



**Little River Band of Ottawa Indians**

PO Box 314  
Manistee MI 49660-0314  
(616) 723-8288

Resolution No. #98-1108-04

**Authorizing the Tribal Chairperson/Speaker to Execute  
Loan Documents (Agreement, Master Advance Note and/or Variable Rate  
Installment Note for the Purpose of Funding Development Costs for  
The Class II/Interim Gaming Facility and Agreeing to a  
Limited Waiver of Sovereign Immunity**

WHEREAS, the Tribe'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 Tribe has determined that the establishment and operation of a tribal gaming enterprise under the IGRA will assist the Tribe generate the revenues needed to establish an effective tribal government, provide necessary employment opportunities services for tribal members and promote tribal self-sufficiency; and

WHEREAS, the Tribe does not presently possess financial resources with which to design, construct and develop a Class II/Interim Gaming Facility on the Tribe's lands; and

WHEREAS, the Tribe adopted a new 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 Tribal Council, pursuant to Article IV, Section 7 (f) and (i) of the Constitution of the Little River Band of Ottawa Indians ("Tribal Constitution"), is authorized to manage the economic affairs and fiscal affairs of the Tribe; and

WHEREAS, the Tribe requires a Loan in an amount not to exceed \$5,000,000.00 to cover the expenses associated with the construction and development of the Tribe's Class II/Interim Gaming Enterprise as provided in a Development and Construction Agreement entered into by the Tribe and North American Gaming; and

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WHEREAS, Comerica Bank has agreed to fund a loan ("Development Loan") under terms and conditions which are suitable to the Tribal Council; and

WHEREAS, the effectuation and protection of the parties' respective rights and obligations under the "Construction/Development Loan" provided by the Bank requires the execution of a Letter Agreement, Master Advance Note and Variable Rate-Installment Note; and

WHEREAS, the Letter Agreement and Master Advance Note provides for the payment of accrued interest, at a rate of one percent below the Bank's prime rate, on the Note by the Tribe during the term of such Note (November 1998-May 2000); and

WHEREAS, the Letter Agreement and Variable Rate-Installment Note provide for the payment of installments of principal and accrued interest on the Note by the Tribe during the term of such Note (May 2000-May 2002); and

WHEREAS, the Tribal Council understands that the primary security for the Loan consists of a personal Guarantee provided by North American Gaming Company's principals; and

WHEREAS, Little River Band of Ottawa Indians, as a federally recognized Indian Tribe, is immune from suit for damages in federal, state or tribal courts; and

WHEREAS, Article XI, Section 1 of the Little River Band of Ottawa Indians' 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 further understands that, upon the occurrence of an event of default under the Letter Agreement, Master Advance Note and Variable Rate-Installment Note, that the Bank may only seek enforcement and collection of amounts owing under said Loan documents from: income received by the Tribe from gaming operations funded by the loan proceeds; and

WHEREAS, the Tribal Council further understands that the Tribe would be agreeing to waive its sovereign immunity from suit in Tribal or state courts for purposes of enforcement and/or interpretation of the specific written rights and duties of the Tribe under the terms of the Master Advance Note, Variable Rate-Installment Note and the Letter Agreement related to the Loan and that the Tribe would agree to have those documents construed and enforced in accordance with the laws of the State of Michigan; and

WHEREAS, the Tribal Council has determined that the specific waiver of sovereign immunity requested by Comerica Bank is in furtherance of important Tribal purposes and tribal business enterprises.

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby authorizes the Tribal Council Chairperson/Speaker, Robert Guenthardt, to execute the Letter Agreement, the Master Advance Note, and Variable Rate-Installment Note to allow performance by Comerica Bank, or other financial institution offering the same or more favorable terms, of a Development Loan in an amount not to exceed \$5,000,000.00, for the expenses and purposes specified in a Development and Construction Budget approved by the Tribal Council in accordance with the Development and Construction Agreement.

IT IS FURTHER RESOLVED THAT the Tribal Council, by authorizing the Tribal Council Chairperson/Speaker to execute such documents, expressly agrees to waive its sovereign immunity from suit for the sole purpose of enforcement and/or interpretation of the Tribe's written rights and duties under the terms of the Letter Agreement, Master Advance Note and the Variable Rate-Installment Note. Provided, However That such waiver of immunity limit include limitations on recourse, which limits the Bank's ability to collect money damages from the Tribe to income and other revenues generated by the Tribal Gaming Facility to be developed with such funds. Provided Further, That any subsequent agreements, including any Permanent Loan Agreement, which require the Tribal Government to waive its sovereign immunity will not be effective until the same are specifically authorized by subsequent Tribal Council Resolution.

### Certificate of Adoption

This resolution was adopted by the Tribal Council of the Little River Band of Ottawa Indians at its Regular Meeting held in Muskegon, Michigan on November 8, 1998 by a vote of 7 in favor, 0 opposed, 0 absent and 0 abstentions. A quorum of the Tribal Council being present for such vote.

Date: 11/8/98

Kathy Berentsen  
Kathy Berentsen, Vice-Chairperson

Attest:

Charles Fisher  
Charles Fisher, Council Secretary