

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AGWEST FARM CREDIT, PCA

Plaintiff,

v.

YAK-TAT KWAAN INCORPORATED, an
Alaska Native Village Corporation,

Defendant.

NO. _____

COMPLAINT ON GUARANTY

COMES NOW AgWest Farm Credit Services, PCA, formerly known as Northwest Farm Credit Services, PCA, and for its claims for relief against Defendant Yak-Tat Kwaan Incorporated, alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff AgWest Farm Credit Services, PCA, formerly known as Northwest Farm Credit Services (hereinafter the “Farm Credit” or “Plaintiff”) is a corporation organized, presently existing and doing business as an instrumentality of the United States of America under the Farm Credit Act of 1971, as amended. Farm Credit services agricultural, timber and commercial fishing loans and borrowers across multiple states and is headquartered in Spokane, Washington.

1 amended, restated or otherwise modified or supplemented from time to time (hereinafter the “**Tug**
2 **& Barge Loan Agreement**”), under which Farm Credit extended a commercial loan to Yak
3 Timber in the amount of \$3,375,000 (the “**Tug & Barge Loan**”). See Exhibit D attached hereto.

4 8. On or about January 10, 2022, Yak Timber executed a Sawmill Building Loan
5 Agreement (**Note No. 6385613**), together with all schedules and exhibits thereto, in each case, as
6 amended, restated or otherwise modified or supplemented from time to time (hereinafter the
7 “**Sawmill Building Loan Agreement**”), under which Farm Credit extended a commercial loan to
8 Yak Timber in the amount of \$750,000 (the “**Sawmill Building Loan**”). See Exhibit E attached
9 hereto.

10 9. The Term Loan, Operating Loan, Equipment Loan, Tug & Barge Loan, and
11 Sawmill Building Loan, are hereinafter collectively referred to as the “**Yak Timber Loans.**”

12 10. In connection with the Yak Timber Loans, YTK executed a Guaranty Agreement
13 dated June 23, 2020, as amended by the First Amendment dated March 25, 2021, the Second
14 Amendment dated January 1, 2022, and the Third Amendment dated March 30, 2023, together
15 with all schedules and exhibits thereto, in each case, as amended, restated or otherwise modified
16 or supplemented from time to time (the “**Guaranty Agreement**”). See Exhibit F hereto.

17 11. Pursuant to the Guaranty Agreement, YTK irrevocably, unconditionally, and
18 absolutely promised to pay, and guaranteed payment and performance when due, of the Yak
19 Timber Loans. The Guaranty Agreement further provided that the failure of YTK to promptly pay
20 Lender the guaranteed amounts, upon default of Yak Timber, and demand by Lender, constitutes
21 an event of default under the Guaranty Agreement.

22 12. The Guaranty further contained certain financial covenants applicable to YTK,
23 including the timely provision of financial statements and reports as further set forth therein.

24 13. On November 2, 2022 Farm Credit issued a Notice of Event of Default and
25 Reservation of Rights, wherein Yak Timber and YTK were notified of Yak Timber’s failure to
26 comply with financial reporting covenants, payment defaults on all of the Yak Timber Loans, and

1 failure of the YTK to comply with the financial covenants in the Guaranty Agreement (“**First**
2 **Notice of Default**”).

3 14. On January 31, 2023 Farm Credit issued a Second Notice of Event of Default and
4 Reservation of Rights, wherein Yak Timber and YTK were notified of continued and additional
5 failures to comply with financial and reporting covenants, continuing and existing payment
6 defaults, failure to comply with other covenants, failure to comply with insurance requirements,
7 and denial of a restructuring application related to all Yak Timber Loans and the Guaranty
8 Agreement (“**Second Notice of Default**”).

9 15. Yak Timber has made no payments under the Yak Timber Loans since mid-2022.

10 16. On March 9, 2023, Farm Credit issued a Final Demand, Notice of Acceleration,
11 and Reservation of Rights to Yak Timber and YTK (“**Final Demand**”). See, **Exhibit G** hereto.

12 17. As set forth in the Final Demand, the balance owing under the Yak Timber Loans
13 as of March 21, 2023, was \$13,301,336.39, exclusive of continually accruing interest, default
14 interest, prepayment fees, attorney fees, and other advances or costs paid by Farm Credit. By virtue
15 of the Guaranty Agreement, YTK is indebted to Farm Credit for this amount.

16 18. The events of default stated in the First Notice of Default and Second Notice of
17 Default continue and have not been cured or remedied. Neither YTK nor Yak Timber has made
18 any payment in response to the Final Demand or otherwise.

19 **III. COUNT I: BREACH OF CONTRACT – GUARANTY AGREEMENT**

20 19. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set
21 forth herein.

22 20. The Guaranty Agreement is a valid, binding, and enforceable agreement under
23 which the Defendant agreed to satisfy Yak Timber’s obligations under the Yak Timber Loans.

24 21. In the Guaranty Agreement, the Defendant irrevocably and unconditionally
25 guaranteed payment and performance of Yak Timber’s obligations under the Yak Timber Loans.

26 22. Yak Timber is in default under the Yak Timber Loans.

1 23. Demand upon Defendant for payment of the Yak Timber Loans has been made.

2 24. Defendant has failed to the amounts due and owing under the Yak Timber Loans,
3 and is therefore in default under the Guaranty Agreement.

4 25. Plaintiff has been damaged in an amount equivalent to that owed under the Yak
5 Timber Loans.

6 26. Accordingly, Plaintiff is entitled to a judgment against Defendant for breach of the
7 Guaranty in the amount of \$13,301,336.39, plus continually accruing interest, default interest,
8 prepayment fees, attorney fees, and other advances or costs paid by Farm Credit through to the
9 date of judgment, the exact amount to be proven by affidavit or at trial, plus post-judgment interest
10 at the applicable rate.

11 **IV. PRAYER FOR RELIEF**

12 WHEREFORE, having alleged the foregoing facts and stated its cause of action, Plaintiff
13 respectfully prays for the following relief:

14 27. For judgment against Defendant for the amounts owed under the Yak Timber
15 Loans, which as of March 21, 2023 was \$13,301,336.39, plus continually accruing interest, default
16 interest, prepayment fees, attorney fees, and other advances or costs paid by Farm Credit through
17 to the date of judgment, the exact amount to be proven by affidavit or at trial, plus post-judgment
18 interest at the applicable rate.

19 28. For judgment against Defendant for Plaintiff's attorneys' fees, costs, and expenses
20 incurred in enforcing the Yak Timber Loan Documents, as permitted under the Guaranty
21 Agreement.

22 29. For such other and further relief as the Court deems just and proper.
23
24
25
26

1 DATED this 31st day of March, 2023.

2 CAIRNCROSS & HEMPELMANN, P.S.

3
4 /s/ *Binah B. Yeung*

5 Binah B. Yeung, WSBA No. 44065

6 Email: byeung@cairncross.com

7 John R. Rizzardi, WSBA No. 9388

8 Email: jrizzardi@cairncross.com

9 524 Second Avenue, Suite 500

10 Seattle, WA 98104-2323

11 Telephone: (206) 587-0700

12 Facsimile: (206) 587-2308

13 Attorneys for AgWest Farm Credit, PCA