

ORIGINAL



Little River Band of Ottawa Indians

PO Box 314

Manistee MI 49660-0314

(616) 723-8288

Resolution No. #99-0722-03

**Authorizing the Tribal Ogema, or in his absence,
the Tribal Council Speaker, to Execute Loan Documents for
the Purpose of Funding Operating Cash Needs of the Tribe's Class III
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 III 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 line or credit loan in an amount not to exceed \$400,000.00 to cover ongoing cash needs of the Tribe's Class III Gaming enterprise, known as "Little River Casino Resort"; and

WHEREAS, National City Bank of Michigan/Illinois (the "Bank") has agreed to fund a loan ("Line of Credit Loan") under terms and conditions which are suitable to the Tribal Council; and

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WHEREAS, the effectuation and protection of the parties' respective rights and obligations under the "Line of Credit Loan" provided by the Bank requires the execution of Promissory Note and other documents (collectively the "Loan Documents"); 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 loan documents, that the Bank may only seek enforcement and collection of amounts owing under said Loan Documents from: the gross income of Little River Casino Resort and accounts established by the Casino with the Bank; and

WHEREAS, the Tribal Council further understands that the Tribe would be agreeing to waive its sovereign immunity from suit in federal and Tribal courts, in accordance with the dispute resolution provisions contained in Exhibit A to the Note, for limited purpose of enforcement and/or interpretation of the specific written rights and duties of the Tribe under the terms of the Loan Documents 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 National City 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 Ogema, or in his absence, the Tribal Council Speaker, to execute the Loan Documents to allow performance by National City Bank of Michigan/Illinois of a "Line of Credit" Loan in an amount not to exceed \$400,000.00.

IT IS FURTHER RESOLVED THAT the Tribal Council, by authorizing the Tribal Ogema, or in his absence, the Tribal Council 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 Loan Documents.

IT IS FURTHER RESOLVED THAT the Tribal Council authorizes the General Manager (Tom Davis) or Chief Financial Officer (Tim Viles) for Little River Casino to request draws against the Loan, provided the instrument requesting such draws is countersigned by at least one of the Tribal Council Representatives (Connie Waitner or Elaine Porter) serving on the Business Board for Little River Casino Resort.

Certificate of Adoption

This resolution was adopted by the Tribal Council of the Little River Band of Ottawa Indians at its Regular Session held at the Little River Community Center in Manistee, Michigan on July 22, 1999 by a vote of 5 in favor, 3 opposed, 0 absent and 0 abstentions. A quorum of the Tribal Council being present for such vote.

Date: 7/22/99


Charles Fisher, Council Recorder

Attest:


Donald Koon, Councilor

"Exhibit A"
Jurisdiction, Waiver of Immunity and Right of Setoff

Section 1. Waiver of Immunity: Consent to Jurisdiction.

(a) The Tribe expressly submits to and consents to the jurisdiction of the Federal District Court for the Western District of Michigan (including all federal courts to which decisions Federal District Court for the Western District of Michigan may be appealed) for the sole purpose of permitting the Bank to bring action to interpret and enforce the Tribe's obligations under this Note, or any amendment or supplement thereto or hereto. In the event a suit is commenced on this Note in the United States District Court for the Western District of Michigan, the Tribe covenants that it will not dispute the jurisdiction of the United States District Court for the Western District of Michigan and all federal courts to which decisions of the United States District Court for the Western District of Michigan may be appealed. The Tribe further covenants that if a suit is commenced on or regarding the subject matter of this Note, it will stipulate and consent to the jurisdiction of the federal courts as describe above.

(b) Except as herein provided for entry of judgment on and enforcement of an arbitration award, the Tribe expressly waives jurisdiction of the Little River Band of Ottawa Indians' Tribal Court with respect to any action commenced on this Note, or any amendment or supplement thereto or hereto, or regarding the subject matter hereof or thereof.

(c) In the event the United States District Court for the Western District of Michigan will not accept jurisdiction as described above, any controversy or claim arising out of or relating to this Note shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") in accordance with the procedures described below.

Section 2 Arbitration.

(a) The Bank and Tribe agree that any dispute, controversy or claim arising out of or relating to this Note, or any amendment or supplement thereto or hereto, that cannot be resolved through the negotiations, or in the federal courts as provided above, 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.

(b) *Place of Arbitration.* The arbitration shall take place in Manistee County, Michigan or such other place as the parties may agree.

(c) *Choice of Law.* The law to be applied in said arbitration shall be the law of the state of Michigan, including the Uniform Commercial Code, without reference to any choice of law provisions.

(d) *Selection of Arbitrators.* Each party shall notify the other party of its nominee for an arbitrator. If the Bank and Tribe can agree upon the nomination of a single arbitrator for the dispute, such person shall serve as sole arbitrator. If the Bank and Tribe do not 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.

(e) The arbitrator or arbitration panel shall have the power to administer oaths to witnesses, to take evidence under oath, and, by majority vote, to issue subpoenas to compel the attendance of officers or employees of the Tribe, employees of the Bank or for the production of books, records, documents and other relevant evidence by either party. The Tribe and the Bank agree to comply with such subpoenas.

- (f) The arbitrator or arbitration panel shall follow the rules of discovery and evidence as established by the AAA, and if the AAA has not established any such rules, then arbitration shall follow such rules as the United States District Court for the Western District of Michigan would apply.
- (g) The arbitrator or arbitration panel may enter an order after hearing granting any party to the dispute before it, temporary or permanent injunctive relief, or any other relief which the arbitrator or arbitration panel deems appropriate.
- (h) The arbitrator or arbitration panel shall hold hearings on the proceedings before it and shall give reasonable advance notice to the Tribe and the Bank by registered mail not less than five business days before any hearing. Appearances at a hearing waives such notice. The arbitrator or arbitration panel may hear and determine the controversy only upon evidence produced before it and may determine the controversy notwithstanding the failure of the Tribe or the Bank duly notified to appear. The Tribe and Bank are each entitled to be heard at all hearings, to present evidence material to the matter subject to arbitration, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at its own expense.
- (i) The arbitration decision shall be final and binding upon the Bank and Tribe unless, during or following completion of the arbitration proceedings, the Bank and Tribe have met and arrived at a different settlement of the dispute.
- (j) The costs of the arbitration shall be borne equally by the parties, unless the arbitrator(s) rule otherwise. In rendering its decision and award, if any, the arbitration panel shall not alter or otherwise modify the provisions of the Note.
- (k) *Waiver of Immunity to Enforce or Compel Arbitration.* Subject to the express provisions of this Note, the Tribe expressly waives its sovereign immunity for the purpose of compelling binding arbitration as provided in this Section, or enforcing any such arbitration award, and consents to be sued, in accordance with this paragraph, in the Tribal Court. If the Tribal Court fails to take the necessary steps to enforce the award within thirty days following application by the Bank, the Bank may seek enforcement of the award in the United States District Court for the Western District of Michigan or any other federal or tribal court of competent jurisdiction. The Tribe's waiver of its sovereign immunity in this Note only extends to disputes over the specific written rights and duties of the Bank and Tribe pursuant to this Note and any extensions or renewals of this Note. 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.

Section 3. Property and Funds Pledged and Assigned to Satisfy Enforcement Proceedings. Damages awarded against the Tribe in satisfaction of any enforcement proceedings under this Note shall be awarded only from the following: (i) The accounts of the Tribe established with the Bank for the Tribe's gaming enterprise (including checking, savings, or some other account); and (ii) Gross revenues of the Tribe derived from the operation of the gaming enterprise. The Tribe authorizes the Bank, to the extent permitted by applicable law, to charge or setoff all sums owing on the Note against any and accounts with the Bank or against Gross Revenues, with the exception of the minimum guaranteed monthly payment to be received by the Tribe under the management agreement as provided by 25 U.S.C. §2711(b)(3). The Tribe agrees to execute such financing statements or other instruments as may be reasonably required by the Bank in order to perfect the pledge and assignment so granted. Damages awarded against the Tribe shall not constitute a lien upon or be collectable from any other income or assets of the Tribe, except with the Tribe's consent.

Section 4. Recipient of Waiver. The waiver of sovereign immunity in this Note is limited to:

- (i) The Bank; and
- (ii) Any assignee of a valid assignment of the Bank's interest in this Note.

Section 6. Time Period. The waiver granted in this Note shall commence as of the date of execution of the Note and shall continue until the Bank receives payment in full of all amounts owing on the Note and all other amounts payable by the Tribe under this agreement.