

AMENDED TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY, NC

Date: JUN 06 2024

RESOLUTION NO. 219 (2024)

A resolution to approve a line of credit to Balsam West Fibernet.

WHEREAS, the Eastern Band of Cherokee Indians (EBCI) is fifty-percent owner of the Balsam West Fibernet enterprise; and

WHEREAS, since inception the EBCI has made equity contributions to the enterprise to support operations and expansion; and

WHEREAS, Balsam West Fibert is in need of funding to use as working capital, grant match, network expansion and business development; and

WHEREAS, the details of the line of credit and repayment terms are contained in Exhibit "A"; and

WHEREAS, Drake Enterprises, LTD is also a 50% owner of Balsam West Fibernet and Drake Enterprises is extending the same line of credit to Balsam West Fibernet.

NOW THEREFORE BE IT RESOLVED by the Eastern Band of Cherokee Indians, in Council assembled, at which a quorum is present, that the line of credit and repayment terms expressed in Exhibit "A" are approved.

BE IT FURTHER RESOLVED the Principal Chief and Office of Budget and Finance are authorized to carry out the intent of this resolution, which shall remain in effect until implemented or rescinded.

BE IT FINALLY RESOLVED this resolution shall be effective upon ratification by the Principal Chief, and all prior resolutions that are inconsistent with this resolution are rescinded.

Submitted by: BalsamWest FiberNet, LLC Board of Directors

Exhibit "A"

LINE OF CREDIT PROMISSORY NOTE

THIS LINE OF CREDIT PROMISSORY NOTE ("Note"), is made this 14th day of July, 2023, by and between The Eastern Band of Cherokee Indians (EBCI), a Sovereign Tribal Nation") and BALSAMWEST FIBERNET, L.L.C. a North Carolina limited liability company ("BORROWER"). BORROWER and EBCI shall collectively be known herein as the "Parties".

- A. Promise to Pay.** For value received, BORROWER promises to pay to the order of EBCI the principle sum of TWO MILLION AND NO/100THS DOLLARS (\$2,000,000.00), or such lesser amount as may be advanced and outstanding, together with interest thereon at a rate of five percent (5%) per quarter, computed on the basis of the actual number of days elapsed and a year of 365 days; provided however, that in no event shall the rate of interest in respect of any indebtedness evidenced hereby exceed the maximum rate of interest allowed to be charged by applicable law.
- B. Line of Credit.** The proceeds of the indebtedness evidenced by this Note shall be used by BORROWER for BORROWER's working capital needs and for no other purpose. BORROWER shall provide written evidence to EBCI, upon EBCI's request, that the proceeds were used, or will be used, for the intended purpose, in the form of copies of checks, bank statements and other supporting documents, within five (5) business days after the date of the request. Advances of credit evidenced by this Note shall be made at the written request of BORROWER, which must be given at least two (2) business days in advance. Advances that are repaid may be reborrowed. The maximum principal amount that may be outstanding hereunder is \$2,000,000.00. Each advance made shall be subject to the approval of EBCI and no further advances shall be made if a Default (as defined below) has occurred.
- C. Loan Repayment Terms.** The entire outstanding principal balance, together with all accrued and unpaid interest, shall be immediately due and payable in full on July 14, 2025. Beginning on October 14th, 2024 and continuing thereafter until the Note is paid in full, BORROWER will make regular quarterly payments of all accrued and unpaid interest due as of each payment date. The indebtedness evidenced hereby may be prepaid in whole or in part, at any time and from time to time, without premium or penalty. Any such prepayments shall be credited first to any accrued and unpaid interest and then to the outstanding balance hereof. If any payment date hereunder falls on Saturday, Sunday, or legal holiday, then such payment shall be due on the next business day.
- D. Method of Loan Payment.** BORROWER shall make all payments called for under this Note by sending a check made payable to EBCI at the address indicated below or to such other address as EBCI may provide from time to time:

The Eastern Band of Cherokee Indians
Office of Budget and Finance
PO Box 455
Cherokee, NC 28719

E. Default.

- 1) **Notice of Default.** Upon Default, EBCI shall provide written notice to BORROWER at the following address:

BalsamWest FiberNet, L.L.C.
35 Bonnie Ln
Sylva, NC 28779

If BORROWER gives written notice to EBCI that a different address shall be used, EBCI shall use such address for giving notice of default (or any other notice called for herein) to BORROWER. Mailing of written notice by EBCI to BORROWER via U.S. Postal Service Certified Mail shall constitute prima facie evidence of delivery.

- 2) **Cure of Default.** BORROWER shall have fifteen (15) days after receipt of a written notice of default to cure any Default hereunder. In the event that a Default is not cured within such period, the entire outstanding principal balance of the indebtedness evidenced hereby, together with any other sums advanced hereunder, and/or under any other instrument or document now or hereafter evidencing, securing or in any way relating to the indebtedness evidenced hereby, together with all unpaid interest accrued thereon, shall, at the option of EBCI and without notice to BORROWER, at once become due and payable and may be collected forthwith.
- 3) **Penalty for Late Payment.** Upon a Default for failure to make any annual accrued interest payment, unless such Default is cured within fifteen (15) days as set forth in Section E(3) of this Note, the annual accrued interest payment then due shall bear a penalty equal to the lesser of: (i) a rate of two percent (2%), or (ii) the maximum rate of interest allowed to be charged under applicable law.

F. Attorneys Fees and Out-of-Pocket Costs. In the event that this Note is placed in the hands of an attorney for collection, or if EBCI incurs any costs incident to the collection of the indebtedness evidenced hereby, BORROWER agrees to pay EBCI an amount equal to all such costs, including without limitation all reasonable attorneys' fees and all court costs.

G. Authority. The Parties hereby represent that all steps and actions have been taken under the respective entity's governing instruments to authorize the entry into this Note. Breach of any representation contained in this paragraph is considered a material breach of the Note.

H. Entire Agreement. This Note sets forth the entire agreement between the Parties with regard to the subject matter hereof. All prior agreements, representations and warranties, express or implied, oral or written, with respect to the subject matter hereof, are superseded by this Note.

I. Severability. Wherever possible, each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note would otherwise be unenforceable or void, (i) that provision shall be deemed modified to the minimum extent necessary so that the provision is valid and enforceable, (ii) such provision as so modified shall be enforced, and (iii)

the remaining provisions of this Note shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

J. Modification. Except as otherwise provided in this document, this Note may be modified, superseded, or voided only upon the written agreement of the Parties. Further, the physical destruction or loss of this document shall not be construed as a modification or termination of the agreement contained herein.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, BORROWER and EBCI affix their signatures hereto as of the date first written above.

EBCI:

Eastern Band of Cherokee Indians
a Sovereign Tribal Nation

By: _____ (SEAL)

Name: Michell Hicks

Title: Principal Chief

BORROWER:

BalsamWest FiberNet, L.L.C.
a North Carolina limited liability company

By _____ (SEAL)

Name: Ryan Sherby

Title: CEO

AMENDED

JUN 06 2024

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA
JUN 06 2024

DATE

AMENDMENT TO Res.. No. 219 (2024)

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-On the exhibit A change the year from “2023” to “2024”