all or a portion of the Collateral and/or the Loan Documents to any one or more third parties ("Assignees") and/or enter into participation or syndication agreements with other lenders approved by Lender on such terms and conditions as Lender shall deem advisable. Borrower shall, if so directed, make all payments due hereunder to Assignee free from any claim or counterclaim, defense or other right that Borrower may have against Lender.

16. **Governing Law; Sovereign Immunity Waiver and Consent to Jurisdiction.**

(a) THE LAWS OF THE STATE OF OKLAHOMA GOVERN THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, WITHOUT REGARD TO OKLAHOMA CHOICE OF LAW RULES. FEDERAL LAW GOVERNS THE CONSTRUCTION AND INTERPRETATION OF THE BORROWER'S LIMITED WAIVER OF IMMUNITY.

(b) No waiver of the immunity of the Borrower from unconsented suit shall be granted hereunder except as expressly set forth herein. Borrower hereby fully and irrevocably grants a limited waiver of the sovereign immunity solely for the purpose of permitting the Lender to enforce this Agreement and the other Loan Documents.

(c) Borrower agrees to irrevocably and unconditionally submit, for itself and its property, to the exclusive jurisdiction of (i) in the first instance, the United States District Court, Northern District of Oklahoma, and any appellate court from which any appeals therefrom are available ("Federal Courts"), in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, or (ii) if the Federal Courts lack or decline jurisdiction, to the courts of the State of Oklahoma sitting in the City of Tulsa, County of Tulsa, and any appellate court from which any appeals therefrom are available ("Oklahoma State Courts"), and Borrower and Lender irrevocably and unconditionally agree that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties to this Agreement agrees that a final judgment in any such action or proceeding may be enforced by any court of competent jurisdiction. Borrower expressly waives, to the fullest extent it may legally and effectively do so, any right it has now or in the future to require any suit, arbitration, legal process or enforcement proceeding be considered or heard first in any tribal court or forum of Borrower, whether because of the doctrine of exhaustion of tribal remedies or as a matter of comity or abstention.

(d) Borrower and Lender each agree to irrevocably and unconditionally waive, to the fullest extent it may legally and effectively do so, any objection to which either is entitled (whether now or in the future) to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any Federal Court or Oklahoma State Court. Borrower and Lender each agree to, and hereby do, irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) Each party hereto agrees to irrevocably consent to service of process in the manner provided for notices in this Agreement. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by law.

(f) For the purposes of this Agreement, each of the parties hereto agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(g) Notwithstanding anything to the contrary in this Section 16, nothing in this Agreement limits the ability of any party to move to compel arbitration or move to stay or dismiss a lawsuit in favor of arbitration, and Borrower's waiver of sovereign immunity expressly extends to such actions and to any such arbitration.

17. **WAIVER OF JURY TRIAL.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY DISPUTE AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY DISPUTE IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, BORROWER AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL



INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

18. **ARBITRATION.** LENDER AND BORROWER FURTHER AGREE, NOTWITHSTANDING THE CONSENT TO THE JURISDICTION OF THE COURTS DESCRIBED IN SECTION 16, AS FOLLOWS:

(a) ANY DISPUTE (INCLUDING WITHOUT LIMITATION DISPUTES INVOLVING CONSUMER-RELATED CLAIMS AND/OR COMMERCIAL CLAIMS) HEREUNDER SHALL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN EFFECT AT THE TIME OF FILING BEFORE A SINGLE NEUTRAL ARBITRATOR SELECTED BY THE AMERICAN ARBITRATION ASSOCIATION FROM AMONG TWO NOMINATIONS TO BE MADE BY EACH OF BORROWER AND LENDER. FAILURE OF ANY ARBITRATOR TO DISCLOSE ALL FACTS WHICH MIGHT TO AN OBJECTIVE OBSERVER CREATE A REASONABLE IMPRESSION OF THE ARBITRATOR'S PARTIALITY, AND/OR MATERIAL ERRORS OF LAW SHALL BE GROUNDS [IN ADDITION TO ALL OTHERS] FOR VACATUR OF AN AWARD RENDERED PURSUANT TO THIS AGREEMENT.

(b) THE PARTIES AGREE THAT (i) NO ARBITRATION PROCEEDING HEREUNDER SHALL BE CERTIFIED AS A CLASS ACTION OR PROCEED AS A CLASS ACTION, OR ON A BASIS INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC, OTHER CUSTOMERS OR POTENTIAL CUSTOMERS OR PERSONS SIMILARLY SITUATED AND (ii) NO ARBITRATION PROCEEDING HEREUNDER SHALL BE CONSOLIDATED WITH, OR JOINED IN ANY WAY WITH, ANY OTHER ARBITRATION PROCEEDING.

(c) THE AWARD OF THE ARBITRATOR SHALL BE FINAL, AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION. THE ARBITRATION AWARD SHALL BE IN WRITING AND SPECIFY THE FACTUAL AND LEGAL BASIS FOR THE AWARD. UPON THE REQUEST OF ANY PARTY, THE AWARD SHALL INCLUDE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(d) ARBITRABLE DISPUTES INCLUDE ANY AND ALL CONTROVERSIES OR CLAIMS BETWEEN THE PARTIES OF WHATEVER TYPE OR MANNER, INCLUDING WITHOUT LIMITATION, ANY CLAIM ARISING OUT OF OR RELATING TO THE NOTE, ALL PAST, PRESENT AND/OR FUTURE CREDIT FACILITIES AND/OR AGREEMENTS INVOLVING THE PARTIES, ANY TRANSACTIONS BETWEEN OR INVOLVING THE PARTIES, AND/OR ANY ASPECT

OF ANY PAST OR PRESENT RELATIONSHIP OF THE PARTIES, WHETHER BANKING OR OTHERWISE, SPECIFICALLY INCLUDING ANY ALLEGED TORT COMMITTED BY ANY PARTY.

(e) THE PARTIES SHALL ALLOW AND PARTICIPATE IN DISCOVERY IN ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE FOR A PERIOD OF ONE HUNDRED TWENTY (120) DAYS AFTER THE FILING OF THE ORIGINAL RESPONSIVE PLEADING. DISCOVERY MAY CONTINUE THEREAFTER AS AGREED BY THE PARTIES OR AS ALLOWED BY THE ARBITRATOR. UNRESOLVED DISCOVERY DISPUTES SHALL BE BROUGHT TO THE ATTENTION OF THE ARBITRATOR BY WRITTEN MOTION FOR PROPER DISPOSITION, INCLUDING RULING ON ANY ASSERTED OBJECTIONS, PRIVILEGES, AND PROTECTIVE ORDER REQUESTS AND AWARDING REASONABLE ATTORNEY'S FEES TO THE PREVAILING PARTY.

(f) IN THE EVENT THE AGGREGATE OF ALL AFFIRMATIVE CLAIMS ASSERTED EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), EXCLUSIVE OF INTEREST AND ATTORNEY'S FEES, OR UPON THE WRITTEN REQUEST OF ANY PARTY, (1) PRIOR TO THE DISSEMINATION OF A LIST OF POTENTIAL ARBITRATORS, THE AMERICAN ARBITRATION ASSOCIATION SHALL CONDUCT AN IN PERSON ADMINISTRATIVE CONFERENCE WITH THE PARTIES AND THEIR ATTORNEYS FOR THE FOLLOWING PURPOSES AND FOR SUCH ADDITIONAL PURPOSES AS THE PARTIES OR THE AMERICAN ARBITRATION ASSOCIATION MAY DEEM APPROPRIATE, (A) TO OBTAIN ADDITIONAL INFORMATION ABOUT THE NATURE AND MAGNITUDE OF THE DISPUTE AND THE ANTICIPATED LENGTH OF HEARINGS AND SCHEDULING; (B) TO DISCUSS THE VIEW OF THE PARTIES ABOUT ANY TECHNICAL AND/OR OTHER SPECIAL QUALIFICATIONS OF THE ARBITRATORS; AND (C) TO CONSIDER, WHETHER MEDIATION OR OTHER METHODS OF DISPUTE RESOLUTION MIGHT BE APPROPRIATE, AND (2) AS PROMPTLY AS PRACTICABLE AFTER THE SELECTION OF THE ARBITRATORS, A PRELIMINARY HEARING SHALL BE HELD AMONG THE PARTIES, THEIR ATTORNEYS AND THE ARBITRATORS. WITH THE AGREEMENT OF THE ARBITRATORS AND THE PARTIES, THE PRELIMINARY HEARING MAY BE CONDUCTED BY TELEPHONE CONFERENCE CALL RATHER THAN IN PERSON. AT THE PRELIMINARY HEARING THE MATTERS THAT MAY BE CONSIDERED SHALL INCLUDE, WITHOUT LIMITATION, A PREHEARING SCHEDULING ORDER ADDRESSING (A) EACH PARTY'S DUTY TO SUBMIT A DETAILED STATEMENT OF CLAIMS, DAMAGES AND/OR DEFENSES, A STATEMENT OF THE ISSUES ASSERTED BY EACH PARTY AND ANY LEGAL AUTHORITIES THE PARTIES MAY WISH TO BRING TO THE ATTENTION OF THE ARBITRATORS; (B) RESPONSES AND/OR REPLIES TO THE PLEADINGS FILED IN COMPLIANCE WITH SUBPART 2(A); (C) STIPULATIONS REGARDING ANY UNCONTESTED FACTS; (D) EXCHANGE AND PREMARKING OF ALL DOCUMENTS WHICH EACH PARTY BELIEVES MAY BE OFFERED AT THE FINAL ARBITRATION HEARING; (E) THE IDENTIFICATION AND AVAILABILITY OF WITNESSES, INCLUDING EXPERTS, AND SUCH ADDITIONAL MATTERS REGARDING WITNESSES INCLUDING THEIR BIOGRAPHIES AND A SHORT SUMMARY OF THEIR EXPECTED TESTIMONY, (F) WHETHER A STENOGRAPHIC OR OTHER OFFICIAL RECORD OF THE



PROCEEDINGS SHALL BE MAINTAINED; AND (G) THE POSSIBILITY OF UTILIZING MEDIATION OR OTHER ALTERNATIVE METHODS OF DISPUTE RESOLUTION.

(g) FOR PURPOSES OF THIS PROVISION, "THE PARTIES" MEAN BORROWER AND LENDER, AND EACH AND ALL PERSONS AND ENTITIES SIGNING THIS AGREEMENT OR ANY OTHER AGREEMENTS BETWEEN OR AMONG ANY OF THE PARTIES AS PART OF THIS TRANSACTION. "THE PARTIES" SHALL ALSO INCLUDE INDIVIDUAL PARTNERS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR REPRESENTATIVES OF ANY PARTY TO SUCH DOCUMENTS, AND SHALL INCLUDE ANY OTHER OWNER AND HOLDER OF THIS AGREEMENT.

(h) THE PARTIES SHALL HAVE THE RIGHT TO INVOKE SELF- HELP REMEDIES (SUCH AS SET-OFF, NOTIFICATION OF ACCOUNT DEBTORS, SEIZURE AND/OR FORECLOSURE OF COLLATERAL, AND NON-JUDICIAL SALE OF PERSONAL PROPERTY AND REAL PROPERTY COLLATERAL) BEFORE, DURING OR AFTER ANY ARBITRATION AND/OR REQUEST ANCILLARY OR PROVISIONAL JUDICIAL REMEDIES (SUCH AS GARNISHMENT, ATTACHMENT, SPECIFIC PERFORMANCE, RECEIVER, INJUNCTION OR RESTRAINING ORDER, AND SEQUESTRATION) BEFORE OR AFTER ANY ARBITRATION. THE PARTIES NEED NOT AWAIT THE OUTCOME OF THE ARBITRATION BEFORE USING SELF-HELP REMEDIES. USE OF SELF-HELP OR ANCILLARY AND/OR PROVISIONAL JUDICIAL REMEDIES SHALL NOT OPERATE AS A WAIVER OF EITHER PARTY'S RIGHT TO COMPEL ARBITRATION. ANY ANCILLARY OR PROVISIONAL REMEDY WHICH WOULD BE AVAILABLE FROM A COURT AT LAW SHALL BE AVAILABLE FROM THE ARBITRATOR, INCLUDING INJUNCTION AND RESTRAINING ORDERS.

(i) THE PARTIES AGREE THAT ANY ACTION REGARDING ANY CONTROVERSY BETWEEN THE PARTIES SHALL EITHER BE BROUGHT BY ARBITRATION, AS DESCRIBED HEREIN, OR BY JUDICIAL PROCEEDINGS, BUT SHALL NOT BE PURSUED SIMULTANEOUSLY IN DIFFERENT OR ALTERNATIVE FORMS. A TIMELY WRITTEN NOTICE OF INTENT TO ARBITRATE PURSUANT TO THIS AGREEMENT STAYS AND/OR ABATES ANY AND ALL ACTION IN A TRIAL COURT, SAVE AND EXCEPT A HEARING ON A MOTION TO COMPEL ARBITRATION AND/OR THE ENTRY OF AN ORDER COMPELLING ARBITRATION AND STAYING AND/OR ABATING THE LITIGATION PENDING THE FILING OF THE FINAL AWARD OF THE ARBITRATORS. ALL REASONABLE AND NECESSARY ATTORNEY'S FEES AND ALL TRAVEL COSTS SHALL BE AWARDED TO THE PREVAILING PARTY ON ANY MOTION TO COMPEL ARBITRATION AND MUST BE PAID TO SUCH PARTY WITHIN TEN (10) DAYS OF THE SIGNING OF THE ORDER COMPELLING ARBITRATION.

(j) ANY PARTY SEEKING TO ARBITRATE SHALL SERVE A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ANY AND ALL OPPOSING PARTIES WITHIN THREE HUNDRED SIXTY (360) DAYS AFTER DISPUTE HAS ARISEN. A DISPUTE IS DEFINED TO HAVE ARISEN ONLY UPON RECEIPT OF SERVICE OF JUDICIAL PROCESS, INCLUDING SERVICE OF A COUNTERCLAIM, FAILURE TO

SERVE A WRITTEN NOTICE OF INTENT TO ARBITRATE WITHIN THE TIME SPECIFIED ABOVE SHALL BE DEEMED A WAIVER OF THE AGGRIEVED PARTY'S RIGHT TO COMPEL ARBITRATION OF SUCH CLAIM. THE ISSUE OF WAIVER PURSUANT TO THIS AGREEMENT IS AN ARBITRABLE DISPUTE.

(k) ACTIVE PARTICIPATION IN PENDING LITIGATION DURING THE THREE HUNDRED SIXTY DAY (360) DAY NOTICE PERIOD, WHETHER AS PLAINTIFF OR DEFENDANT, IS NOT A WAIVER OF THE RIGHT TO COMPEL ARBITRATION. ALL DISCOVERY OBTAINED IN THE PENDING LITIGATION MAY BE USED IN ANY SUBSEQUENT ARBITRATION PROCEEDING.

(l) ANY ARBITRATOR SELECTED SHALL BE KNOWLEDGEABLE IN SOPHISTICATED FINANCIAL TRANSACTIONS OF SIMILAR SIZE AND NATURE TO THE LOAN, AND IN FEDERAL INDIAN LAW. EACH OF THE PARTIES SHALL PAY AN EQUAL SHARE OF THE ARBITRATION COSTS, FEES, EXPENSES, AND OF THE ARBITRATORS' FEES, COSTS AND EXPENSES.

(m) ALL STATUTES OF LIMITATIONS WHICH WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY AND ALL CLAIMS ASSERTED IN ANY ARBITRATION PROCEEDING HEREUNDER AND THE COMMENCEMENT OF ANY ARBITRATION PROCEEDING TOLLS SUCH STATUTES OF LIMITATIONS.

(n) IN ANY ARBITRATION PROCEEDING SUBJECT TO THIS PROVISION, THE ARBITRATORS, OR MAJORITY OF THEM, ARE SPECIFICALLY EMPOWERED TO DECIDE (BY DOCUMENTS ONLY, OR WITH A HEARING, AT THE ARBITRATORS' SOLE DISCRETION) PRE-HEARING MOTIONS WHICH ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION.

(o) THIS ARBITRATION PROVISION SHALL SURVIVE ANY TERMINATION, AMENDMENT, OR EXPIRATION OF THE AGREEMENT IN WHICH THIS PROVISION IS CONTAINED, UNLESS ALL OF THE PARTIES OTHERWISE EXPRESSLY AGREE IN WRITING.

(p) THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT EVIDENCES A TRANSACTION INVOLVING INTERSTATE COMMERCE. THE FEDERAL ARBITRATION ACT SHALL GOVERN THE INTERPRETATION, ENFORCEMENT, AND PROCEEDINGS PURSUANT TO THE ARBITRATION CLAUSE OF THIS AGREEMENT.

(q) IN ANY ARBITRATION HEREUNDER, EACH PARTY SHALL BE SOLELY RESPONSIBLE FOR THE PAYMENT OF ITS OWN COSTS OF THE ARBITRATION, INCLUDING ATTORNEY FEES AND OTHER COSTS.

(r) NEITHER THE PARTIES NOR THE ARBITRATORS MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT PRIOR WRITTEN CONSENT OF ALL PARTIES AND/OR COURT ORDER.

(s) VENUE OF ANY ARBITRATION PROCEEDING HEREUNDER SHALL BE IN TULSA COUNTY, OKLAHOMA.

19. **Waiver of Damages.** In any action to enforce this Agreement, to the extent permitted by law, Borrower hereby irrevocably and unconditionally waives any and all rights under the laws of any state to claim or recover any special, exemplary, punitive, consequential or other damages other than actual direct damages.

20. **Distribution of Information.** Borrower hereby authorizes Lender, as Lender may elect in its sole discretion, to discuss with and furnish to any affiliate of Lender, any government or self regulatory agency with jurisdiction over Lender, or any participant or assignee or prospective participant or assignee, all financial statements, audit reports and other information pertaining to Borrower and/or its subsidiaries whether such information was provided by Borrower or prepared or obtained by Lender or third parties, and to provide information about this Agreement, the Collateral and the Secured Obligations to third parties in connection with Lender's exercise of its remedies hereunder.

21. **Costs, Expenses and Taxes.** Borrower agrees to pay on demand all costs and expenses (including reasonable legal fees and expenses) incurred by Lender at any time in connection with the administration, amendment, waiver, interpretation or enforcement of this Agreement or the Loan Documents, or in the enforcement or protection of Lender's rights hereunder or under the Loan Documents. In addition, Borrower agrees to pay, and to hold Lender harmless from all liability for, all filing fees, stamp, recording, intangibles and other taxes payable in connection with the execution, delivery or recording of any Loan Document or financing statement or any related matter. All obligations under this Section shall be part of the Secured Obligations and shall survive any termination of this Agreement.

22. **Severability.** If any provision hereof shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. **Complete Agreement; Amendments and Waivers.** This Agreement constitutes the entire agreement between Lender and Borrower with respect to the subject matter hereof and supersedes all previous writings and understandings with respect to the Collateral. This Agreement may not be modified or amended except in writing signed by Borrower and Lender, and none of its provisions may be waived except in writing signed by Lender. No waivers shall be implied, whether from any custom or course of dealing or any delay or failure in Lender's exercise of its rights and remedies hereunder or otherwise. Any waiver granted by Lender shall not obligate Lender to grant any further similar or other waivers.

24. **Conflicts.** In the event of any direct conflict between the express terms and provisions of this Agreement and of the Loan Agreement, the terms and provisions of the Loan Agreement shall control.

**[Remainder of page intentionally left blank.]**

THIS SECURITY AGREEMENT is made by Borrower and Lender as of the date first written above.

**“BORROWER”**

**QUAPAW TRIBE OF OKLAHOMA,**  
**(O-Gah-Pah)**, a federally recognized Indian tribe

By: \_\_\_\_\_  
John L. Berrey, Chairman  
Quapaw Tribal Business Committee

THIS SECURITY AGREEMENT is made by Borrower and Lender as of the date first written above.

**“LENDER”**

**INTERNATIONAL BANK OF COMMERCE,**  
a Texas state banking association

By: \_\_\_\_\_  
Andrew J. Levinson, President - Tulsa

**EXHIBIT A**  
**GOODS AND EQUIPMENT**

<u>Qty</u>	<u>Item #</u>	<u>Item Description</u>
<u>1</u>	<u>HP 3500</u>	<u>COMPUTER NETWORK SWITCH</u>
<u>4</u>	<u>J4859C</u>	<u>NETWORK TRANSCEIVER</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>8</u>	<u>CRAFT DCEP70-OB</u>	<u>CEILING FAN-OILED BRONZE</u>
<u>1</u>	<u>ADV383643</u>	<u>FLOOR SCRUBBER 20in ADVANCE MODEL 1500</u>
<u>2</u>	<u>UNGEZ600</u>	<u>TELESCOPIC POLE TWO SECTION 20ft</u>
<u>9000</u>	<u>ESX772405A</u>	<u>CAT6 DATA CABLE - FEET</u>
<u>4</u>	<u>S5118-EG1</u>	<u>SECURITY CAMERA PENDANT TYPE PELCO SPECTRA HD 1.3MP 18X OUTDOOR</u>
<u>8</u>	<u>IME119-1EP</u>	<u>SECURITY CAMERA MINI-DOME PELCO SARIX HD 1MP D/N NETWORK</u>
<u>4</u>	<u>SWM-GY</u>	<u>WALL MOUNT PELCO FOR SPECTRA HD SECURITY CAMERA</u>
<u>8</u>	<u>IM-VEPM</u>	<u>PENDANT MOUNT PELCO VANDAL RESISTANT FOR SARIX IM VE SECURITY CAMERA</u>
<u>8</u>	<u>WMVE-SR</u>	<u>WALL MOUNT FOR PELCO IM-VEPM SARIX PENDANT MOUNT</u>
<u>1</u>	<u>SWMCA</u>	<u>CORNER ADAPTOR PELCO FOR SWM-GY CORNER MOUNT</u>
<u>2</u>	<u>NG1-E-DK-BO</u>	<u>DOOR KIT ETHERNET CONTROLLER INCLUDES NG1-E ENCLOSURE AND LOCK</u>
<u>2</u>	<u>XSG</u>	<u>LOW PROFILE CARD READER</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>2</u>	<u>PB2</u>	<u>PUSH BUTTON MOMENTARY - SINGLE GANG SECURITRON MAGNALOCK CORPORATION</u>
<u>1</u>	<u>SAM</u>	<u>SHEAR ALIGNING MAGNALOCK ELECTROMAGNETIC DOOR LOCK</u>
<u>1</u>	<u>R2416300UL</u>	<u>POWER SUPPLY RACK MOUNT 16 OUTPUT FOR CLOSED CIRCUIT TELEVISION SYSTEM</u>
<u>2</u>	<u>M32</u>	<u>ELECTROMAGNETIC DOOR LOCK</u>
<u>2</u>	<u>NG1-E-DK-BO</u>	<u>DOOR KIT ETHERNET CONTROLLER INCLUDES NG1-E ENCLOSURE AND LOCK</u>
<u>2</u>	<u>XSG</u>	<u>LOW PROFILE CARD READER</u>
<u>1000</u>	<u>ESX772406A</u>	<u>CAT6 DATA CABLE - FEET</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>24</u>	<u>NONE</u>	<u>STAGE DECKS 4ft X 8ft BLACK, QUAD-RIPPLE DECK SURFACE</u>
<u>24</u>	<u>NONE</u>	<u>STAGE LEG TELESCOPING 30in - 54in ELEVATION 5 per</u>
<u>4</u>	<u>NONE</u>	<u>CART STAGE &amp; RAIL</u>
<u>2</u>	<u>NONE</u>	<u>STAIRWAY 8 STEP ADJUSTABLE</u>
<u>46</u>	<u>NONE</u>	<u>CONNECTOR 2-LEG CLAMP USED FOR DECK TO DECK CONNECTIONS</u>
<u>1</u>	<u>NONE</u>	<u>STABILIZER SET 8ft 41in - 72in CROSS BRACING</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>8</u>	<u>274RKDOLLYHT</u>	<u>DISPLAY 9 BIN TIERED 13in X 9.5in X 17.5in</u>
<u>2</u>	<u>SEC56ECQ</u>	<u>SECURITY CAGE MOBILE STANDARD DUTY METRO QWIKSLIT</u>
<u>8</u>	<u>274RKDOLLYHT</u>	<u>DISH RACK GLASS DOLLY W/ 6in HANDLES NOBLE</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>12</u>	<u>371TS38RDBRN</u>	<u>TRAY STAND FOLDING RED BROWN WOODEN 36in LANCASTER</u>
<u>4</u>	<u>274RKDOLLYHT</u>	<u>DISH RACK GLASS DOLLY W/ 6in HANDLES NOBLE</u>

<u>3</u>	<u>371TS38RDBRN</u>	<u>TRAY STAND FOLDING RED BROWN WOODEN 36in LANCASTER</u>
<u>60</u>	<u>124HMSPT2</u>	<u>SALT/PEPPER SHAKERS 2.5oz HAMMERED FINISH STAINLESS STEEL</u>
<u>2</u>	<u>4615A566BC</u>	<u>SHELVING MOBILE CHROME ADJUSTABLE RUBBER CASTERS 24in X 60in X 69in</u>
<u>5</u>	<u>FG452088</u>	<u>BUS CART BEIGE RUBBERMAID</u>
<u>84</u>	<u>K-50P</u>	<u>WINCO STEAK KNIVES (Doz)</u>
<u>59</u>	<u>T922KDTF</u>	<u>ONEIDA DINNER KNIVES (Doz)</u>
<u>59</u>	<u>T922FDNF</u>	<u>ONEIDA DINNER FORKS (Doz)</u>
<u>67</u>	<u>T922SDEF</u>	<u>ONEIDA DESSERT SPOON (Doz)</u>
<u>167</u>	<u>T922FDEF</u>	<u>ONEIDA SALAD/DESSERT FORK (Doz)</u>
<u>3</u>	<u>AT90512-2</u>	<u>JUICE DISPENSER DOUBLE</u>
<u>36</u>	<u>2141400TLBK</u>	<u>SERVING TRAY SMALL</u>
<u>40</u>	<u>SPDX55</u>	<u>SALT-PEPPER SHAKERS 2.5oz STAINLESS OVAL SIDE POUR</u>
<u>180</u>	<u>2900CT138</u>	<u>SERVING TRAY LARGE</u>
<u>432</u>	<u>F8000000730</u>	<u>ONEIDA BOWL NAPPIE 11 oz BUFFALO BRIGHT WHITE</u>
<u>8</u>	<u>IMD-231536-TA</u>	<u>TRASH CANS/ASHTRAY - METAL - RECTANGLE</u>
<u>8</u>	<u>IMD-231536-L</u>	<u>PLASTIC LINER</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>4</u>	<u>HP J4859C</u>	<u>NETWORK TRANSCEIVER 1000BASE-SX</u>
<u>1000</u>	<u>LE-L-1-WHITE-GG</u>	<u>CHAIR FOLDING WHITE RESIN PADDED WHITE VINYL SEAT 1000lb CAP HERCULES SERIES</u>
<u>50</u>	<u>TR12HH</u>	<u>GLASS DISHWASHER RACK 30 COMPARTMENT - VOLRATH</u>
<u>40</u>	<u>WPB-3C</u>	<u>PITCHER STAINLESS STEEL WINCO</u>
<u>100</u>	<u>1527B-31</u>	<u>BUS BOX VOLRATH</u>
<u>42</u>	<u>3711</u>	<u>DRINKING GLASS 11.5oz LIBBY</u>
<u>5</u>	<u>SLX24/85/SM58</u>	<u>WIRELESS MICROPHONE COMBO SHURE</u>
<u>2</u>	<u>UA844SWB</u>	<u>ANTENNA DISTRIBUTION SYSTEM</u>
<u>1</u>	<u>M-8LX</u>	<u>POWER CONDITIONER OUTLETS FURMAN</u>
<u>375</u>	<u>IJIS</u>	<u>CABLE 6pr IJIS MULTICABLE (ft)</u>
<u>1875</u>	<u>NONE</u>	<u>CABLE CAT 5E (ft)</u>
<u>1</u>	<u>FS608v3</u>	<u>ETHERNET SWITCH 8 PORT NETGEAR</u>
<u>1</u>	<u>EWR-8-22</u>	<u>RACK WALL MOUNT MIDDLE ATLANTIC</u>
<u>1</u>	<u>NONE</u>	<u>PROGRAMMING AMX ALL INCLUSIVE</u>
<u>1</u>	<u>VARIOUS</u>	<u>CABLES &amp; CONNECTORS - MISC.</u>
<u>24</u>	<u>LABOR</u>	<u>LABOR @ \$70/Hr</u>
<u>50</u>	<u>22980</u>	<u>TABLE NESTING 8ft WHITE GRANITE LIFETIME BRAND</u>
<u>20</u>	<u>22901</u>	<u>TABLE NESTING 6ft WHITE GRANITE LIFETIME BRAND</u>
<u>1</u>	<u>TAX</u>	<u>SALES TAX</u>
<u>12</u>	<u>#22SFSCW135</u>	<u>FOOD CONTAINER 22qt CLEAR CAMBRO</u>
<u>12</u>	<u>#12SFSCW135</u>	<u>FOOD CONTAINER 12qt CLEAR W/ HANDLES CAMBRO</u>
<u>24</u>	<u>#SFC12453</u>	<u>COVER FOR FOOD CONTAINER 12 18 &amp; 22qt CAMBRO</u>
<u>6</u>	<u>#8SFSCW135</u>	<u>FOOD CONTAINER 8qt ORANGE GRADUATION CAMBRO</u>
<u>6</u>	<u>#SFC6451</u>	<u>LID FOOD CONTAINER RED FITS 6 &amp; 8 Qt. POLYETHYLENE CAMBRO</u>
<u>8</u>	<u>#182615CW135</u>	<u>FOOD CONTAINER 22gal 18in X 26in X 15in CAMBRO</u>
<u>24</u>	<u>#18269CW135</u>	<u>FOOD CONTAINER 13gal 18in X 26in X 9in CAMBRO</u>
<u>6</u>	<u>#18266CW135</u>	<u>FOOD CONTAINER 13gal 18in X 26in X 6in CAMBRO</u>
<u>42</u>	<u>#1826CCW135</u>	<u>FOOD CONTAINER 8.75gal 18in X 26in WHITE CAMBRO</u>
<u>12</u>	<u>#1826CLRCW135</u>	<u>COLANDER NATURAL WHITE 18in X 26in X 6in CAMBRO</u>

<u>50</u>	<u>NONE</u>	<u>UPRIGHT DRAPING 1.5in SCREW-IN 8ft</u>
<u>40</u>	<u>NONE</u>	<u>BASE PLATE FOR UPRIGHT 15in X 15in</u>
<u>65</u>	<u>NONE</u>	<u>UPRIGHT DRAPING 1.5in SCREW-IN 3ft</u>
<u>65</u>	<u>NONE</u>	<u>BASE PLATE FOR 3ft UPRIGHT 11in X 11in</u>
<u>100</u>	<u>NONE</u>	<u>SUPPORTS DRAPE 6-8ft</u>
<u>2</u>	<u>SR10</u>	<u>MOTOR STAGE RIGGING 1 TON RATED 3 PHASE STAGEMAKER</u>
<u>6</u>	<u>5M5041-2</u>	<u>MOTOR STAGE RIGGING 2 1/2 TON RATED 3 PHASE STAGEMAKER</u>
<u>2</u>	<u>NONE</u>	<u>CONTROL PICKLE MOTOR</u>
<u>2</u>	<u>NONE</u>	<u>POWER CABLE MOTOR 100ft</u>
<u>2</u>	<u>NONE</u>	<u>CABLE MOTOR CONTROL 100ft</u>
<u>1</u>	<u>MOTION LABS</u>	<u>POWER DISTRIBUTION RIG</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>2</u>	<u>NONE</u>	<u>SPOTLIGHT 12 HP ZOT LYCIAN W/ 1200 WATT TUNGSTEN LAMP</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>8</u>	<u>NONE</u>	<u>SPOTLIGHT LENS ETC LEKO 26 DEGREE</u>
<u>8</u>	<u>NONE</u>	<u>CONNECTOR PBG (FACTORY INSTALLED)</u>
<u>10</u>	<u>NONE</u>	<u>SPOTLIGHT LAMP 575 WATT 115V</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>504</u>	<u>NONE</u>	<u>GLASS WINE 6.5oz</u>
<u>504</u>	<u>NONE</u>	<u>GLASS COOLER</u>
<u>504</u>	<u>NONE</u>	<u>GLASS ROCKS 9.5oz</u>
<u>4</u>	<u>NONE</u>	<u>ROOM DIVIDER POLYCARBONATE 7ft 6in H X 25ft L</u>
<u>20</u>	<u>946255</u>	<u>CHAFFING DISH 9qt MIRROR FINISH</u>
<u>16</u>	<u>MICA</u>	<u>SPEAKER ARRAY AUDIO CURVILINEAR</u>
<u>6</u>	<u>NONE</u>	<u>SPEAKER SUBWOOFER 700HP</u>
<u>3</u>	<u>M1D-SM</u>	<u>SPEAKER MID-SM FRONT FILL</u>
<u>2</u>	<u>NONE</u>	<u>SPEAKER MG MICA GRID</u>
<u>4</u>	<u>NONE</u>	<u>SPEAKER DOLLIES FOR MICA</u>
<u>4</u>	<u>NONE</u>	<u>SPEAKER DOLLIES FOR 700HP</u>
<u>2</u>	<u>NONE</u>	<u>MTG4 GRID FOR MSL4</u>
<u>2</u>	<u>NONE</u>	<u>GALILEO 616 PROCESSOR SIX INPUT 16 OUTPUT DIGITAL</u>
<u>1</u>	<u>939500</u>	<u>DRAIN WASTE VALVE</u>
<u>2</u>	<u>991200</u>	<u>HOLDING CABINET HEATED SINGLE DOOR CARTER</u>
<u>24</u>	<u>535297</u>	<u>PAN BAKE/ROAST 15qt VOLLRATH</u>
<u>1</u>	<u>476160</u>	<u>FAUCET WALL MOUNT 8in - 12in NOZZLE</u>
<u>12</u>	<u>504980</u>	<u>PAN SHEET ALUMINUM 18in X 26in</u>
<u>8</u>	<u>1655</u>	<u>PAN RACK UNIVERSAL NEW AGE</u>
<u>96</u>	<u>90022</u>	<u>PAN STEAM TABLE VOLLRATH</u>
<u>96</u>	<u>90042</u>	<u>PAN STEAM TABLE VOLLRATH</u>
<u>96</u>	<u>90242</u>	<u>PAN STEAM TABLE VOLLRATH</u>
<u>2</u>	<u>T3672SE</u>	<u>WORK TABLE EAGLE GROUP</u>
<u>2</u>	<u>SHT4-208</u>	<u>COUNTER SERVING HOT FOOD ELECTRIC</u>
<u>2</u>	<u>T36965EB-BS</u>	<u>WORK TABLE EAGLE GROUP</u>
<u>2</u>	<u>PR12-1AS</u>	<u>REFRIGERATOR ROLL-IN BEVERAGE AIRE</u>
<u>1</u>	<u>314-16-2-18L-X</u>	<u>SINK 2 COMPARTMENT EAGLE GROUP</u>
<u>1</u>	<u>T3660SEB-BX</u>	<u>TABLE WORK EAGLE GROUP</u>
<u>1</u>	<u>HR1-1S</u>	<u>REFRIGERATOR REACH-IN</u>
<u>96</u>	<u>ALXP-1826</u>	<u>PAN BUN SHEET PAN WINCO</u>



<u>4</u>	<u>TH-HT4</u>	<u>SHELF TRAY 63.5in X 10in WIDE STATIONARY BRACKET</u>
<u>1</u>		<u>STAGE CURTAINS</u>
<u>10</u>	<u>SS201-2228</u>	<u>STAND SIGN FLAT BASE</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>2</u>	<u>DLM/TI/SC</u>	<u>CARVING STATION HEAT LAMP DUAL BULB HANSON BRASS</u>
<u>1</u>	<u>DEPOSIT</u>	<u>DEPOSIT</u>
<u>4</u>	<u>75685</u>	<u>BAR PORTABLE VOLLRATH CUSTOM COLOR ADJUSTABLE SHELVES</u>
<u>3132</u>	<u>T922STSE</u>	<u>TEASPOON ONEIDA</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>10</u>	<u>RT3096BGB5001</u>	<u>TABLE 30in X 8ft BEIGE TEXTURED</u>
<u>8</u>	<u>RT3072BGB5001</u>	<u>TABLE 30in X 6ft BEIGE TEXTURED</u>
<u>29</u>	<u>AACT30ALB1</u>	<u>TABLE 30in ALUMINUM ANODIZED FINISH ADJ KNOCKDOWN LEGS</u>
<u>50</u>	<u>CT72BGB1</u>	<u>TABLE CIRCULAR 6ft BEIGE TEXTURE BROWN BOTTOM AND TRIM</u>
<u>30</u>	<u>CT48BGB1</u>	<u>TABLE CIRCULAR 4ft BEIGE TEXTURE BROWN BOTTOM AND TRIM</u>
<u>1</u>	<u>MAG20X20WILG</u>	<u>DANCE FLOOR PORTABLE MAGNATTACH 20ft X 20ft</u>
<u>1</u>	<u>CRSET4GOL</u>	<u>CORNERS FOR DANCE FLOOR GOLD SET</u>
<u>3</u>	<u>ER2GOL</u>	<u>STEEL EDGE FOR DANCE FLOOR GOLD</u>
<u>3</u>	<u>ER3GOL</u>	<u>STEEL EDGE FOR DANCE FLOOR GOLD</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>11</u>	<u>AACT30ALB1</u>	<u>TABLE 30in ALUMINUM ANODIZED BRUSHED FINISH ADJ KNOCKDOWN LEGS</u>
<u>2016</u>	<u>840-410N-11</u>	<u>PLATE 6.5in NARROW RIM BRIGHT WHITE PORCELAIN</u>
<u>6</u>	<u>#RG16-414</u>	<u>GLASSES DISHWASHER RACK PACKED 2 EACH</u>
<u>6</u>	<u>#RE14</u>	<u>DISHWASHER RACK EXTENDER CARLISLE</u>
<u>20</u>	<u>#RG25-314</u>	<u>GLASSES DISHWASHER RACK CARLISLE</u>
<u>26</u>	<u>#R4220000118</u>	<u>PLATE COUP 6-3/8" 3 Dz Ct/CS</u>
<u>10</u>	<u>#IMD-231536-TA</u>	<u>TRASH CANS/ASHTRAY - METAL - RECTANGLE</u>
<u>10</u>	<u>#IMD-231536-L</u>	<u>PLASTIC LINER</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>30</u>	<u>NONE</u>	<u>1" x 9" FORGED SHOULDER EYE BOLT; 5/8" SPA SHACKLE</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>2</u>	<u>NONE</u>	<u>HEAT RETENTION BANQUET CART, DOUBLE DOOR 150 PLATE CAP</u>
<u>60</u>	<u>SA1872P2L-CS</u>	<u>18" X 72" ALULITE LINENLESS SWIRL</u>
<u>5</u>	<u>SA3096P2L-CS</u>	<u>30" X 96" ALULITE LINENLESS SWIRL</u>
<u>4</u>	<u>SAC3060PHL-CS</u>	<u>ALULITE LINENLESS SWIRL SERPENTINE H LEG - COPPER SWIRL</u>
<u>2</u>	<u>SA1096PT</u>	<u>1 1/2" EP TABLE TOP TIERS (12" HIGH) COPPER SWIRL</u>
<u>40</u>	<u>SPAN186-CR</u>	<u>18 X 72 SPANDEX SKIRT - CARDINAL RED</u>
<u>40</u>	<u>SPAN186-K</u>	<u>18 X 72 SPANDEX SKIRT - BLACK</u>
<u>5</u>	<u>SPAN308</u>	<u>30 X 96 SPANDEX SKIRT - BLACK</u>
<u>4</u>	<u>SPAN306-K</u>	<u>30 X 72 SPANDEX SKIRT - BLACK</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>12</u>	<u>BOBRICK B270</u>	<u>SANITARY NAPKIN RECEPTACLE</u>
<u>1</u>	<u>NONE</u>	<u>RIGGING HARDWARE</u>
<u>1</u>	<u>NONE</u>	<u>BLUEVIEW ENTERPRISE SOFTWARE</u>

<u>42</u>	<u>D0-6</u>	<u>CHINA PLATE 6-1/2" DIA ROUND NARROW RIM PORCELAIN 3 DZ/CS</u>
<u>42</u>	<u>D0-20</u>	<u>CHINA PLATE 11" DIA. ROUND WIDE RIM ROLLED EDGE 1DZ/CS</u>
<u>21</u>	<u>D0-20</u>	<u>CHINA PLATE 11" DIA. ROUND WIDE RIM ROLLED EDGE 1DZ/CS</u>
<u>-12</u>	<u>535297</u>	<u>PAN BAKE/ROAST 15qt VOLLRATH</u>
<u>-10</u>	<u>504980</u>	<u>PAN SHEET ALUMINUM 18in X 26in</u>
<u>50</u>	<u>D0-20</u>	<u>CHINA PLATE TABLEWARE 11" DIA ROUND WIDE RIM ROLLED EDGE 1DZ/CS</u>
<u>14</u>	<u>D0-22</u>	<u>PLATE MEDIUM 8-1/4" DIA. 3DZ/CS</u>
<u>2</u>	<u>G-TOURTRK4530HS</u>	<u>CABLE TRUCK LARGE</u>
<u>1</u>	<u>G-TOURTRK3022HS</u>	<u>CABLE TRUNK SMALL</u>
<u>4</u>	<u>G-TOURCHAINHOIST2XIT</u>	<u>CHAIN HOIST MOTOR CASE</u>
<u>2</u>	<u>NONE</u>	<u>100' SOCAPEX CABLE</u>
<u>3</u>	<u>NONE</u>	<u>150' SOCAPEX CABLE</u>
<u>1</u>	<u>NONE</u>	<u>100' 12 PAIR XLR SNAKE</u>
<u>1</u>	<u>NONE</u>	<u>150' 12 PAIR XLR SNAKE</u>
<u>2</u>	<u>NAC3FCB-BREAKOUT</u>	<u>SOCAPEX MALE 6' OVERALL-6 EA</u>
<u>4</u>	<u>NONE</u>	<u>POWERCON SPLITTER BOX-1 IN-2 OUT</u>
<u>1</u>	<u>NONE</u>	<u>50X8 RACKMOUNT SPLITTER BOX W/CXF</u>
<u>2</u>	<u>NONE</u>	<u>50 X 8 PRO58-1 W/ROAD CAP, 10' OVERALL</u>
<u>1</u>	<u>NONE</u>	<u>58 CH 50' PRO58 PRO58TRUNK W/ROAD CAPS</u>
<u>1</u>	<u>NONE</u>	<u>58 CH 250' PRO58 PRO58W/ROAD CAPS</u>
<u>1</u>	<u>NONE</u>	<u>16 CH 250' XLR SNAKE</u>
<u>1</u>	<u>12UCAST</u>	<u>12 SPACE RACK W/CASTERS</u>
<u>1</u>	<u>FREIGHT</u>	<u>FREIGHT CHARGES</u>
<u>5</u>		<u>STEEL SLINGS 3/8" 5 ft</u>
<u>1</u>		<u>PROFESSIONAL FEES - DAVE LAWLER</u>
<u>2</u>		<u>ADJ BUTT SPLICE KIT - BLACK</u>
<u>2</u>		<u>BUTT SPLICE KIT BLACK STEEL BLACK</u>
<u>2</u>		<u>RACK MOUNTTING PLATE 18" BLACK</u>
<u>4</u>		<u>STRAIGHT SECTION 18" WIDE</u>
<u>50</u>		<u>120" WOVEN POLYESTER TABLE LINEN ROUND WHITE</u>
<u>50</u>		<u>120" WOVEN POLYESTER TABLE LINEN ROUND BLACK</u>
<u>50</u>		<u>120" WOVEN POLYESTER TABLE LINEN ROUND IVORY</u>
<u>50</u>		<u>120" WOVEN POLYESTER TABLE LINEN ROUND BURGANDY</u>
<u>100</u>		<u>132" WOVEN POLYESTER TABLE LINEN ROUND WHITE</u>
<u>50</u>		<u>132" WOVEN POLYESTER TABLE LINEN ROUND BLACK</u>
<u>100</u>		<u>132" WOVEN POLYESTER TABLE LINEN ROUND IVORY</u>
<u>100</u>		<u>132" WOVEN POLYESTER TABLE LINEN ROUND BURGANDY</u>
<u>50</u>		<u>108" WOVEN POLYESTER TABLE LINEN ROUND WHITE</u>
<u>50</u>		<u>108" WOVEN POLYESTER TABLE LINEN ROUND BLACK</u>
<u>25</u>		<u>108" WOVEN POLYESTER TABLE LINEN ROUND IVORY</u>
<u>25</u>		<u>108" WOVEN POLYESTER TABLE LINEN ROUND BURGANDY</u>
<u>50</u>		<u>52" X 120" WOVEN POLYESTER TABLE LINEN BLACK</u>
<u>50</u>		<u>52" X 120" WOVEN POLYESTER TABLE LINEN WHITE</u>
<u>25</u>		<u>52" X 120" WOVEN POLYESTER TABLE LINEN BURGANDY</u>
<u>50</u>		<u>52" X 96" WOVEN POLYESTER TABLE LINEN WHITE</u>
<u>50</u>		<u>52" X 96" WOVEN POLYESTER TABLE LINEN BLACK</u>
<u>50</u>		<u>52" X 96" WOVEN POLYESTER TABLE LINEN BURGANDY</u>

<u>50</u>		<u>20" X 20" WOVEN WHITE POLYESTER NAPKINS (DOZEN EACH)</u>
<u>50</u>		<u>20" X 20" WOVEN BLACK POLYESTER NAPKINS (DOZEN EACH)</u>
<u>50</u>		<u>20" X 20" WOVEN IVORY POLYESTER NAPKINS (DOZEN EACH)</u>
<u>50</u>		<u>20" X 20" WOVEN BURGANDY POLYESTER NAPKINS (DOZEN EACH)</u>
<u>50</u>		<u>90" WHITE ROUND WOVEN POLYESTER TABLE LINEN</u>
<u>50</u>		<u>90" BLACK ROUND WOVEN POLYESTER TABLE LINEN</u>
<u>15</u>		<u>90" IVORY ROUND WOVEN POLYESTER TABLE LINEN</u>
<u>50</u>		<u>90" ROUND BURGUNDY WOVEN POLYESTER TABLE LINEN</u>
<u>21</u>		<u>108" WOVEN POLYESTER TABLE LINEN ROUND IVORY</u>
<u>25</u>		<u>108" WOVEN POLYESTER TABLE LINEN ROUND BURGANDY</u>
<u>16</u>		<u>90" IVORY ROUND WOVEN POLYESTER TABLE LINEN</u>
<u>134</u>		<u>8' PREMIER DRAPE BLACK</u>
<u>100</u>		<u>3' PREMIER DRAPE BLACK</u>
<u>80</u>		<u>48" HIGH SHIRRED WYNDHAM STAGE SKIRTING WITH VELCRO</u> <u>48"H X 8'L</u>
<u>6</u>		<u>8' WIDE X 39 1/2" HIGH SHIRRED WYNDHAM STAGE SKIRTING</u> <u>BLACK</u>
<u>21</u>	<u>71034</u>	<u>WIRE SHELVING 74 X 48 X 18</u>
<u>1</u>	<u>314141</u>	<u>TOTE WITH A DEPTH OF 19.69" X 32.86"</u>
<u>1</u>	<u>314139</u>	<u>TOTE 50 GALLON</u>
<u>9</u>	<u>71034</u>	<u>WIRE SHELVING 74 X 48 X 18</u>
<u>1</u>	<u>L3096</u>	<u>RT FLAT TABLE CART</u>
<u>1</u>	<u>3072</u>	<u>RT FLAT TABLE CART</u>
<u>1</u>		<u>RT KNOCKDOWN TABLE CART</u>
<u>1</u>		<u>INSTALLATION OF STAGE RIGGING HARDWARE</u>
<u>4</u>		<u>108' ROUND IVORY WOVEN POLYESTER TABLE CLOTHS</u>
<u>19</u>		<u>90' ROUND IVORY WOVEN POLYESTER TABLE CLOTHS</u>
<u>1</u>		<u>FREIGHT CHARGES</u>
<u>13</u>		<u>STERILITE 70 QT ULTRA LATCH SEE THROUGH WHITE W/LID</u>
<u>2</u>	<u>RSR-12TRUS1</u>	<u>12 in BOX TRUSS 10 ft</u>
<u>2</u>		<u>DELIVERY &amp; PICKUP</u>

## EXHIBIT B LAND

A tract of land lying in the Southwest Quarter of the Northwest Quarter (SW  $\frac{1}{4}$ , NW  $\frac{1}{4}$ ) and Lot 10 of Section 17, Township 29 North, Range 25 East, Ottawa County, Oklahoma, being more particularly described as follows:

**COMMENCING** at a Bureau of Land Management (BLM) aluminum disk found for the southwest corner of said Lot 10; thence by bearing based on Oklahoma State Plane North Zone (3501), NAD1983, N03°59'25"W, 899.24 feet to the **POINT OF BEGINNING**;

**Thence** N53°08'14"E, 58.51 feet; **Thence** 49.35 feet along an 81.00 foot radius curve to the right, having a delta angle of 34°54'25" and a chord bearing N70°35'26"E for 48.59 feet; **Thence** N88°02'39"E, 178.25 feet; **Thence** S01°57'21"E, 14.42 feet; **Thence** N88°02'39"E, 37.65 feet; **Thence** S01°36'42"E, 131.28 feet; **Thence** S46°59'55"W, 91.88 feet; **Thence** N43°52'47"W, 36.42 feet; N30°53'24"W, 19.08 feet; **Thence** N42°50'45"W, 32.82 feet; **Thence** S80°32'39"W, 71.35 feet; **Thence** N43°11'46"W, 70.91 feet; **Thence** N58°06'19"W, 81.41 feet to the **POINT OF BEGINNING** and containing **39,911 square feet or 0.92 acres** of land.

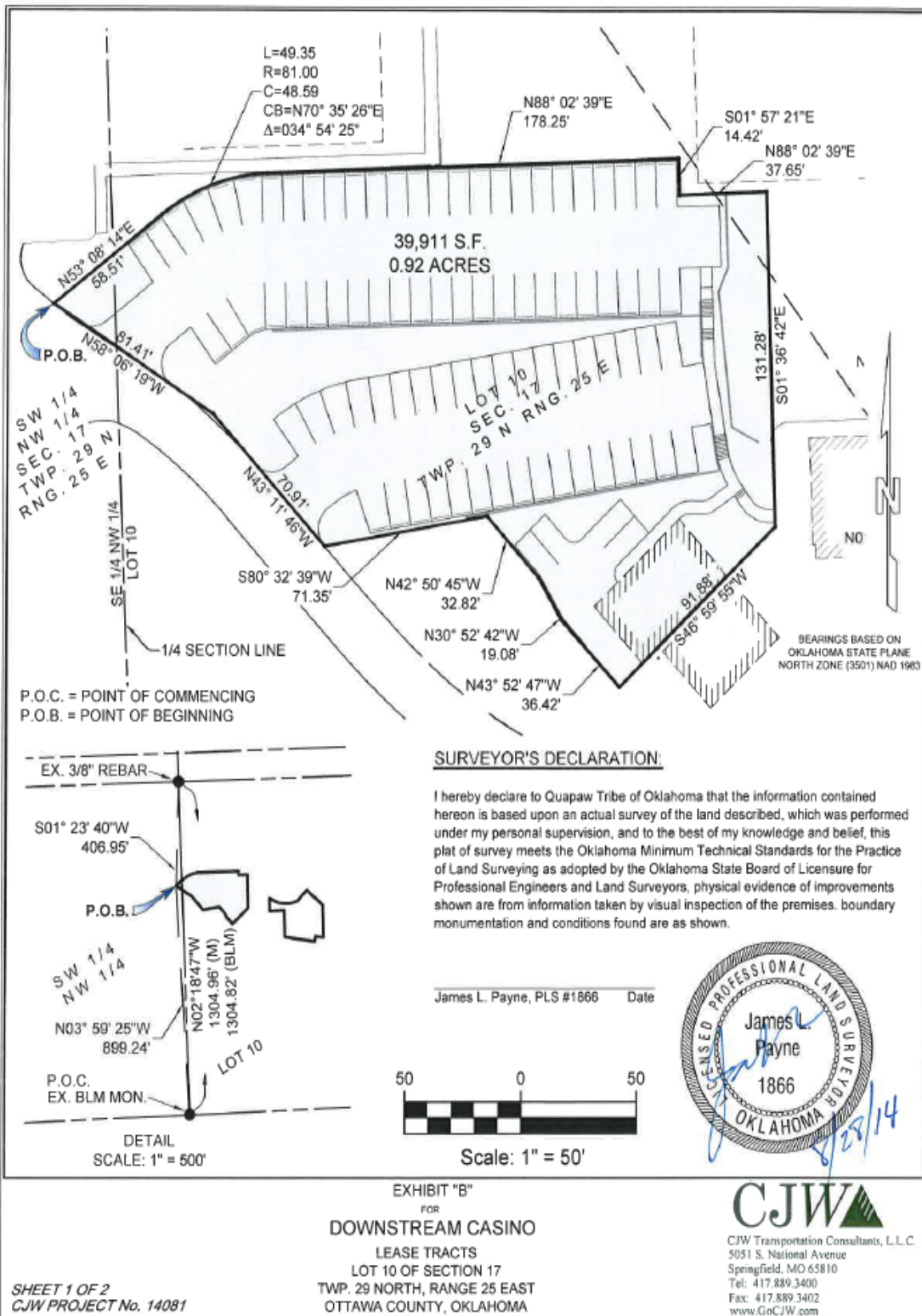
Also:

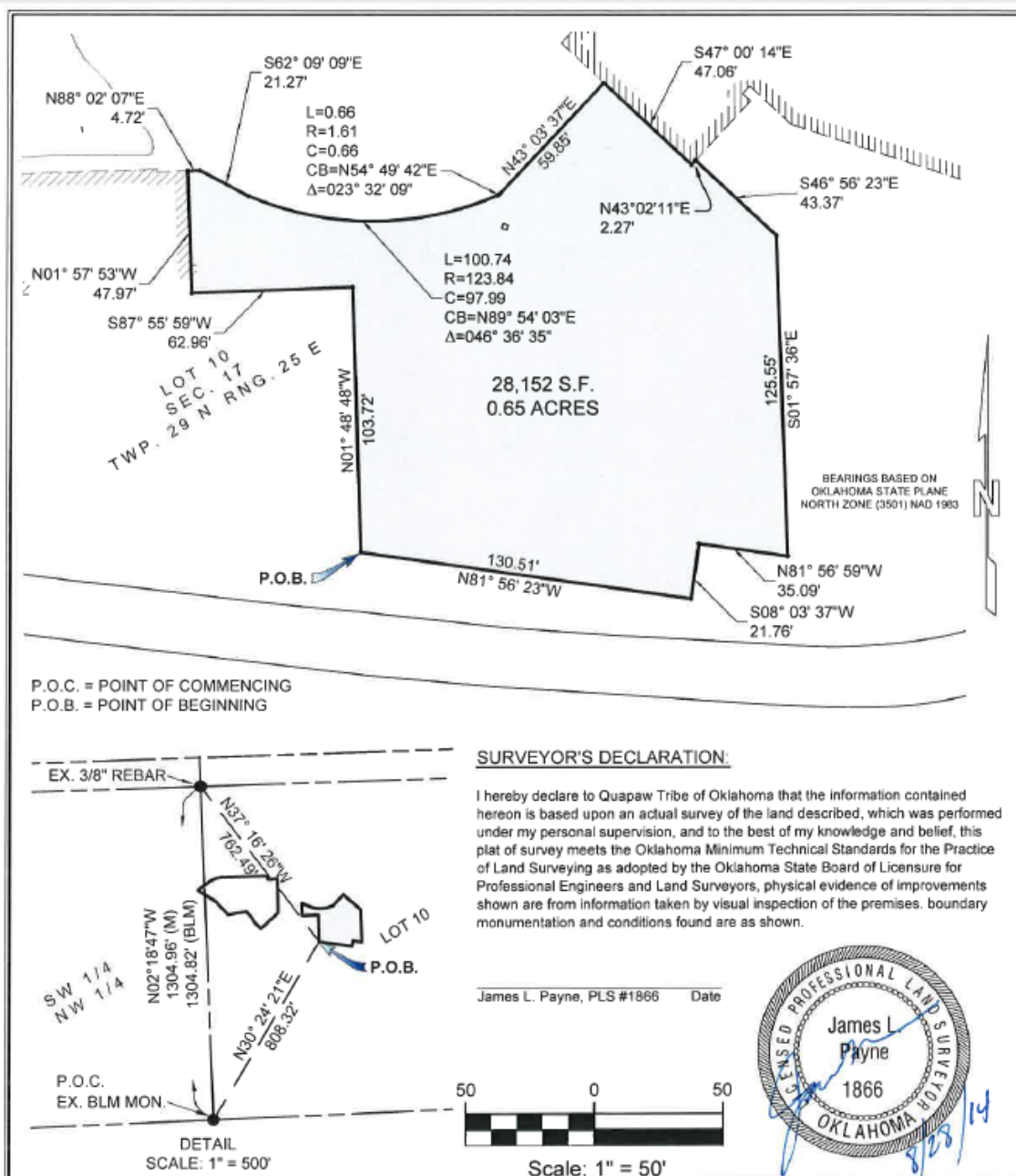
A tract of land lying in Lot 10 of Section 17, Township 29 North, Range 25 East, Ottawa County, Oklahoma, being more particularly described as follows:

**COMMENCING** at a Bureau of Land Management (BLM) aluminum disk found for the southwest corner of said Lot 10; thence by bearing based on Oklahoma State Plane North Zone (3501), NAD1983, N30°24'21"E, 808.32 feet to the **POINT OF BEGINNING**;

**Thence** N01°48'48"W, 103.72 feet; **Thence** S87°55'59"W, 62.96 feet; **Thence** N01°57'53"W, 47.97 feet; **Thence** N88°02'07"E, 4.72 feet; **Thence** S62°09'09"E, 21.27 feet; **Thence** 100.74 feet along a 123.84 foot radius non-tangent curve to the left, having a delta angle of 46°36'35", a chord bearing N89°54'03"E for 97.99 feet; **Thence** 0.66 feet along a 1.61 foot radius curve to the left, having a delta angle of 23°32'09" and a chord bearing N54°49'42"E for 0.66 feet; **Thence** N43°03'37"E, 59.85 feet; **Thence** S47°00'14"E, 47.06 feet; **Thence** N43°02'11"E, 2.27 feet; **Thence** S46°56'23"E, 43.37 feet; **Thence** S01°57'36"E, 125.55 feet; **Thence** N81°56'59"W, 35.09 feet; **Thence** S08°03'37"W, 21.76 feet; **Thence** N81°56'23"W, 130.51 feet to the **POINT OF BEGINNING** and containing **28,152 square feet or 0.62 acres** of land. *Based on a survey on the ground by CJW Transportation Consultants, LLC, OK PLS Number 1866.*







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LEASE AGREEMENT

by and between

QUAPAW TRIBE OF OKLAHOMA (THE O-GAH-PAH)

as Lessor,

and the

DOWNSTREAM DEVELOPMENT AUTHORITY OF THE

QUAPAW TRIBE OF OKLAHOMA (O-GAH-PAH),

as Tenant.

Dated ~~December [●], 2014~~ April \_\_\_\_\_, 2015

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease”) is made and entered into as of ~~September [●], 2014~~April \_\_\_\_\_, 2015 (the “Effective Date”), by and between the Quapaw Tribe of Oklahoma (the O-Gah-Pah) (the “Tribe” or the “Lessor”) and the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the “Authority” or the “Tenant”).

### WITNESSETH

WHEREAS, the Authority desires to expand the meeting and event venue at the Downstream Casino Resort, a multi-amenity gaming and resort complex (the “Resort”), known as the “Pavilion,” so as to accommodate larger meetings, trade shows, concerts, and other events (the “Expansion”), but has determined it is not in its best interest to finance the cost of the Expansion at this time; -and

WHEREAS, as the Resort is the largest single economic enterprise of the Tribe, the Tribal Business Committee desires to support the Authority’s initiatives to improve and expand the business of the Resort and has determined to undertake and finance the Expansion and approved a term sheet with International Bank of Commerce, doing business as IBC Bank, ~~(the “Bank”)~~, providing for potential financing for the Tribe’s construction of the Expansion; -and

WHEREAS, the Authority desires to lease the Expansion improvements from the Tribe, and the Tribe desires to lease the Expansion improvements to the Authority, subject to the terms and conditions of this Lease.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Tribe and the Authority mutually covenant and agree as follows:

### ARTICLE I. PREMISES

1.1 *Leased Premises.* For and in consideration of the covenants and agreements contained herein and other valuable consideration, Lessor hereby leases to Tenant (i) the Expansion portion of the Pavilion, consisting of approximately 19,000 square feet (the leased improvements are referred to herein as the “Premises”-), and (ii) all the goods and other tangible property described in that certain Security Agreement dated April \_\_\_\_\_, 2015, by the Tribe in favor of the Bank (the “Equipment”). The location of the Premises is described in **Exhibit A** hereto, and the lease of the Premises shall entitle Tenant’s customers, employees, contractors, agents, invitees and licensees the exclusive right to access, use, and occupy the parking lot improvements depicted therein.

1.2 *No Lease of Real Property.* This Lease relates solely to the structural improvements defined as the Premises and neither leases nor encumbers any real property, including the real property on which the Premises are located, which the Tribe previously has dedicated for the permanent use of the Resort.



## ARTICLE II. TENANT IMPROVEMENTS

2.1 *Approvals.* Tenant hereby agrees to be solely responsible, at Tenant's cost and expense, for obtaining and maintaining all permits, approvals, zoning, variances or other matters (collectively, the "Approvals") that may be required by all appropriate governmental authorities for the construction, occupancy, operation, and use of the Premises.

2.2 *Tenant Improvements.* Lessor shall complete the Premises, as depicted in **Exhibit "B"** hereto, and shall deliver the Premises and Equipment (the "Leased Property") to Tenant upon substantial completion, along with a permanent or temporary certificate of occupancy for Tenant's use, operation and occupancy thereof.

## ARTICLE III. LEASE TERM

3.1 *Term.* The initial term (herein sometimes referred to as the "Initial Term") of this Lease shall commence on the Effective Date and shall terminate on the earlier of (i) the sixth~~twenty-second~~ anniversary of the Effective Date or (ii) such other date as may be provided herein.

3.2 *Extension of Term.* Lessor does hereby grant to Tenant the right and option (each such option being herein sometimes referred to as a "Renewal Option") to extend and renew the term of this Lease for two additional terms of five (5) years each (each such five (5) year term being herein sometimes referred to as a "Renewal Term"), exercisable by the delivery of written notice to Lessor by Tenant not less than 60 days prior to the expiration of the then-current Initial Term or Renewal Term, as the case may be. If the Renewal Options (or any of them) are duly exercised, the term of this Lease shall be automatically extended for the applicable Renewal Term, upon all of the same terms, conditions and covenants as set forth herein.

3.3 *Expiration of Lease.* On or before the last day of the term of this Lease, Tenant shall peaceably surrender and yield up to Lessor the Premises~~Leased Property~~. Tenant shall have the express right to remove and to allow any subtenants to remove any of their trade fixtures and personal property; provided, however, that the Premises~~Leased Property~~ shall be left in the condition existing on the Effective Date ordinary wear and tear excepted.

## ARTICLE IV. RENT

4.1 *Rent.* Tenant covenants and agrees to pay Lessor rent in monthly installments of \$35,000.00, payable in advance, without demand, set off or deduction, except as expressly provided for herein, on or before the first day of each and every calendar month during the term of this Lease from and after the Effective Date. Tenant shall also pay to Lessor, as additional rent, the amount by which the monthly payment for the corresponding month required on Lessor's \$5.1 million loan dated April \_\_\_\_\_, 2015 from International Bank of Commerce exceeds the above monthly installment. If the Effective Date commences on a day other than the first day of a calendar month, the rent for such month shall payable on such day. All amounts payable by Tenant pursuant to this Lease, including, without limitation, the foregoing monthly

rent and any other sums, costs, expenses or deposits that Tenant assumes or agrees to pay and/or deposit pursuant to any provisions of this Lease, shall constitute "Rent" under this Lease.

4.2 *Late Charges.* If Tenant fails to pay, when the same is due and payable (or within thirty (30) days thereafter), any installments of Rent, such unpaid amounts will bear interest from the due date thereof at the rate of ten percent (10%) per annum.

#### ARTICLE V. UTILITIES AND OTHER PAYMENTS

5.1 *Utilities.* Tenant shall be responsible for arranging and contracting, in its own name, all utility services used in and about the Premises and shall pay the applicable utility companies or governmental agencies for all such utilities consumed on the Premises. Tenant shall promptly pay, prior to delinquency, all utility bills for its monthly usage of water, gas, heat, light, power, telephone, sewage, air conditioning and ventilation, janitorial, landscaping and any other utilities supplied to the Premises at Tenant's request.

5.2 *Other Payments and Assessments.* Tenant shall be responsible for paying any and all taxes and any other governmental assessments or levies, if any, applicable to and issued on or against the ~~Premises~~Leased Property.

#### ARTICLE VI. ARTICLE II. USE AND ASSIGNMENT

6.1 *Permitted Uses.* The ~~Premises~~Leased Property may be used only for lawful purposes and for any business or activity that is incidental, complementary or related to the operations of the Resort.- Tenant shall use the Equipment in a manner that complies with the Security Agreement.

6.2 *Prohibited Uses.* Tenant shall not allow the ~~Premises~~Leased Property to be used for any unlawful or objectionable purposes, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant, shall not commit or suffer, and shall use all reasonable precaution to prevent waste, damage, or injury to the Premises (including from environmental contamination).

6.3 *Opportunity to Cure.* To the extent that Tenant is deemed to be in violation of any provision of Sections 6.1 or 6.2, Tenant shall have thirty (30) days after receipt of written notice from Lessor to remedy any such violation without being deemed to have breached this Lease.

6.4 *Assignment and Subletting.* Tenant shall not assign this Lease or any interest therein without the prior written consent of Lessor.

ARTICLE VII.  
MAINTENANCE; ALTERATIONS; LIENS; OWNERSHIP

7.1 *No Lessor Services.* Lessor shall not be required to furnish any services, utilities or materials whatsoever to the PremisesLeased Property. Lessor shall have no duty or obligation to make any alteration, change, improvement, replacement, restoration or repair to, or to demolish, any improvements. Tenant, as the operator of the Resort, assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the PremisesLeased Property and all improvements thereon and therein.

7.2 *Tenant's Repairs.* Nothing herein shall alter or diminish Tenant's ongoing operations to manage, operate, and maintain the PremisesLeased Property as part of the Resort. Tenant shall be responsible for all maintenance of and repairs to the PremisesLeased Property during the term of this Lease, including, without limitation, the repair of all structural portions thereof (e.g., roof, walls, foundation, exterior, etc.) and non-structural portions thereof (e.g., utility, HVAC, entries, doors, windows, fire sprinklers, fire protection systems, etc.), unless any such repairs or replacements are necessitated by damage caused by the wrongful acts or negligence of Lessor, its employees, agents and contractors or by damage by fire or other casualty for which Lessor is responsible for repairing pursuant to this Lease.

7.3 *Alterations.* Nothing herein shall alter or diminish Tenant's ongoing right to make such alterations to the PremisesLeased Property as Tenant shall from time to time deem necessary for the operation of the Resort, provided that (i) Tenant shall perform such work at Tenant's sole expense and (ii) such alterations shall not impair the structural integrity or diminish the value of the Premises.

7.4 *Liens.* Under no circumstances shall Tenant approve any lien on the real property underlying the Premises, or on the improvements or structures of the Premises. Tenant shall keep the PremisesLeased Property free of all liens and encumbrances, including but not limited to liens for labor or materials.

7.5 *Encumbrances of Indian Land.* Notwithstanding any provision hereunder, any right, requirement or restriction herein that "encumbers Indian land" within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six (6) years and 364 days.

7.6 *No Effect on Existing Rights and Obligations of the Parties.* Nothing herein shall alter or diminish the existing rights and obligations of the Lessor and the Tenant with respect to the operation of the Resort, except as may be set forth herein with respect to the PremisesLeased Property.

ARTICLE VIII.  
INSURANCE

8.1 *Tenant's Insurance.* During the Initial Term and any Renewal Term, -Tenant agrees to carry and maintain insurance coverage with respect to the PremisesLeased Property as may be required by any lender (including the Bank) under existing or future financing agreements of Tenant.

ARTICLE IX.  
DAMAGE OR DESTRUCTION

9.1 *Damage and Destruction.* Except as otherwise provided herein, if any of the Premises are Leased Property is damaged by fire or other casualty, the damage shall be promptly repaired by Tenant to the extent of the insurance proceeds available therefor, plus any deductible maintained with respect to Tenant's property insurance.

ARTICLE X.  
ENVIRONMENTAL COVENANTS AND INDEMNITIES

10.1 *Hazardous Substances.* Tenant shall exercise reasonable care during the term of this Lease in handling Hazardous Substances (as defined below) if Tenant uses or encounters any in connection with its use of and operations on the Premises-Leased Property. Tenant, at Tenant's expense, will undertake any and all preventative, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (i) required by any applicable Environmental Laws (as defined below) or orders by any Governmental Authority having jurisdiction under Environmental Laws, or (ii) necessary to prevent or minimize property damage (including damage to Tenant's own property), personal injury or damage to the environment, or the threat of any such damage or injury by releases of or exposure to Hazardous Substances attributable to the operations of Tenant on the Premises. Without limiting the foregoing, if Hazardous Substances are discovered on the Premises that are attributable to Tenant's operation during Tenant's use and operation thereof in violation of Governmental Requirements, Tenant will remove (or cause to be removed or remediated) and pay (or cause to be paid) immediately when due the cost of removing or remediating any Hazardous Substances from the Premises in compliance with all Governmental Requirements. In the event Tenant fails to perform any of its obligations under this Article X, Lessor may (but will not be required to) perform such obligations at Tenant's expense. All such costs and expenses incurred by Lessor under this Section and otherwise under this Lease will be reimbursed by Tenant to Lessor upon demand. In performing any such obligations of Tenant, Lessor will at all times be deemed to be the agent of Tenant and will not by reason of such performance be deemed to be assuming any responsibility of Tenant under any Environmental Law or to any third party.

10.2 *Compliance with Environmental Laws.* Tenant will cause the operations conducted on the Premises by Tenant or its employees, agents, representatives and contractors, during the term of this Lease, to comply in all material respects with all Environmental Laws and orders of any Governmental Authorities having jurisdiction under any Environmental Laws and will obtain, keep in effect and comply in all material respects with all Governmental Requirements promulgated pursuant to any Environmental Laws with respect to the Premises or operations.

10.3 *Definitions.* For the purposes of this Lease, the following terms have the meanings indicated below:

- (a) "Environmental Laws" means all applicable federal, tribal, state, local and foreign statutes, regulations, ordinances and similar provisions having the force or effect of law, all judicial and administrative orders and determinations, and all common law

concerning public health and safety, worker health and safety, and pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation.

(b) “Governmental Authority” means any federal, tribal, state, county or municipal government, any agency, board, bureau, commission, court, department or other instrumentality of any such government.

(c) “Governmental Requirements” means all laws, ordinances, requirements, orders, directives, rules and regulations of Governmental Authorities having jurisdiction over the Premises.

(d) “Hazardous Substances” is used in this Lease in its very broadest sense and means and includes, without limitation, asbestos and any substance containing asbestos, the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, and also refers to pollutants, effluents, contaminants, emissions or related materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. Hazardous Substances includes, but is not limited to, any and all hazardous or toxic substances, materials or waste as defined by or listed under any of the Environmental Laws.

## ARTICLE XI. DEFAULT

11.1 *Events of Default.* The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(a) Any failure by Tenant to pay the Rent or any other monetary sums required to be paid hereunder where such failure continues for thirty (30) days after receipt of written notice thereof from Lessor that such amounts are past due; and

(b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after receipt of written notice thereof from Lessor; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty-day (30-day) period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

11.2 *Remedies.* In the event of any such material default or breach by Tenant, Lessor may at any time thereafter, after giving Tenant notice and/or demand and in addition to other remedies available under law:

(a) Maintain this Lease in full force and effect and recover the Rent and other monetary charges as they become due; or

(b) Terminate this Lease and provide such notification of such action as is required hereunder and under other obligations of the Lessor with respect to the Premises, and pursue permitted remedies; or

(c) If Tenant fails to make any payment, perform any obligation or cure any default hereunder within the time permitted (including any cure periods provided for herein), Lessor, without being under any obligation to do so, and without thereby waiving such failure or default, may make the payment, perform such obligation and/or remedy such default for the account of Tenant (and enter the Premises for such purpose). Tenant agrees to pay Lessor, upon demand, all costs, expenses and disbursements (including reasonable attorney's fees) incurred by Lessor in taking such remedial action.

## ARTICLE XII. MISCELLANEOUS

12.1 *Governing Law.* This Lease shall be construed under the laws of the Lessor.

12.2 *Disputes.* All disputes between the parties with respect to this Lease shall be determined solely by the courts of the Lessor.

12.3 *Notice.* Any notice or consent required to be given by or on behalf of any party hereto to any other party shall be in writing and sent by facsimile with written confirmation of transmittal, mailed by registered or certified mail/return receipt requested, or sent by air courier or expedited mail service or personal delivery, addressed as follows:

If to Tenant: Downstream Development Authority  
69300 E. Nee Road  
Quapaw, Oklahoma 74363  
Attention: Chairman, Board of Members and General Manager

If to Lessor: Quapaw Tribe of Oklahoma  
P.O. Box 765  
Quapaw, Oklahoma 74363-0765  
Attention: Chairman, Tribal Business Committee

or at such other address as may be specified from time to time in writing. All such notices hereunder shall be deemed to have been given on the date of delivery or the date marked on the return receipt unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

12.4 *Non-Waiver of Default.* No acquiescence by either party to any default by the other party hereunder shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition.

12.5 *Successors and Assigns.* All covenants, promises, conditions, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.6 *Time is of the Essence.* Time is of the essence hereof.

12.7 *Partial Invalidity.* If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

12.8 *Entire Agreement.* This Lease, including exhibits hereto, constitutes the complete agreement of Lessor and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Lessor or Tenant, or anyone acting on behalf of Lessor or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

12.9 *Headings, Captions and References.* The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms “hereof,” “hereunder” and “herein” shall refer to this Lease as a whole, inclusive of the Exhibits (including the Agreement), except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

IN WITNESS WHEREOF, the parties hereto indicate their acceptance of the terms and conditions hereunder by executing this Lease below as of the day and year first above written.

LESSOR:

QUAPAW TRIBE OF OKLAHOMA (the  
O-GAH-PAH)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

DOWNSTREAM AUTHORITY OF THE  
QUAPAW TRIBE OF OKLAHOMA  
(O-GAH-PAH)

By: \_\_\_\_\_  
Name: John L. Berrey  
Title: Chairman, Board of Members

#### LIST OF EXHIBITS

Exhibit "A"  
Exhibit "B"

Location of the Premises  
Description of Expansion



EXHIBIT "A"

LOCATION OF THE PREMISES

EXHIBIT “B”

DESCRIPTION OF EXPANSION

[QUAPAW TRIBE OF OKLAHOMA LETTERHEAD]

[●], 2015

Downstream Development Authority  
69300 E. Nee Road  
Quapaw, Oklahoma 74363

Re: Loan Agreement dated [●], 2014 between International Bank of Commerce (together with its successor and assigns, "Lender") and the Quapaw Tribe of Oklahoma (the O-Gah-Pah) ("Borrower")

Ladies and Gentlemen:

This letter is in regards to the above referenced Loan Agreement (as amended from time to time, the "Loan Agreement"). Capitalized terms used but not defined in this letter have the meanings given to them in the Loan Agreement.

Payment of Future Lease Payments. Lender and Borrower request, and you, the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the "Authority"), hereby agree, as a condition to Lender's obligations under the Loan Agreement, that upon Lender's demand at any time, the Authority direct all future rent payments due under the Lease Agreement dated [●], 2014 between Borrower, as landlord, and the Authority, as tenant (as it may be amended from time to time, the "Lease"), to Lender at an address or in accordance with wire instructions provided by Lender, until the earlier of (i) all obligations of Borrower under the Loan Agreement have been paid and performed in full and Lender has no further obligation to extend credit under the Loan Agreement ("Payment In Full"), as confirmed to you by Lender or Lender's counsel, or (ii) you receive notice from Lender to resume making Lease payments to Borrower.

Notification of Default by Landlord. In addition, the Authority agrees to provide written notice of any default by Borrower under the Lease to Lender at the following address:

International Bank of Commerce  
2250 E. 73rd Street, Suite 200  
Tulsa, Oklahoma 74136  
Attention: Andrew J. Levinson, President—Tulsa Region

Further, the Authority agrees to (i) give Borrower and/or Lender up to thirty (30) days to cure or to obtain a cure of any such default under the Lease from the date on which Lender receives notice of such default and (ii) accept any cure undertaken or performed by Lender or by any other party on Lender's behalf. The Authority agrees that, as long as Payment in Full has not occurred, the Authority shall continue to pay rent as may be directed above as long as the Lease is in effect and during any additional time in which the Authority remains in possession of the premises subject to the Lease (the "Premises"). Notwithstanding the foregoing, neither Lender, nor its designees or agents, will be liable for any of Borrower's acts or omissions or Borrower's defaults under the Lease.

No Lease Amendment or Termination. Borrower and the Authority further agree that, until Payment in Full, neither Borrower nor the Authority shall (i) exercise any termination for

convenience rights under the Lease, (ii) terminate the Lease for any non-material uncured breach or default, or (iii) amend the Lease in any material respect, except in each case as approved in writing by Lender.

Regulatory Matters. Lender acknowledges and agrees that this agreement may be subject to federal, tribal, and state laws applicable to the Authority's gaming operations. As a condition to receiving payment under this agreement, Lender shall be responsible for obtaining such licenses as are required and obtaining any and all necessary governmental approvals.

Limited Waiver of Immunity. The Authority hereby expressly and irrevocably grants a limited waiver of its sovereign immunity from unconsented suit, collection, or other legal proceedings, and any execution under any order or judgment arising therefrom, for purposes of enforcement of this agreement, subject to the limitations on such waiver set forth herein. Further, the Authority agrees irrevocably and unconditionally to submit, for itself and its property, exclusively to the jurisdiction of any state or federal court in Oklahoma with jurisdiction over any proceeding arising out of or to enforce this agreement. The limited waiver of immunity granted hereunder shall permit only: (i) an action or actions by Lender seeking a money judgment for rent not paid to Lender, as provided herein, and accruing during the time that the Authority remains in possession of the Premises, or otherwise for breach of this letter agreement, and (ii) actions available under applicable law to enforce any resulting judgment(s), and not for any other relief. Further, nothing herein shall be construed to conflict with or impair the Authority's separate existing bond financing and related obligations. In any dispute arising under this agreement, Lender and the Authority will each be responsible for the payment of its own costs, including attorney fees. Notwithstanding the foregoing, however, if the Authority is in default hereunder, and Lender seeks thereafter to enforce its rights and/or collect the sums due and owing hereunder, the reasonable attorney fees and costs incurred by the Lender in its efforts to collect shall be paid by the Authority. The limited waiver of immunity hereunder is granted solely for the use and benefit of Lender, and is not transferrable.

Except as to gaming laws, this agreement shall be governed by the laws of the State of Oklahoma, without regard to Oklahoma choice of law rules; provided, however, that the validity and scope of the limited waiver of immunity granted by the Authority hereunder shall be determined pursuant to federal law. The Authority further will, and hereby does, irrevocably waive, to the fullest extent it may legally and effectively do so (i) any objection to which it is entitled (whether now or in the future) to the laying of venue of any suit, action or proceeding arising out of or relating to this letter agreement in any of the aforementioned courts, (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court, and (iii) any right it has now or in the future to require any suit, arbitration, legal process or enforcement proceeding be considered or heard first in any tribal court or forum of Borrower, whether because of the doctrine of exhaustion of tribal remedies or as a matter of comity or abstention.

The Authority shall, before or contemporaneously with the execution of this letter agreement, by resolution, grant the foregoing limited waiver of its sovereign immunity and consent to jurisdiction.

Please acknowledge the foregoing and your agreement with the same by executing and delivering a copy of this letter to both Borrower and Lender.

[SIGNATURE PAGES ATTACHED]

Very truly yours,

**Quapaw Tribe of Oklahoma (O-Gah-Pah)**

By: \_\_\_\_\_  
John L. Berrey, Chairman  
Quapaw Tribal Business Committee

Very truly yours,

**INTERNATIONAL BANK OF COMMERCE**

By: \_\_\_\_\_  
Andrew J. Levinson  
President - Tulsa Region

Agreed and accepted:

**Downstream Development Authority of the  
Quapaw Tribe of Oklahoma (O-Gah-Pah)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_