

Downstream Development Authority of the Quapaw Tribe of Oklahoma  
Supplement to Minutes dated 5/29/18.  
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 Monday June 4, 2018.

All,

The attached resolution is submitted for approval, authorizing a First Amendment to the IBC term loan agreement dated Feb 1, 2018.

Background: The proposed amendment waives the Fixed Charge Coverage Ratio in the IBC loan agreement for the remainder of 2018. The resort slightly missed its financial targets for the first quarter, and IBC agreed to waive the requirement for the rest of the calendar year. A copy of the proposed amendment is attached. It is short and very similar to amendments the Authority has adopted to its loan financing in the past.

Any questions please let me know.

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.

## **FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT**

This FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this “Amendment”) is entered into as of June [●], 2018 (the “First Amendment Effective Date”), by the undersigned with reference to the Amended and Restated Credit Agreement, dated as of February 1, 2018 (the “Credit Agreement”), among **Quapaw Tribe of Oklahoma (O-Gah-Pah)**, a federally recognized Indian tribe (the “Tribe”), **Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah)**, a wholly-owned unincorporated instrumentality of the Tribe (“Borrower”), the lenders from time to time party thereto (the “Lenders”), and **International Bank of Commerce**, as Administrative Agent (“Administrative Agent”). Capitalized terms not defined herein are used herein with the meanings set forth for those terms in the Credit Agreement.

WHEREAS, Lenders have extended a term loan to Borrower pursuant to the terms of the Credit Agreement.

WHEREAS, Borrower has requested that the Lenders provide a limited waiver with respect to a certain default and modify the required Fixed Charge Coverage Ratio, and the Lenders have agreed, on the terms set forth in this Amendment.

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

1. **Definitions.** Certain of the defined terms in the Credit Agreement are hereby modified as follows:

(a) The terms “Agreement” or “this Agreement” are amended to mean the Credit Agreement as amended by this Amendment, and as subsequently amended, restated, supplemented, or otherwise modified from time to time.

(b) The term “Loan Documents” shall include this Amendment and the Ratification of and Amendment to Guaranty and Collateral Documents of even date herewith between the Tribe, the Borrower, and the Administrative Agent, and each other document, instrument, or agreement executed by any Loan Party or responsible officer thereof in connection with this Amendment.

2. **Amendment to Financial Covenants.** Section 9.01(b) of the Credit Agreement is amended to read as follows:

(b) **Fixed Charge Coverage Ratio.** Permit the Fixed Charge Coverage Ratio as of the last day of the Fiscal Quarter ending June 30, 2018, or any subsequent Fiscal Quarter, to be less than 1.00 to 1.00.

3. **Limited Waiver Respecting Stated Default.** As of the last day of the Fiscal Quarter ending March 31, 2018, the Fixed Charge Coverage Ratio was less than 1.05 to 1.00, in violation of Section 9.01(b) of the Credit Agreement (“Stated Default”). The Administrative Agent and the Lenders hereby waive the Stated Default (such waiver the “Limited Waiver”), subject to the terms, conditions and limitations set forth in this Amendment, and provided that no other Default or Event of Default (except the Stated Default) exists as of the First Amendment Effective Date. The Limited Waiver: (a) is a one-time limited waiver only; (b) relates only to the Stated Default described above,

which occurred prior to the execution of this Amendment; and (c) shall not be deemed to constitute a modification or waiver of any term or condition in respect of the Borrower's future compliance with any of its obligations, covenants and requirements as set forth in the Credit Agreement (including, without limitation, any provision under Section 9.01(b) thereof) or any other Loan Documents on any other occasion, at any other time or for any other purpose. Borrower's failure to timely and strictly comply with any of its obligations, covenants and requirements as set forth in the Credit Agreement or any other Loan Document on any other occasion or for any other purpose (excepting only the Stated Default) shall constitute a new Default or Event of Default under the Credit Agreement, which is not (and shall not be deemed to be) covered by the Limited Waiver as herein set forth. Without limitation of any of the foregoing, the Limited Waiver as set forth in this Amendment shall be effective only to the extent specifically set forth herein and shall not: (i) affect the right of the Administrative Agent and the Lenders to demand strict compliance by the Borrower with all terms and conditions of the Loan Documents, except as specifically waived by this Amendment; (ii) be deemed a waiver of any transaction or future action on the part of the Borrower requiring the Administrative Agent's and the Lenders' consent or approval under the Loan Documents; or (iii) except as specifically set forth herein, be deemed or construed to be a waiver or release of, or a limitation upon, the Administrative Agent's and the Lenders' exercise of any rights or remedies under the Credit Agreement or any other Loan Document, whether arising as a consequence of any Default or Event of Default (other than the Stated Default) which may now or hereafter exist, or otherwise, and all such rights and remedies are hereby being expressly preserved and reserved by the Administrative Agent and the Lenders.

4. **Representations and Warranties of Borrower.** To induce Administrative Agent and the Lenders to enter into this Amendment, Borrower hereby represents and warrants to Administrative Agent and the Lenders that:

(a) Borrower has all necessary power and has taken all action necessary to enter into this Amendment, and this Amendment constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws or by equitable principles relating to enforceability;

(b) after giving effect to the execution, delivery and effectiveness of this Amendment, no Default or Event of Default under the Credit Agreement (other than the Stated Default) has occurred and remains continuing; and

(c) after giving effect to the execution, delivery and effectiveness of this Amendment, each of the representations and warranties set forth in Article V of the Credit Agreement are true and correct as of the date of this Amendment (other than those representations which relate solely to a prior date, each of which was true as of that date).

5. **Representations and Warranties of the Tribe.** To induce Administrative Agent and the Lenders to enter into this Amendment, the Tribe hereby represents and warrants to Administrative Agent and the Lenders that:

(a) the Tribe has all necessary power and has taken all action necessary to enter into this Amendment, and this Amendment constitutes the legal, valid and binding obligation of the Tribe, enforceable against the Tribe in accordance with its terms, except as such

enforceability may be limited by Debtor Relief Laws or by equitable principles relating to enforceability; and

(b) after giving effect to the execution, delivery and effectiveness of this Amendment, each of the representations and warranties set forth in Article VIII of the Credit Agreement are true and correct as of the date of this Amendment.

6. **Amendment Fee.** It is a condition to the effectiveness of Sections 2 and 3 of this Amendment that Borrower pay a \$25,000 amendment fee to Administrative Agent for the benefit of the Lenders.

7. **Ratification and Confirmation.** In all respects except as set forth above, the terms of the Credit Agreement and the other Loan Documents are hereby ratified and confirmed and remain in full force and effect.

8. **Release.** The undersigned Loan Parties, for themselves and on behalf of their respective predecessors, successors, assigns, agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, employees, servants and attorneys (collectively the “Releasing Parties”), release and forever discharge the Administrative Agent and each Lender and their respective partners, directors, officers, agents, attorneys, and employees, and all of their respective successors and assigns (collectively, the “Released Parties”) from any and all claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities and obligations, at law or in equity, known or unknown, whether past, present or future, that any Releasing Party now holds or acquires in the future, as a result of any actions or inactions occurring on or before the First Amendment Effective Date, under common law or statutory right, arising, directly or indirectly out of the Loan Documents or any of the transactions arising out of or related to the Loan Documents (collectively, the “Released Matters”). The undersigned Loan Parties understand and agree that (a) this Section 8 is a full, final and complete release of the Released Matters, (b) any Released Party may plead this Section 8 as an absolute and final bar to any suit or suits pending or filed or prosecuted in the future by any Releasing Party, or anyone claiming by, through or under any Releasing Party, in respect of any Released Matter, (c) no recovery on account of the Released Matters may be had from anyone whomsoever, and (d) the consideration given for this release is not an admission of liability on the part of any Released Party.

9. **Counterparts.** This Amendment may be executed in any number of counterparts and any party hereto may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts of this Amendment when taken together will be deemed to be but one and the same instrument. Delivery of an executed counterpart of this Amendment by email with scanned attachment shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Amendment by email with scanned attachment also shall deliver an original executed counterpart, but the failure to deliver such an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

10. **Amendment as Loan Document; Limited Waiver of Sovereign Immunity; Consent to Jurisdiction; Governing Law.** This Amendment shall constitute a Loan Document under the Credit Agreement, and, accordingly, it shall be an Event of Default under the Credit Agreement if Borrower fails to perform or comply with any covenant or agreement contained herein.

Without limiting the foregoing sentence, it is expressly agreed that all provisions of Article XII and Section 13.15 of the Credit Agreement are hereby incorporated by reference into this Amendment, and shall be in effect with respect to this Amendment as though set forth fully in this Amendment. Any provision of any Loan Document which applies to Loan Documents generally shall apply to this Amendment.

*[SIGNATURE PAGES FOLLOW]*

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

BORROWER:

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

By:

\_\_\_\_\_  
John L. Berrey, Chairman

THE TRIBE:

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

By:

\_\_\_\_\_  
John L. Berrey, Chairman  
Tribal Business Committee

THE ADMINISTRATIVE AGENT:

**INTERNATIONAL BANK OF COMMERCE,**  
an Oklahoma state banking corporation, as  
Administrative Agent

By:

\_\_\_\_\_  
Andrew Levinson, President-Tulsa

LENDER:

**INTERNATIONAL BANK OF COMMERCE,**  
an Oklahoma state banking corporation

By:

\_\_\_\_\_  
Andrew Levinson, President-Tulsa