

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
7500 ODAWA CIRCLE
HARBOR SPRINGS, MI 49740

TRIBAL RESOLUTION # 071011-01

AUTHORIZATION OF ODAWA CASINO RESORT
BUSINESS BANKING ACCOUNT AND TREASURY MANAGEMENT
DOCUMENTS AND LIMITED WAIVER OF SOVEREIGN IMMUNITY
AND RELATED MATTERS

WHEREAS, the Waganakising Odawak Nation, known as the Little Traverse Bay Bands of Odawa Indians ("LTBB") and its citizens are vested with inherent sovereignty and right to self-governance;

WHEREAS, LTBB is a federally recognized Indian Tribe under Public Law 103-324, and is a party to numerous Treaties with the United States, the most recent of which being the Treaty of Washington of March 28, 1836 (7 Stat. 491) and the Treaty of Detroit of 1855 (11 Stat. 621);

WHEREAS, The Tribal Constitution adopted February 1, 2005 (the "Constitution") provides the authority to the LTTB Tribal Council to establish the management of any and all economic affairs and enterprises, by Statute, that will further the economic development of the Tribe or its members;

WHEREAS, WOS 2010-021, Gaming Delegation and Authority Statute was enacted into law on December 20, 2010 (the "Statute"), and provides for the establishment of the Gaming Authority (the "Gaming Authority") as a subordinate entity of LTTB, in accordance with the Constitution;

WHEREAS, the Gaming Delegation and Authority Statute assigns the duty and authority to the Gaming Authority to establish and maintain bank accounts and to manage accounting and cash management as may be necessary for the operations of the Odawa Casino Resort and ancillary enterprises and activities and other LTBB owned enterprises or businesses related to gaming (collectively, the "Enterprises");

WHEREAS, the Gaming Authority desires to designate PNC Bank, National Association ("Bank") as a depository of the Gaming Authority with full authority to accept deposits of money, checks and other instruments (collectively "Items") to the credit of the Gaming Authority in accounts with the Bank in accordance with all written instructions of any person making a deposit, and subject to the present or

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subsequently amended Business Account Agreement between the Gaming Authority and the Bank (the "Account Agreement");

WHEREAS, the Gaming Authority wishes to enter into agreements with the Bank from time to time to furnish treasury management services to the Gaming Authority, which agreements may relate to one or more deposit accounts of the Gaming Authority with the Bank;

WHEREAS, the Gaming Authority now wishes to enter into the Bank's agreements for treasury management services including, without limitation, the Bank's Master Agreement for treasury management services, the Account Agreement, the Bank's Master Repurchase Agreement and the Bank's agreements for purchasing card or other commercial card services (collectively such agreements are termed the "Treasury Management Documents");

WHEREAS, one of the purposes of this Resolution is to authorize the execution of the Treasury Management Documents by the Gaming Authority;

WHEREAS, LTBB Tribal Council understands that the Bank requires certain representations and warranties and a limited waiver of sovereign immunity to assure enforceability of the Treasury Management Documents;

NOW THEREFORE, BE IT RESOLVED that the Little Traverse Bay Bands of Odawa Indians Tribal Council hereby approves the Treasury Management Documents and expressly authorizes execution of all such Treasury Management Documents by the Gaming Authority; and

BE IT FURTHER RESOLVED that the Little Traverse Bay Bands of Odawa Indians Tribal Council hereby approves and incorporates into this Resolution the entirety of Exhibit 1 attached hereto containing certain representations, warranties, and a limited waiver of sovereign immunity.

CERTIFICATION

As Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Tribal 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 July 10, 2011, at which a quorum was present, by a vote of 7 in favor, 0 opposed, 1 abstentions, 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Marvin Mulholland	<u>X</u>	_____	_____	_____
Belinda Bardwell	<u>X</u>	_____	_____	_____
Melvin L. Kiogima	<u>X</u>	_____	_____	_____
Gerald V. Chingwa	<u>X</u>	_____	_____	_____
Rita Shananaquet	<u>X</u>	_____	_____	_____
Aaron Otto	_____	_____	_____	<u>X</u>
John Bott	_____	_____	<u>X</u>	_____
Regina Gasco Bentley	<u>X</u>	_____	_____	_____
Julie Shananaquet	<u>X</u>	_____	_____	_____

Date: 7-10-11

Julie A. Shananaquet, Legislative Leader

Date: 7-10-11

Regina Gasco Bentley, Secretary

Received by the Executive Office on 7-11-11 by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005, the Executive concurs in this action of the Tribal Council

Date: 7-15-11

Ken Harrington, Tribal Chairperson

EXHIBIT 1
TO TRIBAL RESOLUTION # _____
OF THE LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COUNCIL

With respect to the attached resolutions (the "Resolutions"), the Little Traverse Bay Bands of Odawa Indians Tribal Council on behalf of the Little Traverse Bay Bands of Odawa Indians (the "Tribe") certifies to the Bank as follows:

1. **Representations and Warranties.**

(a) The Tribe represents that it is a federally recognized Indian Tribe organized under _____ Public Law 103-324 and that adopting the attached Resolutions and authorizing the Gaming Authority to enter into the Treasury Management Documents, as defined in the attached Resolutions will advance such purposes.

(b) The laws of the Tribe authorize the Tribe to adopt the Resolutions and to authorize and delegate authority to the Gaming Authority to enter into the Treasury Management Documents.

(c) The Tribe warrants to the Bank that the Resolutions have been duly authorized and executed and are binding on it.

(d) The Tribe has complied with all laws, all laws of the Tribe, the laws of the State of Michigan ("State"), and the United States applicable to the Tribe and the execution and delivery of the Treasury Management Documents.

(e) Except as expressly set forth herein, the Treasury Management Documents are in no other way altered, amended, or modified, and the same are hereby approved and ratified.

(f) The Tribe acknowledges that none of the treasury management services as described in the Treasury Management Documents are being provided or performed by the Bank on (a) the Tribe's "Indian Lands" as defined in the Indian Gaming Regulatory Act (25 U.S.C. §2703(4)) or National Indian Gaming Commission Regulations (25 C.F.R. §502.12), or (b) the Tribe's current, aboriginal or historical reservation lands and that as a result the Tribe's Tribal Court is without jurisdiction over the Bank's provision of such treasury management services.

2. **Nonimpairment.** The Tribe agrees that it shall not pass or adopt any resolutions or approve or allow any other action of the Tribe, or any of its officers, employees, agents, subdivisions, agencies or instrumentalities of any nature that shall impair the contractual rights of any party under the Treasury Management Documents. Upon execution of any Treasury Management Documents by the Gaming Authority, they shall become the valid and binding obligations of the Tribe, enforceable in accordance with their terms for purposes of tribal law and the laws of all other applicable jurisdictions.

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3. **Waiver of Sovereign Immunity and Consent to Jurisdiction.**

The Tribe hereby expressly waives its sovereign immunity from suit should an action be commenced under or relating to the Treasury Management Documents (as the same has been or may be amended, modified, or restated from time to time) or any documents required by the Bank relating to the Treasury Management Documents.

This waiver:

- (a) shall survive termination of the Treasury Management Documents
- (b) is granted solely to the Bank, its successors and assigns;
- (c) shall extend to inter alia, any judicial or non-judicial action, including, but not limited to: any lawsuit, arbitration, judicial or non-judicial foreclosure proceeding and judicial or non-judicial action to enforce the rights of the Bank under or relating to the Treasury Management Documents, and the assertion of any Claim in a court of competent jurisdiction or with any arbitrator or arbitration panel, if applicable, to enforce the obligations of the Tribe under or relating to the Treasury Management Documents;
- (d) shall be enforceable against the assets of the Enterprises to the extent necessary to satisfy the Gaming Authority's obligations under or relating to the Treasury Management Documents, together with any of the Enterprises property or assets held under or relating to the Treasury Management Documents, which shall be considered first to satisfy any obligations of the Authority under or relating to the Treasury Management Documents.
- (e) shall be enforceable only in a court of competent jurisdiction, including the courts of the State and any court to which an appeal therefrom may be made, and the federal courts in the State and any court to which an appeal therefrom may be made, or any arbitrator or arbitration panel, if applicable;
- (f) the Treasury Management Documents shall be construed in accordance with, and governed by, the internal laws of the jurisdiction set forth in each such document; and
- (g) the Tribe consents to the jurisdiction of the courts of the State, including any court to which decisions may be appealed, and the federal courts in the State, including any courts to which decisions may be appealed, with respect to any Claim under, arising out of, or relating to, the Treasury Management Documents. "Claim" means any dispute, claim or controversy under, arising out of or relating in any way to the Treasury Management Documents or any document or agreement related thereto or any actions contemplated to be taken in accordance therewith.

If the Bank shall so elect, in lieu of judicial resolution of any Claim, the Claim shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"), as modified by the following:

(i) Commencement of Proceeding/Selection of Arbitrators. The Bank, at its option, may commence an arbitration proceeding by the filing of a Statement of Claim (within the meaning of the AAA rules) with the AAA and serving a copy thereof on the other party. The parties shall have 20 days after such copy is served on them in which to agree upon a single mutually-acceptable arbitrator. If the parties are unable to agree on a single arbitrator within that time, the AAA shall thereafter appoint the arbitrator in accordance with its rules. Notwithstanding the foregoing, if the Claim involves a monetary amount in dispute of more than \$100,000, the parties shall appoint three arbitrators under the applicable Procedures for Large, Complex Commercial Disputes of the AAA.

(ii) Arbitrator Qualifications. No person shall be eligible to serve as an arbitrator if the person is related to, affiliated with or has represented in a legal capacity any party to the arbitration proceeding, the Bank or the Tribe. The arbitrators shall be attorneys at law admitted to practice and in good standing before the highest court of the State, who are experienced in advising clients in connection with agreements for treasury management services.

(iii) Discovery. Any party shall be permitted to engage in any discovery permitted under the rules of the AAA. However, all discovery shall be completed within 90 days following the initial filing of the Statement of Claim.

(iv) Hearing. The hearing on the arbitration shall commence and be completed no more than 30 days after the close of discovery, and the arbitration panel shall render an award in writing within 30 days of the completion of the hearing, which shall contain findings of fact and conclusions of law. If the arbitrators are not available to meet these deadlines then the parties shall select a mutually agreeable alternative date, such date to be as soon as possible after such applicable deadline. The arbitrator(s) appointed hereunder may award interim injunctive relief before the final arbitration award. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator(s)

(v) Enforcement. Proceedings to obtain injunctive relief while arbitration is pending or to enter judgment upon, enforce, modify or vacate any award or seek interim injunctive relief shall be commenced in (i) any circuit court of the State and any court to which an appeal therefrom may be made, or (ii) any federal courts in the State and any court to which an appeal therefrom may be made, and (iii) only with the consent of the Bank, all tribal courts of the Tribe, only if none of the foregoing courts shall have or will accept jurisdiction, or only to permit the compelling of arbitration as prescribed herein, or the enforcement of any judgment, decree or award of any foregoing court or any arbitration permitted herein. The Tribe hereby expressly and irrevocably waives any application of the exhaustion of tribal remedies or abstention doctrine and any other law, rule, regulation or interpretation that might otherwise require, as a matter of law or comity, that resolution of a Claim be heard first in a tribal court of the Tribe.

(vi) Prohibition on Punitive Damages. The Bank and the Tribe including the Authority, have equal bargaining power and have freely entered into the Treasury Management Documents after such consultation with their attorneys as they have deemed advisable, and therefore notwithstanding any other provision herein, the arbitrator shall have no power to award punitive damages and any such award shall be null and void and of no effect.

(vii) Validity of Provision. The Bank and the Tribe agree that this arbitration provision is valid, binding and enforceable, and to the extent permitted by law waive any defense or claim to the contrary.

(viii) No Limitations on Other Remedies/Self-Help. The provisions of these Resolutions shall not limit the ability of the Bank to exercise any self-help remedies available under applicable law.

(ix) Full Faith and Credit. The Tribe and all present or future tribal courts of the Tribe shall give full faith and credit to any award, order, judgment or decree rendered in any arbitration or by any federal or state court in accordance with this Resolution and, to the extent reasonably necessary, shall issue such orders and exercise such legal powers as may reasonably be necessary in order to effectuate the same. The Tribe's police powers shall be available to secure and support any such enforcement efforts, and all police or other law enforcement officials of the Tribe shall carry out any orders that may be entered by the Tribe or its tribal court pursuant to this Resolution. The Tribe agrees that judgment enforcement remedies generally available throughout the State may be applied on lands held by or in trust for the Tribe or an affiliate of the Tribe with respect to any matter that is a proper subject of arbitration under this Resolution.

The Tribe shall not invoke or assert, and hereby waives any right that it might otherwise have to invoke or assert, in any arbitration proceeding, any claim that the Tribe's law governs this Resolution or any Treasury Management Document.

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