



Little River Band of Ottawa Indians

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

Resolution No. #02-0320-08

Authorizing the Tribal Ogema and the Tribal Council Speaker to Execute an Application for Irrevocable Standby Letter of Credit, a Reimbursement and Security Agreement (including Exhibit A), Security/Pledge Agreement, and Custodial Agreement with National City Bank of Michigan/Illinois in Connection and Agreeing to a Limited Waiver of Sovereign Immunity to Permit Enforcement of Such Obligations

WHEREAS, the Little River Band of Ottawa Indians (the "Band") is a federally recognized Indian Tribe whose status was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156 (25 U.S.C. §§ 1300k et seq.); and

WHEREAS, the Band adopted a new Constitution pursuant to a vote of the membership on May 28, 1998, which Constitution became effective upon its approval by the Assistant Secretary – Indian Affairs on July 10, 1998; and

WHEREAS, under the Constitution, the Tribal Ogema is authorized to consult, negotiate, and execute agreements and contracts on behalf of the Band, which agreements must be approved or ratified by the Tribal Council to be effective; and

WHEREAS, the legislative powers of the Band are vested in a Tribal Council made up of elected representatives who act in accordance with the Constitution of the Band and who are empowered to authorize and ratify agreements and contracts on behalf of the Band; and

WHEREAS, the Band has undertaken construction of an expansion to the Little River Casino Resort and has approved an agreement for Carlson Hospitality Worldwide Procurement Group, Inc. d/b/a "Provisions" to advance funds to purchase furnishings, fixtures and equipment on behalf of the Band and for the Band to reimburse Provisions, which agreement requires the Band to secure an irrevocable standby letter of credit guaranteeing Provisions right to repayment; and

WHEREAS, in connection with obtaining that letter of credit, Band will be required to enter into certain agreements with National City Bank of Michigan/Illinois (hereafter "National City"), including a Custodian Agreement, an Application for Irrevocable Standby Letter of Credit, a Reimbursement and Security Agreement, including Attachment A to that Agreement, and a Security/Pledge Agreement; and

WHEREAS, under the terms of that Custodian Agreement, the Band will be establishing a custodial account and transferring undesignated General Funds to that custodial account to be held by National City as security for the Letter of Credit; and

WHEREAS, under the terms of Reimbursement and Security Agreement and the Security/Pledge Agreement, the Letter of Credit will be a limited obligation of the Band secured by and payable only from funds held in the "Custodial Account"; and

WHEREAS, pursuant to Attachment A to the Reimbursement and Security Agreement and Section 14 of the Security/Pledge Agreement, the Band will agree to have disputes arising under those agreements resolved in the United States District Court for the Western District of Michigan or through binding arbitration enforceable in the Commercial Division of the Tribal Courts; and

WHEREAS, pursuant to Article XI, Section 1 of the Constitution provides that the Tribal Council "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 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 National City for the specific purpose of enforcement and/or interpretation of the documents relating to that Letter of Credit 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 BE IT 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 an Application for Irrevocable Standby Letter of Credit, a Reimbursement and Security Agreement (including Exhibit A), Security/Pledge Agreement, and Custodial Agreement with National City Bank of Michigan/Illinois in connection with obtaining a Letter of Credit with a face value not to exceed \$1,275,021.46.

IT IS FINALLY RESOLVED THAT the Tribal Council agrees to a limited waiver of sovereign immunity, as described in Attachment A to the Reimbursement and Security Agreement and Section 14 of the Security/Pledge Agreement, and consents to have disputes between the Band and National City Bank of Michigan/Illinois, which arise under the above-agreements, resolved in the United States District Court for the Western District of Michigan (including all federal courts to which decisions of the United States District


Court for the Western District of Michigan may be appealed), or in the event National City determines in good faith that the United States District Court for the Western District will not have jurisdiction, the Tribal Council consents to have disputes between the Band and National City settled by arbitration, including the limitation on recourse provisions, and would further provide for enforcement of arbitration awards in the Commercial Division of the Tribal Court in accordance with the Tribal Arbitration Code. In providing such a waiver, the Tribal Council agrees to an unconditional and irrevocable waiver by the Band of the application of the doctrines of exhaustion of tribal remedies and any right of comity with respect to any of the Band's Courts.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 5 FOR, 3 AGAINST, 0 ABSTAINING, and 1 ABSENT, at the Closed Meeting of a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on March 20, 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



Stephen Parsons, Council Speaker

Attest:

Distribution: Tribal Council Records
Tribal Court
Tribal Ogema
Legal Department
National City Bank of Michigan/Illinois