

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
7500 Odawa Circle
Harbor Springs, MI 49740

RESOLUTION # 022005-01
Waiver of Sovereign Immunity to Resolve 8% Payment Issue

WHEREAS to foster and enhance Tribal governmental operations and programs, the general welfare of the Tribe and its members, and Tribal economic development, the Little Traverse Bay Bands of Odawa Indians (“LTBB” or “Tribe”) operates a class III gaming operation under the Indian Gaming Regulatory Act and the Tribal/State Compact executed by Michigan Governor Engler on December 2, 1998, ratified by the Michigan Legislature on December 11, 1998 and made effective by Department of Interior Federal Register notification on February 18, 1999, 64 FR 8111, as amended with Federal Register notification on December 10, 2003, 68 FR 68944-01 (“Compact”).

WHEREAS the Compact includes a payment for exclusivity provision that provides that LTBB will pay the State of Michigan (“State”) an amount equal to 8% of the Tribe’s net revenue from electronic games of chance so long as “. . .no other person (except a federally-recognized Indian Tribe operating pursuant to a valid Compact under IGRA or a person operating in the City of Detroit pursuant to the Initiated Law of 1996, MCL 432.201) within the State lawfully operates electronic games of chance or commercial casino games. . .”

WHEREAS after concluding that the State’s introduction of club keno in bars, restaurants and other venues throughout the State triggered the termination of LTBB’s 8% payment obligation under the Compact, on August 22, 2004 the LTBB Tribal Council adopted a motion “to suspend further 8% payments to the State of Michigan and to deposit the 8% payment that would be due the State of Michigan on August 31, 2004 under the Compact if exclusivity still existed into a separate bank account until the issue as to whether the conditions for payment are still in place is resolved, and to pursue negotiations and/or litigation as determined by Legal Counsel to resolve this issue. The 8% will continue to be recorded on the accounting books as a liability of the casino until this issue is resolved.”

WHEREAS the State has expressed its position in written correspondence that its operation of club keno does not terminate LTBB’s 8% payment obligation under the Compact;

WHEREAS it is in the interests on LTBB, and presumably the State, to resolve this issue through litigation as amicably as circumstances allow;

THEREFORE BE IT RESOLVED that the Little Traverse Bay Bands of Odawa Indians waives its common law immunity from suit to allow it to be sued by the State of Michigan in the Federal District Court for Western District of Michigan in a declaratory judgment action to determine whether its 8% payment obligation under the Compact terminated upon the State's introduction of club keno;

FURTHER RESOLVED that LTBB agrees to be bound by any final judgment of the Federal Court, after exhaustion of all appeals, with regard to its 8% payment obligation under the Compact;

FINALLY RESOLVED that in the event the federal courts, after exhaustion of all appeals, determine that the State's club keno operation does not terminate the Tribe's 8% payment under the Compact, then LTBB will remit all amounts due the State withheld since August 31, 2004, along with any interest earned on the funds while held by the Tribe since that date.

CERTIFICATION

As Tribal Chairman and Tribal Secretary, we certify that this Resolution was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held February 20, 2005 at which a quorum was present, by a vote of 5 in favor, 0 opposed, 0 abstentions, and 2 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Frank Ettawageshik	x			
Beatrice Law				x
Alice Yellowbank	x			
Dexter McNamara	x			
Fred Harrington, Jr.	x			
Rita Shananaquet				x
Regina Gasco Bentley	x			

Date: February 20, 2005

Frank Ettawageshik, Tribal Chairman

Dexter McNamara, Tribal Secretary