

Downstream Authority of the Quapaw Tribe of Oklahoma Regular Meeting
May 29, 12

Meeting Called to Order: 10 am

ROLL CALL:	John Berrey, Chairman	Present
	Larry Ramsey, Secretary	Present
	Ranny McWatters, Treasurer	Present
	Marilyn Rogers, Member	Present
	Tamara Smiley, Member	Present

DECLARATION OF QUORUM: announced by Larry Ramsey

Resolution for financing – 052912-A

- See attached

Motion by DDA Secretary Larry Ramsey to approve Resolution 052912-A Approving agreements related to the CIT financing of the new hotel. Seconded by DDA Treasurer Ranny McWatters. Vote: JB: yes; LR: Yes; RM: yes; MR: yes; TS: yes (5 yes, 0 no, 0 abstaining, 0 absent) Motion Carries.

Marketing Review

- Name for towers
- Commercial shoot
- Market foot prints – Arkansas
- Bigger push in NW Arkansas
- Level of play
- Promotions
 - Reduce the number of play and earns
- Player Development
 - 2 events a month
- Training in department
- Switzer Contract
 - See attached

Motion by DDA Secretary Larry Ramsey to approve contract as presented. Seconded by DDA Treasurer Ranny McWatters. Vote: JB: yes; LR: Yes; RM: yes; MR: yes; TS: yes (5 yes, 0 no, 0 abstaining, 0 absent) Motion Carries.

Eagle Creek

- United Golf
 - Total cost \$1,688,623
 - New bunkers
 - New bridges
 - Ponds
 - Request for increase in budget to \$57,350 for 4 months (June/July/Aug/Sept)
 - See attached

Motion by Ranny McWatters to approve the Eagle Creek increased budget. Seconded by DDA Member Tamara Smiley. Vote: JB: yes; LR: Yes; RM: yes; MR: yes; TS: yes (5 yes, 0 no, 0 abstaining, 0 absent) Motion Carries.

Adjourn 4:15pm



RESOLUTION NO. 052912-A

**A RESOLUTION APPROVING AND/OR RATIFYING AGREEMENTS
RELATING TO FINANCING FOR THE DOWNSTREAM CASINO
RESORT HOTEL EXPANSION**

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" or "Tribal"), a federally recognized Indian nation; and

WHEREAS, the Authority was created under the laws of the Tribe and authorized to develop, operate, and manage the Downstream Casino Resort (the "Resort") and to engage in gaming pursuant to Tribal and applicable federal and state laws 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 financing for the development of the Resort; and

WHEREAS, the Authority, in accordance with long-range plans for the development of the Resort made in accordance with professional business advice and approved in 2011, has determined that it is in the best interests of the Tribe and the Resort to proceed with the planned financing for an expansion of the Resort hotel, along with associated and related projects (the "Project"); and

WHEREAS, the Authority previously, by and through Resolution No. 031412 A, selected as financial agents, arrangers, and lenders for the financing of the Project the entities CIT Lending Services Corporation ("CITLSC"), CIT Bank, and CIT Capital Securities LLC ("CITSC") (the CIT entities are collectively referred to hereinafter as the "CIT Parties"), and approved and entered a Commitment Letter, Term Sheet, and Fee Letter with such CIT Parties, each of which are confidential documents (the Commitment Letter, Term Sheet, and Fee Letter with attached schedules, are collectively referred to hereinafter as the "Commitment Letter"); and

WHEREAS, the Authority has agreed to obtain financing through the CIT Parties in the aggregate amount of up to Forty Three Million Dollars (\$43,000,000), to be comprised of a delayed draw term loan facility in a principal amount of up to Thirty Five Million Dollars (\$35,000,000), and a furniture, fixtures, and equipment facility—or "FF&E Facility"—in an aggregate principal amount of up to Eight Million Dollars (\$8,000,000) (collectively the "Senior Credit Facilities") (the overall transaction to be referred to hereinafter as the "Project Financing"); and

WHEREAS, for purposes of the Project Financing the Authority will be required to enter



into certain agreements necessary for such financing, including: (i) a Credit Agreement; (ii) Promissory Notes relating to such Credit Agreement; (iii) a Security Agreement; (iv) various account control agreements; (v) a Credit Agreement (FF&E); (vi) Promissory Notes relating to such Credit Agreement (FF&E); and (vii) a Security Agreement (FF&E); and (viii) such other agreements, documents, instruments, financing statements, and/or certificates as may be necessary or requested by CIT Parties and/or the lenders under the Senior Credit Facilities in connection with the Project Financing (collectively, the "Loan Documents"); and

WHEREAS, pursuant to the Credit Agreement, the Authority will be required to enter into certain swap agreements no later than May 30, 2012, which will require the Authority to enter into certain agreements, schedules and other documents, including an ISDA master agreement (collectively the "Swap Documents," and, together with the Loan Documents, the "Transaction Documents"); and

WHEREAS, the Authority, by and through its Members and officers, hereby desires to ratify and reaffirm its approval of all actions of the Authority and the Chairman of the Authority (the "Chairman") and the Members taken subsequent to the Authority's previous approval of the Project and the Project Financing with respect to the Project and the Project Financing; and

WHEREAS, in advance of the scheduled closing of the Project Financing, the Authority has been presented with drafts in final form or in substantially final form of each of the Loan Documents, and the Authority desires to approve or ratify and reaffirm its approval of the form of each and every Loan Document, and to authorize and direct the Chairman of the Authority, or such other officers of the Authority whose signatures are required to be given on any particular document, to execute and deliver each of the Transaction Documents to which the Authority is a party on behalf of the Authority, and to execute and deliver on behalf of the Authority such other agreements, documents, instruments or certificates as may be necessary or desirable for the Authority to execute in connection with the Project Financing.

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

- 1. Findings.** The Authority finds and determines that: (i) the recitals and representations 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 and the pending Project Financing each are in the best interest of the Tribe and the Resort, and further each are consistent with the laws of the Tribe.
- 2. Ratification or Reapproval of the Project and Project Financing.** The Authority hereby (i) ratifies and reapproves the Project and (ii) further ratifies and reapproves the Project Financing, including the Commitment Letter.
- 3. Approval of the Form of the Transaction Documents.** The Authority hereby (i) approves the form of each of the Loan Documents; (ii) authorizes the Chairman and any other officer of the Authority to negotiate the form of each of the Swap Documents; and (iii) delegates to the Chairman, and/or to such other officers of the Authority whose signatures are required to be given on any particular Transaction Document, the power and authority to approve on behalf of the Authority the final form of each of the Transaction Documents.
- 4. Delegation to Chairman or Other Officers.** The Authority hereby authorizes

and directs the Chairman, and/or such other officers of the Authority whose signatures are required to be given on any particular Transaction Document, to execute and deliver each of the Transaction Documents to which the Authority is a party, and to proceed to closing on all agreements and matters relating to the Project Financing authorized or reauthorized hereunder, and further authorizes and directs the Chairman and/or any other officer of the Authority to execute any certificates and other documents or agreements and to take or cause to be taken any other actions necessary to assist in the closing of the Project Financing.

5. Authorization of Further Negotiations. The Authority hereby authorizes and directs the Chairman to direct, conduct, and conclude further negotiations of the Transaction Documents; provided, however, that the Chairman shall continue to confer with the officers and Members of the Authority and the Authority's counsel and such other advisors as the Chairman deems appropriate in exercising the authority and powers delegated hereunder. **6. Choice of Law.** The Authority hereby approves the choice of the laws of the State of New York as the governing law for the Transaction Documents, as set forth in such agreements or, in the case of the Swap Documents, as may be negotiated by the Chairman or any other officer of the Authority (collectively, the "Choice of Law Provisions").

7. Dispute Resolution. The Authority hereby approves the means for the resolution of disputes arising under or related to the Transaction Documents as the procedures and processes as set forth in such Transaction Documents or, in the case of the Swap Documents, negotiated by the Chairman or any other officer of the Authority, including the forums set forth in the Transaction Documents, the waivers of rights to have disputes heard first before a Tribal court or other dispute resolution forums of the Tribe, and the consents to have disputes resolved by binding arbitration (collectively, the "Dispute Resolution Provisions").

8. Approval of Limited Waiver of Sovereign Immunity. The Transaction Documents authorized and approved, or ratified, herein include or, in the case of the Swap Documents, may include, certain provisions relating to the Authority's limited waiver of sovereign immunity, including for actions in the forums specified therein (collectively, the "Sovereign Immunity Provisions") to enforce the Transaction Documents and to take other related actions, and such provisions are hereby irrevocably and unconditionally approved, including, without limitation, any such provisions which may be contained in the Swap Documents, as may be negotiated by the Chairman or any other officer of the Authority.

10. Consent and Waiver Provisions. Each of the Choice of Law Provisions, the Dispute Resolution Provisions, and the Sovereign Immunity Provisions (collectively, the "Consent and Waiver Provisions") shall be deemed incorporated by reference into this Resolution in its entirety as though set forth at length herein, and such provisions are hereby expressly, conclusively, and irrevocably made by the Authority in this Resolution for the benefit of the parties benefited thereby. The Consent and Waiver Provisions are hereby unconditionally and irrevocably approved so long as the applicable documents or instruments in which such provisions appear or are referenced shall be in effect (or for so long as the parties initially intended such documents to be in effect in the event of any such documents' invalidity), subject to such modification from time to time as is permitted by the terms of the applicable documents.

11. 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.

12. Nonimpairment of Authority's Obligations. Neither the Authority nor any of its officers, members, principals, agents, or employees shall take any actions, without the written consent of all parties, to modify, amend, or in any manner impair the obligations of the contracts entered into by the Authority or other parties in furtherance of the Project Financing and/or the Transaction Documents.

13. Confidentiality. The Authority hereby orders and directs that the Transaction Documents, including each and every one of the Transaction Documents and all drafts and all other specific information concerning the Project Financing, including but not limited to engagements and fee arrangements and all financial aspects of the refinancing and transactions described thereunder, except as set forth herein, shall be deemed to be highly confidential and proprietary information of the Authority and the Tribe (the "Confidential Information"), and further that such Confidential Information shall not, except as expressly authorized by the Authority, be released or disclosed, except to members of the Authority, management of the Authority and the Resort who have a need to know such information, and Authority accounting personnel and legal counsel, although such information may also be disclosed to the members of the Tribal Business Committee, and also to the Tribal Administrator and the Tribal accounting staff, provided that such persons are advised of and agree to maintain the confidentiality of such Confidential Information, as required hereunder.

14. Additional Determinations. The Authority does not intend that any provisions of the Transaction Documents presented to it, whether taken singularly, in the aggregate, or in any combination, will constitute a "management contract" within the meaning of the Indian Gaming Regulatory Act ("IGRA") or deprive the Tribe of the "sole proprietary interest and responsibility" for the conduct of the gaming activity of the Authority's gaming operations within the meaning of IGRA.

15. 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.

[Remainder of This Page Intentionally Left Blank.]

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 29, 2012, with a vote reflecting 5 yes, 0 no, 0 abstaining, and 0 absent.



John L. Berrey, Chairman
Downstream Development Authority



Larry J. Ramsey, Secretary
Downstream Development Authority



May 29, 2012

Barry Switzer, Manager
Barry Switzer Family, L.L.C.
700 Timberdell Road
Norman, Oklahoma 73070

Re: Talent Services Agreement

Dear Barry:

This letter agreement (the "Letter Agreement") is made and entered into by and between the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), doing business as the Downstream Casino Resort (the "Client"), and the Barry Switzer Family, L.L.C. (the "BSFLLC"), relating to the rendition of talent services by Barry Switzer (the "Designated Talent"). Any capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the parties' "Talent Service Agreement" dated on or about June 15, 2009 (the "2009 Agreement"), a copy of which is attached hereto and incorporated herein.

The Designated Talent hereby agrees to continue providing services as the non-exclusive spokesman of the Client on the following terms:

1. Length of Performance. The term of this Letter Agreement shall be for a period of five (5) years, commencing on the 16th day of June, 2012, and ending on the 15th day of June, 2017.
2. Services of Designated Talent. Designated Talent agrees to provide the same services with respect to television commercials, radio commercials, print ads, public relations days ("PRDs"), personal appearances, and the internet as set forth in the 2009 Agreement; provided, however, that the frequency and/or number of such services shall be the average number per year as were performed by the Designated Talent under the 2009 Agreement.
3. Consideration. Client shall pay the Designated Talent a flat fee in the amount of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) per year for five (5) years, beginning on June 16, 2012 (the "Talent Fees"). The Talent Fees shall be payable as follows:

Client shall pay BSFLLC the sum of Sixty-One Thousand Two Hundred Fifty Dollars Only (\$61,250.00) on the first day of June 2012, and then the sum of Twenty-Six Thousand Two Hundred Fifty Only Dollars (\$26,250.00) on the first day of each month thereafter up to and including May 1, 2013. Client shall pay BSFLLC the sum of Sixty-One Thousand Two Hundred Fifty Dollars (\$61,250.00) on the first day of June 2013, and then the sum of Twenty-Six



Thousand Two Hundred Fifty Only Dollars (\$26,250.00) on the first day of each month thereafter up to and including May 1, 2014. Client shall pay BSFLLC the sum of Sixty-One Thousand Two Hundred Fifty Dollars Only (\$61,250.00) on the first day of June 2014, and then the sum of Twenty-Six Thousand Two Hundred Fifty Only Dollars (\$26,250.00) on the first day of each month thereafter up to and including May 1, 2015. Client shall pay BSFLLC the sum of Sixty-One Thousand Two Hundred Fifty Dollars Only (\$61,250.00) on the first day of June 2015, and then the sum of Twenty-Six Thousand Two Hundred Fifty Only Dollars (\$26,250.00) on the first day of each month thereafter up to and including May 1, 2016. Client shall pay BSFLLC the sum of Sixty-One Thousand Two Hundred Fifty Dollars Only (\$61,250.00) on the first day of June 2016, and then the sum of Twenty-Six Thousand Two Hundred Fifty Only Dollars (\$26,250.00) on the first day of each month thereafter up to and including May 1, 2017.

4. Expense Reimbursement. Client shall reimburse BSFLLC on the same basis as set forth in paragraph 5 of the 2009 Agreement.

5. Limited Use of Name. BSFLLC and the Designated Talent hereby grant the Client limited permission to use Designated Talent's name, voice, image, photograph, video, drawing, and likeness, as set forth in paragraph 6 of the 2009 Agreement.

6. PRDs and Personal Appearance Event Conditions; Production of Performance. Client agrees to conduct PRDs and personal appearances involving or by the Designated Talent as set forth in Paragraph 7 of the 2009 Agreement. The terms of paragraph 8 of the 2009 Agreement shall apply hereunder.

7. Indemnification. The terms of paragraph 10 of the 2009 Agreement shall apply hereunder.

8. Independent Contractor. This Agreement does not constitute BSFLLC, Designated Talent or the Client as the agent of the other, or create a partnership, joint venture or similar relationship among the parties. BSFLLC shall at all times be an independent contractor hereunder, and shall not be an employee of the Client for any purpose. The provisions of paragraph 13 of the 2009 Agreement shall apply hereunder.

9. Termination/Cancellation. Any party hereto may terminate or cancel this Agreement upon reasonable notice in writing to the other party for any reason or no reason, or for nonperformance by the other party, or for force majeure, as defined in paragraph 28 of the 2009 Agreement. In the event of such termination or cancellation prior to the expiration of this Agreement, the Client shall pay the Talent Fees due and owing as of the date of such notice on a pro rata basis for the contract year then in progress, and Client shall have no further liability to BSFLLC thereafter.

10. Other Terms. This Agreement shall not be assignable. The governing law and dispute resolution shall be as set forth in paragraphs 19 and 20 of the 2009 Agreement. Notices

Mr. Barry Switzer
May 29, 2012
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shall be provided as set forth in paragraph 26 of the 2009 Agreement. The confidentiality provisions as set forth in paragraph 31 of the 2009 Agreement shall apply hereunder.

Please indicate by signing below the acceptance of the Barry Switzer Family, L.L.C., of the terms of this Agreement. We look forward to continuing this productive relationship.

Sincerely,

John L. Berrey, Chairman
Downstream Authority

AGREED:

CLIENT:

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

BSFLLC:

BARRY SWITZER FAMILY, L.L.C.

By: _____
John L. Berrey, Chairman

By: _____
Barry Switzer, Manager

DESIGNATED TALENT

By: _____
Barry Switzer, an individual

Scope of work completed by United Golf for project of Spring of 2012

New Irrigation

Rainbird IC irrigation	\$863,000	
Pump Station, Wet Well & Cement Slab		\$142,000
Electric Service to pump station		
o Allowance of \$5,000. I know at least	\$8,000	
Pump House		
o Allowance of \$15,000. I know that brick		
Work was \$11,940. Plus Facility did roof		
Materials.		
Club House irrigation (Allowance of \$15,000)		\$15,000
Mobilization of equipment	<u>\$20,000</u>	

Sub-Total \$1,055,000

Bunkers

61,000 sq. ft. with white sand	\$386,000
Enlargement of bunkers of 6,930	\$43,867
Fallouts piping of bunkers	\$7,098
Sod for #6 bunker	<u>\$1,740</u>

Sub-Total \$439,105

Bridges

#5 Ladies Tee area	\$67,225
#5 Green to #6 Tee	<u>\$107,793</u>

Sub-Total \$175,018

Ponds

Mark Lotts portion	\$9,500
United Golf's portion (Per Larry Ramsey)	<u>\$10,000</u>

Sub-Total \$19,500

Total \$1,688,623

Scope of work not completed by United Golf

Hole #4 Improvement	\$64,980
Hole #6 Improvement	\$31,800
Hole #15 Improvement	\$21,600
Driving Range Tee	\$6,300
Hole #18 pond that should not be charged	\$17,850
Hole #3 pond that should not be charged	<u>\$44,268</u>
Total	\$186,798

Added work not on Bid.

Spoils Dumped at 15 tee. They did some leveling of this area.
North side of Turf Care Center. Packed spoils with dozer.
Drain work at #9 fairway by path to creek 6" drain pipe used.
Drain work across #5 fairway from fairway bunker.

New improvements to Eagle Creek Golf Club

- 17 Miles of irrigation pipe
- 866 sprinkler heads
- Drain lines and runoffs in all bunkers
- New "Billy Bunker" method in lining the bunkers
- White sand in all 37 bunkers
- Extended all bunkers back to original design from architect
- Drain lines put on 4 areas of golf course to help with draining water from cart trails
- Ponds on #3 and #18 dug out and lined with clay to help maintain a full level of water
- Repair cart paths where crossings for irrigation lines have occurred
- New dam and bridge across #5
- Replaced bridge on #5 tee
- New efficient pump station to supply water to golf course
- Clubhouse lawn new irrigation
- Wiring to well pump for new irrigation
- Weather station to monitor golf course conditions

New improvements done "in house" at Eagle Creek Golf Club

- Moving the maintenance to the 19th hole building
- 2 new garage doors in the turf care center for equipment entrance
- Leveling of ground for area to be used by maintenance department
- 8 foot tall fence to obstruct the view of the area around the turf care center
- Development of new tee on #15
- New tee on #17
- New tee on #9
- New tee on #6

29000	Payroll
4000	Payroll taxes
3300	Sod and mulch
8000	employee lunches
2000	Chemicals
3000	Fertilizer
2000	Equipment repairs
4800	General Insurance
1250	Water increase
57350	

SCHEDULE "C"

RENTS

Following is a schedule of rents and payments due to the Lessor pursuant to Section 2.02 of the lease:

	<u>Month</u>	<u>Year</u>	<u>Monthly Rent</u>
1	June	2012	80802.23
2	July	2012	77595.09
3	August	2012	82013.82
4	September	2012	98383.73