



Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution No. #02-0306-18

**Authorizing the Tribal Ogema, or in the absence of, the
Tribal Council Speaker to Execute a Purchase Agreement
with Lieberman Gaming Company and Consenting to Have Disputes
Arising Under That Agreement Resolved by Binding Arbitration in
Accordance with Section 8.5 to that Agreement**

WHEREAS, the Band's status as a federally-recognized Indian tribe was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156 (25 U.S.C. §1300k et seq.)(hereinafter "Little River Act"); and

WHEREAS, the Band adopted a Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Band is entitled to the protections and benefits accorded federally-recognized Indian tribes under federal law, including those under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. §2701 et seq.)(hereinafter "IGRA"), which permits Indian tribes to operate Class II gaming activities on lands held in trust for the Band; and

WHEREAS, the Tribal Council, pursuant to Article IV, Section 7 (b) of the Constitution, has the power to authorize and ratify agreements and contracts negotiated by the Tribal Ogema; and

WHEREAS, pursuant to Article IX, Section 1 of the Constitution provides that the Band "shall not waive or limit the right of the Little River Band to be immune from suit, except as authorized by tribal ordinance or resolution or in furtherance of tribal business enterprises"; and

WHEREAS, the Tribal Council has previously approved a Capital Budget for the Casino Resort Expansion Project, which includes estimated budget requirements for the FF&E required for the Casino Resort Expansion; and

WHEREAS, the Tribal Council has previously delegated to the Construction Management Team certain responsibilities regarding bidding and contracting for the FF&E portion of the Casino Resort Expansion Budget; and

WHEREAS, the Construction Management Team and Director of Gaming Operations for Little River Casino Resort have negotiated the purchase of certain slot machines and related equipment from Lieberman Gaming Company and recommended approval of a Purchase Agreement with Lieberman Gaming Company in a form approved by the Band's Legal Department; and

WHEREAS, Lieberman Gaming Company has requested a limited waiver of sovereign immunity from the Band to allow disputes arising under the purchase agreement to be resolved through binding arbitration, enforceable in the Commercial Division of the Tribal Court, which agreement is reflected in Section 8.5 of the Agreement; and

WHEREAS, the Tribal Council has adopted the Arbitration Code, Ordinance #01-300-02, governing the approval of contracts which include arbitration provisions; and

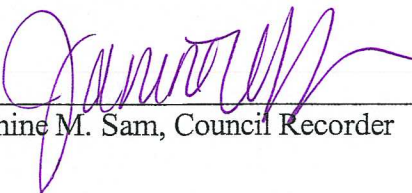
WHEREAS, the Tribal Council has determined that the specific waiver of sovereign immunity requested by Lieberman Gaming Company for the specific purpose of enforcement and/or interpretation of that agreement is in furtherance of important Tribal purposes and tribal business enterprises and that such waiver is authorized by and is consistent with Article XI, Section 1 of the Tribe's Constitution.

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby authorizes the Tribal Ogema, or in the absence of, the Tribal Council Speaker, to execute the Purchase Agreement with Lieberman Gaming Company to purchase the slot machines and equipment described in that Agreement for the total purchase price of \$104,845.00.

IT IS FINALLY RESOLVED THAT the Tribal Council agrees to a limited waiver of sovereign immunity and consents to have disputes between the Tribe and Lieberman Gaming Company, which arise under that agreement decided by arbitration, including the limitation on recourse provisions contained in Section 8.5.3 of that Agreement, which agreement to arbitrate would be enforceable in the Commercial Division of the Tribal Court in accordance with the Tribal Arbitration Code.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 5 FOR, 1 AGAINST, 3 ABSENT, and 8 ABSTAINING, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on March 6, 2002, at the Little River Band's Downtown Offices in Manistee, Michigan, with a quorum being present for such vote.



Janine M. Sam, Council Recorder

Attest:



Steven Parsons, Council Speaker

Distribution: Council Records
Tribal Ogema
Tribal Court
Legal Department
Lieberman Gaming Company

Lieberman Gaming Company SALES ORDER

1-800-879-0321

SOLD TO: Little River Band of Ottawa Indians
dba: Little River Casino & Resort
2700 Orchard Highway

Manistee MI 49660

CONTACT: Don James
PHONE: 888/568-2244

SHIP TO:
SAME AS ABOVE

1/21/02

Order Date:

License No:

Russ Moen

Sales Rep:

PO No:

Exempt

Tax ID:

Date Required		Terms	Ship Via:	FOB:	
4/1/02		Sales Agreement	Best	Las Vegas	
QTY	PART NO.	DESCRIPTION		UNIT PRICE	TOTAL
3	S6000/Slant	Bally S6000/Reel Slant Top		8,495.00	25,485.00
3	Ex/Cab	Extended Systems Cabinet		200.00	600.00
10	S6000/Up	Bally S6000 Reel Upright - 16" Top		7,395.00	73,950.00
10	Ex/Cab	Extended Systems Cabinet		200.00	2,000.00
6	Trades	Bally Gamemaker 1998 Model		-1,000.00	-6,000.00
10	Conversions	S6000 Reel Conversions		699.00	6,990.00
1		Freight		1,820.00	1,820.00

Special Instructions:

3% discount if paid within 10 days of date of invoice or 1/2 in 30 days, balance in 60 days and no discount.

Subtotal 104,845.00

Salestax: 0.00

Customer Signature

GC Signature

Date Signed

[Signature]
[Signature]
1-24-02

Total 104,845.00

PURCHASE ORDER AND SALES AGREEMENT

Terms and Conditions of Sale.

Lieberman Gaming Company (hereafter referred to as "LGC") hereby sells to Little River Band of Ottawa Indians, dba: Little River Casino & Resort (hereafter referred to as "Buyer"), and Buyer hereby agrees to purchase from LGC the equipment described on the front page of this Agreement (hereafter referred to as "Equipment"), subject to the following terms and conditions:

1. Summary of Terms of Sale:

Total Purchase Price of Equipment	\$	<u>104,845.00</u>
Sales Tax	\$	<u>-0-</u>
Total Amount of Purchase	\$	<u>104,845.00</u>

2. Fees and Taxes.

- 2.1 The purchase price of the Equipment does not include any local, state, federal or other taxes or licensing or other fees, which may be imposed by any governmental authority. These amounts are the sole responsibility of Buyer.

3. Delivery.

- 3.1 All equipment will be shipped FOB Buyer's place of business on Buyer's Reservation in Manistee, Michigan. The cost of freight is included in the invoice and charged to Buyer.
- 3.2 If Buyer requests LGC to make any modification(s) to the Equipment during manufacture, Buyer shall allow LGC a reasonable period of time within which to effect delivery.
- 3.3 Buyer is responsible for all expenses required for installation of the Equipment, unless otherwise agreed in writing.

- 3.4 Buyer will ensure that the Equipment is used in compliance with all applicable governmental regulations, import or export laws and applicable licensing requirements. LGC will reasonably assist Buyer in obtaining all necessary approvals.
- 3.5 Shipping Instructions/Delivery Unless otherwise directed by the Buyer's Purchasing Agent, the Equipment shall be shipped to the Buyer's Casino Resort facilities located at 2700 Orchard Highway (U.S. 31 and M-22), Manistee, Michigan 49660 (hereinafter the "Location"). The Equipment shall be delivered to the Location, or other location specified by the Buyer's Purchasing Agent on or before April 30, 2002 but no earlier than April 1, 2002.

Prior to shipping the Equipment, LGC (or LGC's shipping agent) shall contact the Buyer's Purchasing Agent to receive shipping instructions. LGC acknowledges and agrees that time is of the essence in the performance of this Purchase Agreement.

If delivery dates cannot be met, LGC shall promptly notify the Buyer of the earliest possible date for delivery.

For purposes of this paragraph, the name, address and telephone number of the Buyer's Purchasing Agent is:

Mike Dickson, Director of Gaming Operations
2700 Orchard Highway, Manistee, MI 49660
Telephone: (231) 723-1535

4. Terms of Payment.

- 4.1 Cash Sales. N/A, check or draft approved by LGC in advance, certified bank funds or wire transfer to _____ Bank (I.D. No. _____), to the order of LGC's account no. _____, as follows:

\$ -0-, upon signing this Sales Agreement;

\$ -0-, net thirty (30) days from invoice date.

Special Terms:

Invoice will be sent by LGC after shipment of the Equipment from LGC's facility. Buyer agrees that payment in full is due net 30 days from the date the equipment is delivered to Buyer's address. Buyer will receive a 3% discount if payment in full is made within 10 days of date of invoice or 1.5% if paid within 30 days of invoice. No discount will apply if the invoice is paid later than 30 days from the date of the invoice.

- 4.2 LGC shall be entitled to collect, at its option, a late charge of one and one-half percent (1-1/2%) per month on all amounts owing and which are in arrears; that is, not paid within such thirty (30) day period.
- 4.3 \$NA of the total purchase price shall be financed by LGC. Buyer agrees to make _____ equal consecutive monthly installments in the amount of \$ _____ each, commencing _____, 2002, with the last payment due on or before _____, 2002_____.
- 4.4 The first installment payment due LGC shall be NA (_____) days after the Equipment is delivered to Buyer. The parties are authorized to insert the appropriate first and last payment dates above based on the actual delivery date of the Equipment.
- 4.5 Buyer agrees to pay and LGC may collect, at its option, a late payment charge in an amount equal to one and one-half percent (1.5%) per month of the late installment on each installment which is not paid to LGC on or before the date on which it is due. Payment is deemed made when received by LGC at its address listed on the first page of this Agreement. Buyer may prepay all of the unpaid purchase price plus accrued interest, at any time, without penalty.

5. Security Interest: Insurance.

- 5.1 To secure both Buyer's payment of all amounts due and the performance of all of its obligations under Section 5.3 of this Agreement, Buyer grants to LGC a first priority security interest in and to all of the following (collectively the "Collateral"): (a) the Equipment, (b) all insurance policies pertaining to the Equipment (the "Policies"). Buyer and LGC agree that LGC's security interest is

valid so long as any payment is unpaid and upon full payment by the Buyer, the security interest shall be self-terminating.

5.2 Buyer warrants that LGC's security interest is not and shall not become subordinate or junior to the lien or claim of any person or entity whatsoever, except upon receiving the prior written consent of LGC; provided that the grant of the security interest, as set forth herein, shall immediately terminate upon the payment of all sums due under this Agreement. Upon the payment of all sums due under this Agreement, LGC agrees to execute any additional and further documentation evidencing the termination of its security interest, as provided herein, required by the Buyer or the Buyer's lenders.

5.3 Buyer at its sole expense shall maintain coverage on the Equipment insuring it against (a) loss or damage by fire, wind, theft, accident and all other risks and hazards ordinarily insured against by owners of such property in similar businesses; (b) public liability risks and hazards relating to Buyer's ownership and use of the Equipment in an amount which shall be no less than the total purchase price of the Equipment.

6. **Limited Warranties; Exclusive Remedy of Buyer.**

6.1 LGC warrants that the Equipment will be free from defects in workmanship and materials for a period of ninety (90) days after the Equipment is delivered to Buyer.

6.2 If a component of the Equipment is defective during the warranty period, LGC's sole obligation and liability, notwithstanding any other provision of this Agreement or any other law or regulation to the contrary, shall be to repair or replace the component, in LGC's sole discretion.

6.3 The costs of all labor associated with undertaking necessary warranty repairs shall be divided and paid as follows:

- (a) Purchaser shall identify and remove any allegedly faulty component(s) at its expense. (Vendor's technical support personnel will assist Purchaser in making this determination by telephone).

- (b) Purchaser shall pay all costs of shipping such allegedly defective component(s) to Vendor per its instructions for testing, repair and/or replacement, as Vendor deems necessary, and Purchaser shall pay all costs of return shipping of all such components.
- 6.4 LGC shall also, at its sole expense, modify or alter the software in the Equipment as necessary to keep the programs and games in operation and in compliance with all applicable governmental regulations, which were in effect at the time of sale. Buyer shall pay for installation of any replacement software, which may be required under this paragraph.
- 6.5 This warranty does not apply to any component which has been improperly installed, overloaded, abused or modified in any manner (except if the fault of LGC), unless, in the case of a modification, it has been approved in writing by LGC.
- 6.6 LGC EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SET FORTH SPECIFICALLY IN THIS SECTION. LGC DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR RESULTS OF THE USE OF THE EQUIPMENT. THE WARRANTIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED.

7. Default.

- 7.1 The Buyer shall be in default of this Agreement if, at any time during the period of this Agreement is in effect, the Buyer:
 - (a) fails to observe or perform any covenant or obligation under this Agreement, including but not limited to, the failure to make any payment when due hereunder;
 - (b) to the extent LGC extends credit to Buyer, a default shall occur if Buyer makes or proposes any compromise with its creditors

or is subject to any form of insolvency proceedings;

- (c) makes a false or misleading statement or fails to disclose any material information which might adversely affect LGC's licensing status in any jurisdiction in which it does business;
- (d) has its license or authorization to engage in the gaming business suspended or revoked, or is subject to any adverse regulatory proceedings in any jurisdiction, due to the conduct, actual or alleged, of any of its officers, directors, shareholders, partners, agents or associates, which in the sole discretion of LGC may have an adverse effect on LGC's business or licensing interests anywhere in the world.

7.2 Upon default by Buyer under this Agreement, LGC's remedies shall include the right to:

- (a) if Buyer fails or neglects to make any payment provided for herein which is due, LGC may enter onto the premises or such other places as the equipment may be found and take possession of and carry away the Equipment only pursuant to a valid court order, judgment or decree by a Court of Competent Jurisdiction. It is specifically agreed and understood between the parties hereto that a waiver by LGC of any default under the terms of this Agreement at any time shall not constitute a waiver by LGC of any other or subsequent default by Buyer. This provision shall not be limited to, but shall be in addition to any and all other remedies or rights available;
- (b) suspend any further performance hereunder, including cancellation of any unfilled part of this contract, without liability whatsoever;
- (c) exercise any and all of the rights of a secured party upon default by a debtor under any applicable laws.

8. General Terms and Conditions.

8.1 Delay in performance; Limitations on Liability. Neither party shall be liable for any failure or delay in the performance of any of its

obligations under this Agreement if or to the extent such failure results from causes beyond the reasonable control of that party including, but not limited to, transportation delays, natural calamity including fire, flood, tempest, explosion, earthquake and the like, outbreak of war, insurgency, riots, theft or the like, intervention of government agencies, including changes in the law or orders of any competent authority or court, strikes and other labor disputes, delay in supply of raw materials or finished products, or any government agency delay or refusal to issue any requisite permit, authority or license; provided, however this section shall not excuse Buyer's obligation to pay for the Equipment or its obligation to insure the Equipment, pursuant to sections 4 and 5, above.

8.2 **Limitations on Damages.** Notwithstanding any provisions to the contrary in this Agreement or otherwise, neither party shall be liable to the other for any indirect, special or consequential loss or damage however arising in connection with this Agreement, including but not limited to lost profits, downtime, goodwill, damage to or replacement of any property which may be affected by the Equipment.

8.3 **Regulatory Compliance.** Buyer shall comply with all reasonable requests of LGC to provide information which may be required by LGC's regulatory compliance officers; the failure to do so may constitute a material breach of this Agreement.

LGC warrants that it possesses a current Gaming Vendor's License issued by the Little River Band Gaming Commission. Failure to obtain or maintain any required Vendor License shall constitute a breach of this Agreement

8.4 **Governing Law.** This Agreement shall be construed in accordance with and governed by the substantive laws of the State of Michigan, including without limitation, laws relating to substantive rights and remedies to intellectual property. Notwithstanding anything to the contrary set forth in this Agreement, LGC acknowledges and agrees that the Buyer's agreement to designate Michigan law as the governing law shall in no way constitute or be interpreted as a waiver or modification of, or limitation on, the Buyer's sovereign immunity from suit in the courts of the State of Michigan. The parties agree that the situs of this Agreement is the Reservation of the Little River Band of Ottawa Indians.

8.5 Dispute Resolution.

- 8.5.1 Arbitration LGC and Buyer agree that any dispute, controversy or claim arising out of or relating to this Agreement or other obligation between the parties that cannot be resolved through the negotiations shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date the demand for Arbitration is made. The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of this Agreement. The arbitration shall take place in Manistee County, Michigan or such other place as the parties may agree. Except as provided in Section 9.5.2, the law to be applied in said arbitration shall be; applicable federal and Tribal laws concerning gaming devices and gaming vendors and the law of the State of Michigan, including the Uniform Commercial Code, without reference to any choice of law provisions. Each party shall notify the other party of its nominee for an arbitrator. If the LGC and Buyer can agree upon the nomination of a single arbitrator, each party's nominee shall serve as arbitrator upon a panel of three, and those two arbitrators shall select a third arbitrator to serve with them within two weeks. The arbitration decision shall be final and binding upon the LGC and Buyer unless, during or following completion of the arbitration proceedings, LGC and Buyer have met and arrived at a different settlement of the dispute. In rendering its decision and award, if any, the arbitration panel shall not alter or otherwise modify the provisions of this Agreement, including the limitations on recourse defined in Section 9.5.3.
- 8.5.2 Waiver of Sovereign Immunity The Buyer expressly waives its sovereign immunity for the purpose of permitting or compelling binding arbitration as provided in Section 9.5.1, or enforcing any such arbitration award, and consents to be sued, in accordance with this paragraph in the Commercial Division of the Little River Band Tribal Court and the Tribal Court of Appeals. By this agreement, the Buyer does not waive, limit or modify its sovereign immunity from unconsented suit in any other court including any State or Federal court. The Buyer's waiver of its sovereign immunity in this Agreement only extends to disputes of the specific written rights and duties of the LGC and Buyer pursuant to this Agreement and the other agreements between the parties. The law to be applied in any

proceeding to compel or enforce in accordance with this paragraph shall be the law of the State of Michigan and the Tribal Arbitration Code.

- 8.5.3 Property and Funds Pledged and Assigned to Satisfy Enforcement Proceedings. Damages awarded against the Buyer in satisfaction of any enforcement proceedings under this Agreement shall be awarded only from the following: (i) financing provided to the Buyer for the development of the Casino Project, as described in a Taxable Construction Loan Agreement between the Buyer and Miller & Schroeder Investments Corporation and Comerica Bank and Other Lenders described therein; provided that LGC's right to recourse against financing proceeds under such Taxable Construction Loan Agreement shall be subject to any requirements under the terms of a Taxable Disbursing Agreement between the Buyer, Miller & Schroeder Investments Corporation, Comerica Bank and Commonwealth Land Title Insurance Company, as Disbursing Agent, dated June 21, 2001, as amended from time to time; (ii) repossession of any equipment being sold under the Agreement; provided that any purchase money security interest retained by LGC shall be immediately discharged upon receipt of the purchase price for the goods and services under this Agreement; and (iii) net gaming revenues of the Buyer distributed to the Buyer under the terms of the Management Agreement between the Buyer and Manistee Gaming, LLC, dated July 15, 1999, as amended from time to time; provided that the LGC's right to recourse against net gaming revenues shall not extend to net gaming revenues which have been transferred to either: (i) a Trust and Agency Fund of the Buyer; or (ii) an Enterprise Fund of the Buyer; or (iii) except for the equipment being sold under this Agreement, to assets of the Buyer purchased with net gaming revenues distributed to the Buyer. Damages awarded against the Buyer shall not constitute a lien upon or be collectable from any other income or assets of the Buyer, except with the Buyer's consent
- 8.6 Assignment. Buyer/Seller shall not assign this contract or its obligations under this contract without the prior written consent of LGC.
- 8.7 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision

shall be enforced to the maximum extent permissible so as to effect the intent of the parties and the remainder of this Agreement shall continue in full force and effect.

- 8.8 **Further Assurances.** Each party shall sign, execute and deliver all such documents, instruments and writings, and shall do such other acts and things, and shall also cause its employees and agents to do everything necessary to give full effect to this Agreement.

9. **Notices.**

- 9.1 A notice required or permitted under this Agreement will be deemed given when mailed, and shall be in writing, addressed to the other party and:

- (a) delivered to that party by certified U.S. Mail, postage prepaid, return receipt requested, and
- (b) transmitted by facsimile to that party's telecopier number:

To LGC: Lieberman Gaming Company
9549 Penn Avenue South
Minneapolis, Minnesota 55431 U.S.A.
Fax: 612/881-8286

To Buyer: Little River Band of Ottawa Indians dba:
Little River Casino & Resort
2700 Orchard Highway
Manistee, MI 49660

10. **Effect of Signing This Agreement: Authorizations.**

- 10.1 The individuals signing below represent that they are duly authorized to enter into this Agreement on behalf of LGC and Buyer, respectively, and that this Agreement is a valid and enforceable contract binding upon the parties.

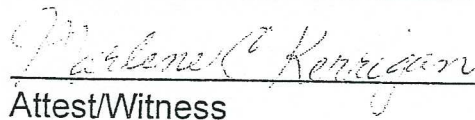
11. Special Provisions.

Date: 2.26. 02


LIEBERMAN GAMING COMPANY

By: 


Date: 2/26/02


Attest/Witness

Buyer: LITTLE RIVER BAND OF OTTAWA INDIANS,
dba; LITTLE RIVER CASINO & RESORT

By: 
Title: owner

Date: 3/1/02


Attest/Witness