Gaming Enterprise(s) Board of Directors Act of 2010
Ordinance #10-800-03

Article I. Purpose; Findings.

1.01. *Purpose.* The purpose of this Act is to establish a Gaming Enterprises Board of Directors to provide monitoring, oversight, and direction regarding the management of the gaming enterprise in order to maximize the income for existing and future Gaming Enterprise(s) and the Tribe.

1.02. *Authority.* The Tribal Council of the Little River Band of Ottawa Indians adopts this Ordinance in accordance with the following authority:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" Article IV, Section 7(a); and

b. Article V, Section 5(a)(2) of the Constitution provides that the Ogema shall oversee the administration and management of the Tribal government in accordance with the laws, resolutions and motions adopted by the Tribal Council; and

c. Article V, Section 5(a)(8) of the Constitution provides that the Ogema shall manage the economic affairs, enterprises, property, and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council; and

d. Article V, Section5(a)(4), of the Constitution provides that the Ogema has the power, with the approval of the Tribal Council, to appoint members of regulatory commissions and heads of subordinate organizations created by ordinance; and

e. Article V, Section 7(f), of the Constitution provides that Tribal Council has the power to create by ordinance regulatory commissions or subordinate organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band; and

f. Article IV, Section7(h), of the Constitution provides that the Tribal Council has the power to approve appointments to regulatory commissions and heads of subordinate organizations created by ordinance.

1.03. *Findings.* The Tribal Council finds that:

a. The Indian Gaming Regulatory Act identifies that a principal goal of federal Indian policy is to promote Tribal economic development, tribal self-sufficiency, and strong Tribal Governments, and has set forth limitations regarding the use of gaming revenues by Indian Tribes, as well as imposing on Tribes the manner in which they must operate their gaming enterprises; and

b. The Gaming Enterprise(s) continue to grow and expand as the Tribe's primary source of governmental revenue and jobs; and

c. The nature of the Gaming Enterprise(s)' 24-hour year-round operations requires constant monitoring, oversight, and direction; and

d. The establishment of a Board of Directors for the Gaming Enterprise(s) to provide appropriate monitoring, oversight, and direction regarding the management and operation of any and all existing and future Gaming Enterprise(s) will serve the best interests of the Tribe by maximizing generation of income from gaming for the benefit of the Tribe, reducing expenses where appropriate, and minimizing the potential for political interference of business decision-making, all in accordance with the goals and budgets established by the Tribal Council by law or resolution.

Article II. Adoption; Amendment; Repeal; Severability.

2.01. *Adoption.*

a. This Ordinance is adopted by resolution #10-0825-292, which repeals all previous versions of the Board of Directors Act of 2005, Ordinance #05-800-03 effective thirty (30) days from the date of adoption, and replaces that Act with this Ordinance #10-800-03.

b. Resolution #10-0915-310, which adopted amendments on an emergency basis to clarify the terms of office for members of the Interim Board of Directors, the First Board of Directors, and all subsequent Boards of Directors appointed in accordance with the provisions of this Ordinance.

c. Resolution #10-0922-318, which adopted amendments on an emergency basis to eliminate provisions of this Ordinance that required an Elected Official to establish a quorum for the Board of Directors to conduct business.

d. Resolution #11-0406-108, adopting amendments to define daily operational expenses; clarify when the Board is required to act by Resolution; and mandating that the General Manager be employed under a duly approved employment contract.

e. Resolution #11-0706-248, adopting amendments to define Construction Contracts and prohibit Tribal Government Employees from sitting on the board.

f. Resolution #11-0824-307, permanent adoption of amendments to require that the Ogema fill Seat #1 on the Board.

g. Resolution #11-1026-370, adopting emergency amendments authorizing the Board of Directors to release necessary financial information to support the Resort's position during collective bargaining negotiations.

h. Resolution #11-0208-026, permanently adopting emergency amendments approved by Resolution #11-1026-370.

i. Resolution #13-1204-368, adopting amendments to allow the Ogema to delegate his seat on the Board to a Member of Tribal Council.

g. Resolution #14-0827-266, adopting emergency amendments that elected officials shall sit in a non-voting capacity, increasing the number of Members from five to seven, listing qualifications for at-large Board Members and allowing for the appointment of non-Tribal Members in the event that no qualified Tribal Members found to accept appointment.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution, the Administrative Procedures Act, and any other laws or rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Repeal.* The following Resolutions are hereby repealed: Resolution #04-0721-307, Resolution #04-0922-380, Resolution #04-1013-405, Resolution #04-1027-432, Resolution #05-720-328, Resolution #09-0325-84, and Resolution #09-0325-85. This Ordinance may be repealed in accordance with the procedures set forth in Article IV of the Administrative Procedures Act – Ordinance #04-100-07.

2.04. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.05. *Title.* This Ordinance shall be referred to as the "Gaming Enterprise(s) Board of Directors Act of 2010" ("Act").

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.

3.02. *At-Large Member* means a Member of the Gaming Enterprise Board who is not an elected official of the Tribe.

3.03. *Capital Expenditures* means the amount spent to add to the value of or extend the useful life of property, plant or equipment or to adapt it to a new or different use. Expenses that keep property, plant and equipment in an ordinarily efficient operating condition and do not add to its value or appreciably add to its useful life are not capital expenditures.

3.04. *Collective Bargaining Agreement* means a contract between a Gaming Enterprise and a labor organization regarding wages, hours, terms or conditions of employment pursuant to the Fair Employment Practices Code.

3.05. *Contract* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

3.06. *Daily Operational Expense* means those expenses identified in the budget as necessary to operate and manage the Enterprise on a day-to-day basis, and include but are not limited to: payroll; insurance premiums; utilities; and payments made in accordance with the terms of an approved contract.

3.07. *Elected Official*, as used in this Ordinance, shall mean the Ogema and any sitting Tribal Council member appointed to serve on the Gaming Enterprise Board of Directors.

3.08. *First Board of Directors* shall mean the First Board appointed in accordance with Article XIV of this Ordinance.

3.09. *Gaming Enterprise(s)*, as used in this Ordinance, shall mean the Little River Casino Resort and any future facility at which gaming is authorized under Tribal, State, and/or Federal Law including, but not limited to, the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact(s), and the Tribal Gaming Ordinance. Gaming Enterprises are considered public employers, and are authorized to conduct activities including, but not limited to, the following:

a. Gaming activities authorized under the Tribal-State Gaming Compact;

b. Hotel and recreational activities;

c. Entertainment and conference activities;

d. Dining and banquet activities;

e. Activities reasonably related to subparagraphs (a) – (d) above; and

f. Other activities as may be authorized from time to time by resolution of the Tribal Council amending this ordinance.

3.10. *Gaming License Eligibility Standards*, as used in this Ordinance, shall mean the standards to be applied when determining whether elected officials are eligible to hold and/or maintain a gaming license. "Gaming License Eligibility Standards" shall include application of all Tribal and federal licensing eligibility requirements governing Primary Management Officials.

3.11. *Good Cause*, as used in this Ordinance as a basis for removal of a Member of the Board of Directors, shall have the meaning ascribed to it under Article V of this ordinance.

3.12. *Official Action* shall mean an action taken by Resolution or Motion approved by a majority of the Members of the Board of Directors present and voting at an official meeting.

3.13. *Official Capacity.* A Member of the Board of Directors is acting in his or her official capacity only when undertaking actions officially sanctioned and approved by a majority of Members of the Board of Directors present and voting at an official meeting.

3.14. *Primary Management Official* shall have the meaning ascribed to it under the Indian Gaming Regulatory Act, as amended from time to time.

3.15. *Public Employer* means a Gaming Enterprise or other subordinate economic organization, department, commission, agency, or authority of the Tribe engaged in any Governmental Operations of the Tribe.

Article IV. Board of Directors –Creation, Composition, Qualifications.

4.01. *Creation of the Board of Directors.* The Tribal Council hereby creates and establishes the Board of Directors for the Gaming Enterprise(s), to act as a subordinate organization of the Tribe in overseeing the Tribe's Gaming Enterprise(s), subject to the following conditions:

a. The Board of Directors and its Members shall be subject to the Constitution, laws, and resolutions of the Tribe, including the legislative authority of the Tribal Council to enact laws and resolutions and the executive authority of the Ogema to carry out the laws and resolutions enacted by the Tribal Council.

b. The Board of Directors and its Members shall be subject to all federal laws, or any laws promulgated pursuant to federal law, including but not limited to the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Ordinance of the Tribe, and all applicable laws,

regulations, internal operating procedures and minimum internal control standards.

c. The Members of the Board of Directors shall take an oath of office given by a member of the Judiciary of the Little River Band Tribal Court, and shall file a signed confidentiality statement with the Tribal Council Recorder.

4.02. *Composition of the Board of Directors.* The Board of Directors shall be comprised of seven (7) Members seated as follows:

a. *Elected Officials.* Two members of the Board of Directors shall be Elected Officials of the Tribe, specifically either the Ogema or a Member of Tribal Council. These Members shall serve on the Board in a non-voting capacity.

1. One (1) Member of the Board of Directors may be the Tribal Ogema. In the event that the Ogema declines to sit as a Member of the Board, then he or she shall appoint a Tribal Council member to sit in his or her place. Any appointment made under this subsection shall be approved by the Tribal Council and shall have no effect on subsection 4.02(a)(2) below.

2. One (1) Member of the Board of Directors shall be a sitting member of the Tribal Council, appointed by the Ogema and approved by the Tribal Council.

3. Elected Tribal officials serving on the Board of Directors shall not be required to hold a Gaming License issued by the Tribe's Regulatory Authority, but shall be required to meet all Gaming License Eligibility Standards as defined in Section 3.10 of this Ordinance.

b. *At-Large Members.* Five Members of the Board of Directors shall be at-large, and shall be appointed by the Ogema and approved by the Tribal Council.

1. The Ogema and Tribal Council shall ensure that every effort is made to appoint and approve individuals who possess relevant experience in the fields of business, finance, and/or the hospitality industry, with a particular emphasis on gaming facility experience

2. All at-large Members of the Board of Directors shall possess and maintain a Gaming License issued by the Gaming Commission or other Gaming Regulatory Agency of the Tribe.

c. *Officers; Chairperson; Vice-Chairperson.*

1. If the Ogema chooses to sit on the Board, he may serve as Chairperson of the Board. In the event the Ogema chooses to not sit on the Board, the Ogema shall appoint another Member of the Board to act as Chairperson. Any appointment made under this subsection shall require approval by Tribal Council.

2. The Office of Vice-Chairperson shall be filled by a Board Member duly seated on the Board of Directors.

d. The Tribal Council may elect to secure a bond and/or insurance covering activities of Members of the Board of Directors. All Members of the Board of Directors shall cooperate fully with the Tribe to secure bonding and/or insurance covering his or her activities as a Member of the Board of Directors.

e. The following individuals shall be prohibited from serving as a Member of the Board of Directors:

1. Any person who previously held a seat on the Board of Directors who was removed for good cause.

2. Any person previously disqualified from serving on the Board of Directors.

3. Any person sitting as a Commissioner on the Little River Band of Ottawa Indians Gaming Commission or other Tribal Gaming Regulatory Agency.

4. Any person employed by any Gaming Enterprise.

5. Any person employed by the Little River Band of Ottawa Indians Gaming Commission or other Tribal Gaming Regulatory Agency.

4.03. *Qualifications of Board Members.* Each Member of the Board, except for elected officials serving in a non-voting capacity, shall have one or more of the following qualifications:

a. At least 7 years of experience of executive management in the fields of finance, operations, hospitality or gaming or comparative fields; or

b. A comparable amount of executive experience that lends demonstrable skills to the management of a gaming enterprise.

Article V. Removal.

5.01. *Removal by Board of Directors.* The Board of Directors shall have the power to remove a Board Member for good cause upon a majority vote of the Board.

5.02. *Good cause*, as used in this ordinance as a basis for removal, means that a Member of the Board of Directors shall be removed for the following reasons by the Board of Directors:

a. Failure to attend four meetings of the Board of Directors, including special or emergency meetings, within a twelve month period.

b. Revocation of a professional license, permit or certification that reflects on the qualifications of the member to sit on the Board or reflects on the professional responsibilities and integrity of the member.

c. Conviction of a felony, or conviction of a misdemeanor act that impinges on the professional responsibilities and integrity of the member.

d. Failure to carry out the fiscal obligations mandated by this Ordinance.

5.03. *Removal Process.* The following process for removal of a member of the Board of Directors shall be strictly adhered to:

a. *Notification – Reasons for Removal.* The member of the Board of Directors subject to removal shall receive written notification that sets forth, with specificity, the reason(s) for removal. The Notification shall include, at a minimum, the conduct, incident, or action that is the basis for the removal and the date and place the conduct, incident or action occurred; any documents relevant to the conduct, incident, or action; and the names of witnesses or other individuals with information regarding the conduct, incident or action.

b. *Notification – Hearing Date and Time.* The Notification shall include the place, date and time of the meeting at which the Board Member may answer the charge for removal. Removal hearings shall only be heard in a closed session meeting; provided that the Board Member subject to removal may request a public hearing.

c. *Filing of Notification.* A copy of the Notification and any attachments shall be forwarded to the Tribal Council Recorder.

d. *Witnesses; Documents.* The Board Member who is the subject of a removal proceeding shall submit, no later than forty-eight (48) hours prior to the hearing date and time, a list of proposed witnesses that will be called and/or a copy of all documents that will be presented at the removal hearing. Witnesses, at the time of the hearing, shall swear an oath as to the truth and accuracy of their statements.

e. *Majority Vote Required.* A Board Member shall only be removed by majority vote.

f. *Final Decision.* A majority vote of the Board of Directors, or the Tribal Council in accordance with Section 5.05 below, to remove a Board Member shall be final and may not be appealed to the Tribal Court.

5.04. *Return of Property.* Any Board Member subject to removal shall immediately, upon receipt of notification of removal, return any property, including documents or records of any type, that rightfully belongs in the possession of the Board of Directors.

5.05. *Removal by Tribal Council.* In the event the Board of Directors fails to bring a charge for removal against a Board Member for good cause under Section 5.02 above, the Tribal Council may remove the Board Member in accordance with the procedures identified in Section 5.03.

Article VI. Automatic Disqualification.

6.01. *Automatic Disqualification - General.* Automatic disqualifications are non-discretionary and must be strictly enforced by the Chairperson, or the Vice-Chairperson presiding in the Chairperson's absence.

6.02. *Grounds for Disqualification.* A Board Member shall be automatically disqualified from serving on the Board of Directors when one of the following occurs:

a. The Board Member no longer holds or is eligible to hold a valid gaming license issued by the Tribe's gaming regulatory agency; or

b. The Board Member, if a Tribal Member at the time of his or her appointment, ceases to be an enrolled member of the Little River Band of Ottawa Indians; or

c. The Board Member is an elected official who no longer holds an elected office during that term.

6.03. *Disqualification – Procedure.* When a Board Member is subject to disqualification under Section 6.02 above, the Chairperson, or the Vice-Chairperson presiding in the Chairperson's absence, shall notify the Board Member in writing. The notification shall contain, at a minimum:

a. The reason(s) for the disqualification; and

b. Notice that the Board Member is disqualified effective immediately; and

c. Notice that the disqualification is not appealable to any hearing body.

6.04. *Return of Property.* Any Board Member disqualified from serving on the Board of Directors shall immediately return any property, including documents or records of any type, that rightfully belongs in the possession of the Board of Directors.

Article VII. Notice; Posting Required; Vacancies.

7.01. *Notification Required.* The Board of Directors is required to notify the Ogema and Tribal Council, in writing, when a vacancy is created by conclusion of a term, removal by the Board or Tribal Council, disqualification, or resignation of a member.

7.02. *Posting Notice of Vacancy for Applicants.* The Ogema shall post for 30 days in the Tribal newspaper, a notice that a vacancy on the Board of Directors exists, the preferred qualifications for the vacant position, the term of office for the vacant position, and the opening and closing dates of the application period. All applications received shall be forwarded to the Tribal Council with the appointments presented under Section 7.04 of this Ordinance. This Section shall not apply to appointments to the First Board of Directors appointed in accordance with this Ordinance.

7.03. *Vacancy Exists.* A vacancy exists upon removal by the Board of Directors or Tribal Council, automatic disqualification, resignation, expiration of term of office, or upon receipt of the notice of vacancy by the Ogema.

7.04. *Procedure for Filling Vacancies.* The following procedures shall be adhered to when filling vacancies on the Board of Directors:

a. The Board of Directors performs duties necessary to the activities of the Gaming Enterprise(s) such that it is important that vacancies be filled in an efficient and timely manner. The Ogema shall submit appointments for vacancies on the Board of Directors within 45 days of receipt of notice of a vacancy.

b. With respect to vacancies existing on the date of adoption of this ordinance, the Ogema shall submit appointments to Tribal Council for approval within seven (7) days after the date of adoption.

c. If the Ogema is unable to appoint individuals to fill vacancies on the Board, he or she shall identify the reasons why vacancies cannot be filled within the timelines set forth in this section, identify all attempts made to nominate qualified persons, and identify with specificity what qualifications each applicant is lacking.

d. If a vacancy occurs on the Board of Directors in one or more of the seats which requires a minimum qualification as set by Section 4.02 above, the remaining Members of the Board of Directors may continue to conduct business.

e. A vacancy in either an Elected Official or an At-Large seat shall be filled for the remainder of that term.

f. A vacancy in the Board of Directors' seat reserved for the Ogema due to removal, disqualification, resignation, or decision to appoint another Elected Official shall be filled by a Tribal Council Member in accordance with Section 4.02(a)(2) of this Ordinance.

Article VIII. Meetings; Minutes; Compensation.

8.01. *Quorum.* A quorum of the Board of Directors shall consist of any five (5) Members of the Board of Directors. A quorum shall be required to conduct business.

8.02. *Meetings.* The Board of Directors shall hold regularly scheduled meetings at least once per month. The Board may convene special or emergency meetings as necessary.

8.03. *Requirement to Attend Meetings.* All Board Members shall participate in all regularly scheduled monthly meetings in order to be compensated. Board Members may participate in meetings by telephone, upon approval of the remaining Board Members, when conditions prohibit attending in person.

8.04. *Procedures.* The Board of Directors shall be authorized to establish its own meeting procedures not inconsistent with this Ordinance; provided that the Board of Directors shall act only by Resolution under the following circumstances:

a. When approving contracts and agreements in accordance with Sections 9.03 and 11.03; and

b. When authorizing a waiver of the sovereign immunity of the Gaming Enterprise(s) in accordance with Section 9.03 and Article X; and

c. When approving and authorizing execution of Collective Bargaining Agreements in accordance with Section 9.03 and Article X; and

d. When authorizing expenditures in accordance with Section 9.03.

8.05. *Minutes.* The Board of Directors shall prepare minutes of all open and closed session meetings which shall describe with specificity all official actions taken by the Board, and shall memorialize all discussions related to those official actions. Copies of the Board of

Directors' minutes shall be submitted to Tribal Council for acceptance to the record in a timely manner.

8.06. *Compensation.* Each at-large Member of the Board of Directors shall be paid reasonable compensation as authorized by Resolution of the Tribal Council subject to the following limitations:

a. Compensation for at-large Members of the Board of Directors shall not be diminished during any term of office.

b. The Ogema and Tribal Council Member(s) sitting on the Board of Directors shall not receive additional compensation for sitting on the Board.

c. Compensation shall be subject to the power of the Tribal Council to appropriate funds for such purposes.

d. In the event that an elected Tribal official sitting on the Board is not re-elected to his or her Tribal government position, he or she shall be paid the same compensation as at-large Members of the Board of Directors for a period of not more than sixty (60) days following the swearing–in of the new Ogema and/or Tribal Council, consistent with the hold-over provision in Article XIV below.

Article IX. Responsibilities and Duties.

9.01. *Responsibilities.* The Board of Directors shall be responsible for the following:

a. To ensure compliance with the laws and resolutions enacted by the Tribal Council, including any goals for the Gaming Enterprise(s) established by the Tribal Council; and

b. to ensure compliance with all applicable laws and regulations, including the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Ordinance of the Tribe, and all applicable laws, regulations, internal operating procedures, policies and minimum internal control standards; and

c. to account for and transfer, or to direct the accounting and transfer of, all revenues generated by the Gaming Enterprise(s), excluding authorized operating funds, on at least a 48-hour basis to an account or accounts authorized and established by the Tribal Council by law or resolution; provided that such transfers shall be made according to written procedures established by the Board of Directors which shall be subject to modification by the Tribal Council by law or resolution; and,

d. to increase the number of Tribal Members employed by the Gaming Enterprise(s) in accordance with the Indian Preference in Employment Ordinance; and,

e. to increase the number of Tribal Members employed by the Gaming Enterprise(s) in management level positions in accordance with the Indian Preference in Employment Ordinance; and,

f. to maintain a consistent and regular attendance record; and,

g. to be held accountable, to the highest degree, for the accuracy and thoroughness of the records and reports of the Gaming Enterprise(s); and,

h. to be responsible for the successful overall direction and operation of all activities of the Gaming Enterprise(s) in accordance with the laws and resolutions enacted by the Tribal Council.

9.02. *General Duties.* The Board of Directors shall:

a. create, develop, and implement an effective strategy of business organization for the Gaming Enterprise(s) including setting objectives for future growth and expansion in accordance with the Annual Operating Plan and Annual Budget approved by the Tribal Council; and,

b. ensure the quality of management activities and operations in all areas of the Gaming Enterprise(s); and,

c. have all duties and responsibilities customary for a Board of Directors of a gaming, restaurant, hotel, and entertainment enterprise, including responsibility for the overall operation of the Gaming Enterprise(s), subject to any limitations or prohibitions set forth in this Ordinance.

9.03. *Specific Duties.*

a. *General Manager.* The Board of Directors shall have the power to hire a General Manager for the Little River Casino Resort in accordance with the laws and resolutions of the Tribe. The Board of Directors shall enter into an employment contract with the General Manager; provided, that such contract shall be subject to ratification by the Tribal Council. The Board of Directors shall evaluate the performance of the General Manager on an annual basis or more frequently as needed. The Board of Directors shall have the power to terminate the employment of the General Manager in accordance with the laws and resolutions of the Tribe.

b. *Primary Management Official Employment.* The General Manager shall have the power to employ Primary Management Officials for the Gaming

Enterprise(s) in accordance with the laws and resolutions of the Tribe. Any employment contract entered into in accordance with this Section shall be ratified by the Board of Directors. The Board of Directors shall be provided the evaluation reports regarding the performance of all Primary Management Officials on an annual basis or more frequently as needed. The General Manager shall keep the Board informed of any matters concerning performance of primary management official employees

c. *Personnel Manual.* The Board of Directors shall have the power to approve and amend the Personnel Manual for the Gaming Enterprise(s), subject to the overriding authority of the Tribal Council to alter such Personnel Manual by law or resolution. The Board of Directors shall provide at least a 30-day advance notice to the Ogema and Tribal Council of all proposed amendments to the Personnel Manual.

d. *Grievance Procedures.* Within thirty (30) days of the effective date of this Ordinance, the Board of Directors, in consultation with the General Manager, shall prepare and forward to Tribal Council for approval a comprehensive Grievance Procedure Policy which clearly identifies what personnel actions may be grieved. At a minimum, the Policy shall create a Board of Review made up of Enterprise employees who shall be authorized to hear grievances and make binding decisions. Any grievances pending before the Board of Directors on the date this Ordinance goes into effect shall be stayed and held in abeyance until a Board of Review has been created. Employees within a bargaining unit represented by an exclusive bargaining representative on or after the effective date of this Ordinance shall be exempt from application of this Grievance Procedure Policy.

e. *Collective Bargaining Agreements; Contracts.* The Board of Directors is expressly delegated the authority to enter into Collective Bargaining Agreements for the Gaming Enterprise(s) on behalf of the Tribe in accordance with Article X of this Ordinance. Collective Bargaining Agreements shall only be approved by a duly authorized Resolution which shall be forwarded to the Tribal Council Recorder for filing with the Board's Monthly Report.

1. *Release of Financial Information.* The Board of Directors is expressly delegated authority to release necessary financial information to support the Little River Casino Resort's position(s) during any collective bargaining process. Financial information released shall be subject to the confidentiality provisions under Article XVI of the Fair Employment Practices Code.

f. *Contracts.* The Board of Directors shall have the power to approve contracts up to and including $500,000.00 without Tribal Council approval subject to those limitations identified in Article XI of this Ordinance.

g. *Expenditures.* The Board of Directors shall authorize all Gaming Enterprise capital expenditures, and shall authorize all other expenditures in excess of $50,000.00, excluding budgeted daily operational expenses.

9.04. *Additional Duties of Chairperson and Vice-Chairperson.* In addition to all other duties of the Board of Directors contained in this Ordinance, the Chairperson, or in his or her absence the Vice-Chairperson, shall be responsible for carrying out the following additional duties:

a. *Mandatory Reporting Requirements.* Ensuring the accuracy and timely submission of all mandatory budgets and reports in accordance with the schedules set forth in XII of this Ordinance.

b. *Mandatory Distributions.* Ensuring the accuracy and timeliness of all mandatory distributions of gaming revenues in accordance with the schedules set forth in Article XIII of this Ordinance.

c. In the event that any mandatory distribution or reporting requirements are not met in accordance with the provisions of this Ordinance, then the Chairperson, or Vice-Chairperson in his or her absence, shall submit to the Tribal Council a comprehensive Corrective Action Plan which, at a minimum:

1. identifies with specificity the individual(s) responsible for the Gaming Enterprise's failure to comply with the provisions of this Ordinance;

2. identifies with specificity any disciplinary action taken against the responsible individual(s); and

3. identifies with specificity what action the Board has taken to avoid future non-compliance with the provisions of this Ordinance; and

4. a Corrective Action Plan submitted under this Section shall be delivered to the Tribal Council Recorder within three (3) business days of the date of default. The Tribal Council Recorder shall place the matter on the next available Tribal Council closed session agenda for discussion.

Article X. Limited Authority to Waive Sovereign Immunity.

10.01. *Limited Delegation of Authority – General.* The Tribal Council expressly delegates its authority to the Board of Directors to waive or limit the right of the Gaming Enterprise(s) to be immune from suit in accordance with Article XI, Section1 of the Constitution, subject to the limitations contained in this Article.

10.02. *Authority.* The Board of Directors shall have limited authority to waive the sovereign immunity of the Gaming Enterprise(s) in accordance with the terms and limitations set forth in this Article in the following circumstances:

a. The Board of Directors shall have limited authority to execute Collective Bargaining Agreements for the Gaming Enterprise(s) on behalf of the Tribe. To the extent a Collective Bargaining Agreement provides for a waiver of the Tribe's sovereign immunity, the Board is authorized to execute such a waiver, but only to the extent that such a waiver is consistent with the waiver of sovereign immunity provided by Article XVI of the Fair Employment Practices Code, or any amendments thereto.

b. The Board of Directors shall have the additional limited authority to waive the sovereign immunity of the Gaming Enterprise(s) only when contracting for essential daily operational needs.

10.03. *Limitations on Waiver Authority.* Any waiver of sovereign immunity shall be subject to the following limitations in order to be valid and enforceable:

a. A waiver of sovereign immunity authorized in accordance with Section 10.02(b) above shall be limited to claims against the Gaming Enterprise(s) and not the Tribe; and

b. The Board of Directors shall not have the authority to waive the right of the Gaming Enterprise(s) to be immune from suit for damages; and

c. For purposes of this Ordinance only, "damages" do not include remedies or awards for wages or other "make whole" remedies that employees may be entitled to recover pursuant to a Collective Bargaining Agreement entered into pursuant to Article XVI of the Fair Employment Practices Code.

10.04. *Procedure.* Only waivers of the sovereign immunity of the Gaming Enterprise(s) that strictly comply with the procedures set forth in this Section shall be valid and enforceable:

a. The Board of Directors shall only waive the sovereign immunity of the Gaming Enterprise(s) by a duly authorized resolution which contains the following information:

1. The precise waiver and any limitation(s) to the wavier as identified in the contract or Collective Bargaining Agreement; and

2. The forum and choice of law which will govern claims or disputes.

b. A copy of the authorizing Resolution shall be forwarded to the Tribal Council Recorder for filing with the Board's Monthly Report.

Article XI. Limitations to Authority and Access.

11.01. *Official Action Required.* No Member of the Board of Directors shall be authorized to act independently or in the absence of an official action taken by roll call vote.

11.02. *Limitations on Access.* The Board of Directors shall not be authorized to access pits, cage, surveillance, count rooms, vaults, and behind bars serving food and/or alcohol in any Gaming Enterprise.

11.03. *Limitations on Contracting Authority.* The Board of Directors shall not have the power to enter into or approve any contracts for legal counsel or construction contracts, nor may the Board enter into any form of contract or agreement or initiate negotiations with any municipality, nation, Indian Tribe, state or body politic, without the approval of the Tribal Council. Contracts and agreements shall only be approved by a duly authorized Resolution which shall be forwarded to the Tribal Council Recorder for filing with the Board's Monthly Report.

11.04. *Limitation on Authority to Terminate Employment.* The Board of Directors shall have no independent authority to intervene or intercede in any personnel related matter, including termination of employment. The Board shall retain authority related to employment of the General Manager in accordance with Section 9.03(a) of this Ordinance.

11.05. *Limitation on Authority to Obligate Funds.* The Board of Directors shall have no authority to obligate funds outside the parameters of the approved budget without prior approval by the Tribal Council including, but not limited to, funding connected to any bonus or profit sharing programs.

Article XII. Budgets; Reporting Requirements; Schedules – Required.

12.01. *Operation of Gaming Enterprise(s).* The operation of the Gaming Enterprise(s) is governed by the provisions contained within this Article. No deviation from approved plans and budgets shall occur unless approved by the Board of Directors and ratified by Tribal Council resolution.

12.02. *Annual Budget, Reports and Operating Plan.*

a. The Board of Directors shall prepare, or cause to be prepared, a separate proposed Annual Budget for each Gaming Enterprise in accordance with the power of the Ogema to prepare and present an annual budget to Tribal Council under Article V, Section 5(a)(5) of the Constitution, and in accordance with the power of the Tribal Council to approve or amend the annual budget; provided that the Annual Budget shall include at a minimum:

1. Statements of projected revenue and proposed expenses for the budget year, actual results for the prior year and actual results year-to-date plus the remaining budget for the current year;

2. The statement of revenue and expenses shall be presented by month, with summary statements of all departments and operating segments, detailed statements by department or other operating segment and detailed statements of monthly revenue by category;

3. Schedule of budgeted depreciation & capital replacement reserves;

4. Detail of budgeted capital expenditures by month including justification for each expenditure/project over $100,000.00;

5. Budget case flow statement by month;

6. Loan amortization schedule for the budget year;

7. Loan covenant compliance calculation by month for the budget year;
8. Schedule and discussion of risks and opportunities for the budget year; and

9. Budgeted Board of Directors expenditures including, but not limited to, compensation, expenses, office space requirements, staff costs, consulting fees and professional fees.

b. *Annual Marketing Report*. The annual marketing report shall report on the activities of the current fiscal year to date as well as for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Executive summary;

2. Situation analysis;

3. Market analysis / target markets;

4. Competitive analysis;
5. Marketing strategies;

6. Direct mail;

7. Player development activities; and

8. Event profiles and pro-formas.

c. *Annual Human Resources Report.* The human resources report shall report on the activities of the current fiscal year to date as well as for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Head count schedule;

2. Preference employment report;

3. Hiring plans;

4. Training schedules;

5. Employee development plans;

6. Proposed changes to employee benefits / plans;

7. Compensation plans;

8. Disclosure of any bonus type plans;

9. Status of Collective Bargaining Agreements and other union activities; and

10. Termination reports.

d. *Annual Operating Plan & Report.* The operating plan shall report on the proposed activities for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Operating goals for the enterprise;

2. Operating goals for each department;

3. Proposed changes in operations;

4. Status of Collective Bargaining Agreements and other union activities; and

5. Schedule and discussion of risks and opportunities.

e. *Schedule for Submission of Annual Budgets and Reports*. The annual budget and annual reports described in items (a) – (d) above shall be submitted to the Ogema and Tribal Council no later than September 1.

f. *Confidentiality*. Reports and statements submitted to the Ogema and Tribal Council under this subsection shall be treated as privileged and confidential and submitted only in Tribal Council closed meetings.

12.03. *Monthly Reports*.

a. The Board of Directors shall prepare, or cause to be prepared, a written monthly report to the submitted to the Ogema and Tribal Council. The monthly report shall include as attachments all Resolutions authorized by the Board during the reporting period, and shall summarize the status of all material aspects of the operation of each Gaming Enterprise. The monthly report shall include, at a minimum:

1. Statements of revenue and expenses that shall include:

i. Actual, budget and prior year results for the current month and year to date;

ii. Summary statement of all departments and other operating segments;

iii. Detailed statements by department or other operating segment;

iv. Detailed statement of revenue by category;

v. Cash flow statement; and

vi. Capital replacement reserve schedule.

2. Three month forecast of revenues by category;

3. Balance sheets for the current month, the prior month and the prior year end;

4. Schedule of actual capital expenditures vs budget for the current month and year to date;

5. Schedule of forecast capital expenditures vs budget for the next three months;

6. Loan covenant compliance schedule;

7. Management narrative of operations;

8. Schedule and discussion of risks and opportunities for the next three months;

9. Marketing Department Report, containing the impact of the current month's promotions, promotions scheduled for the next three months and entertainment venue and conference center use scheduled for the next three months;

10. Human Resources Report containing a headcount schedule, preference employment report, summary of new hires, headcount forecast for the next three months and termination reports; and

11. Status of Collective Bargaining Agreements and other union activities

b. *Schedule for Submission of Monthly Reports*. The monthly report shall be submitted no later than the 20th day following month end.

c. *Confidentiality*. Reports and statements submitted under this section, except for the Human Resources preference employement report, shall be treated as confidential and submitted to the Ogema and Tribal Council only in Tribal Council closed meetings.

12.04. *Applicable Accounting Standards*. The Board of Directors shall ensure that all budgets and reporting requirements contained in this Ordinances comply with generally accepted accounting practices in the market.

Article XIII. Mandatory Distributions.

13.01. *Mandatory Distributions*. The Board of Directors shall be responsible for ensuring the timely payment of all distributions required by applicable Federal, State or Tribal laws, Resolutions, Regulations, Compacts, or Agreements including, but not limited to, the following:

a. *Distributions Required by Compact(s).* Distributions mandated by any Compact between the Little River Band of Ottawa Indians and the State of Michigan shall be made in accordance with the terms of that Compact or any other Agreement entered into between the Tribe and the State

b. *National Indian Gaming Commission Payments.* All payments required to be made to the National Indian Gaming Commission, or any other payments mandated by the Indian Gaming Regulatory Act.

c. *Tribal Gross Gaming Tax.* The Tribal Gross Gaming Tax shall be distributed monthly in arrears to the Tribe along with a certificate signed

by an officer stating the amount of the tax and showing how such amount was computed. The distribution of the tax shall be made no later than twenty days after the end of each month and shall be based on percentages as set forth by Ordinance.

d. *Net Gaming Revenue*. Distributions of net gaming revenue to the Tribal Government shall be made monthly, no later than twenty days after the end of each month.

Article XIV. Terms of Office; Hold-Over Period.

14.01. *Terms of Office*. Each Member of the Board of Directors appointed under the provisions of this ordinance shall have a term of office in accordance with the following schedule:

a. Seat 1. Seat 1 shall be filled by the Ogema for a term of office consistent with the Ogema's term of office.

b. Seat 2. Seat 2 shall be filled by a Tribal Council member, who shall serve a term of office of two (2) years.

c. Seat 3. Seat 3 is an At-Large Member, who shall serve a term of office of four (4) years.

d. Seat 4. Seat 4 is an At-Large Member, who shall serve a term of office of four (4) years.

e. Seat 5. Seat 5 is an At-Large Member, who shall serve a term of office of four (4) years.

f. Seat 6. Seat 6 is an At-Large Member, who shall serve a term of office of four (4) years.

g. Seat 7. Seat 7 is an At-Large Member, who shall serve a term of office of four (4) years.

14.02. *Hold-Over Period.* To accommodate the appointment and approval provisions for seating Board Members, each member of the Board of Directors appointed and approved in accordance with this Ordinance may be held-over in office for a period not to exceed sixty (60) days.

CERTIFICATION

I, Sandy Mezeske, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Gaming Enterprise Board of Directors Act of 2010 permanently adopted by the Tribal Council on February 18, 2015.

Sandy Mezeske

Sandy Mezeske, Tribal Council Recorder

[Seal]