

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
RESOLUTION NO. 122701-01**

**Approving a Borrowing with a Pledge of Casino Revenues and Property as Security,
Execution of Related Documents; a Waiver of Sovereign Immunity; Adoption of an
Arbitration Code; Adoption of Portions of Uniform Commercial Code; and Other Matters**

WHEREAS, the Little Traverse Bay Bands of Odawa Indians (the “**Tribe**”) is a federally recognized Indian tribe pursuant to Public Law 103-324, as amended, entitled the “Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act” (the “**Act**”); and

WHEREAS, under the terms of the Act, the Tribe was permitted to be governed by the governing documents of the Tribe then in effect, with the direction that within 24 months thereafter, an election would be held for the purpose of the Tribe adopting a new constitution; and

WHEREAS, at the time of enactment of the Act, the Tribe was governed by a Constitution and By-Laws adopted by the Board of Directors of the Little Traverse Bay Bands of Odawa Indians, Inc. on March 3, 1989, as modified by Resolution 12079102 (the “**Constitution**”); and

WHEREAS, a new constitution has never been adopted by the Tribe as set forth in the Act, and the Tribe continues to be governed by the Constitution; and

WHEREAS, under the Constitution the Tribe is governed by a board of directors, which is now known as the Tribal Council of the Tribe (the “**Tribal Council**”); and

WHEREAS, the Tribe and its Gaming Administration, a tribally created entity (“**Gaming Administration**”) have previously entered into various leasing and financing arrangements with North American Sports Management VII, Inc. (“**NORAM**”), related to the development and operation of Victories Casino, a gaming operation owned and operated by or on behalf of the Tribe (the “**Casino Facilities**”); and

WHEREAS, the Tribe has negotiated the termination of the leasing, subleasing, and financing arrangements with NORAM in consideration of the Tribe paying to NORAM the sum of \$21,897,286.71 as a purchase price, settlement or pay-off payment (the “**Termination Payment**”); and

WHEREAS, the Tribe also intends to improve and expand the Casino Facilities, and expects to incur costs related to the planning, construction or equipping of such improvement

and expansion (the “**Project Costs**”); and

WHEREAS, the Tribe desires to finance the Termination Payment and a portion of the Project Costs by receiving a loan in an amount up to \$25,000,000 (the “**Loan**”) pursuant to a proposed Loan Agreement between the Tribe, acting through its Gaming Administration, and National City Bank of Michigan/Illinois, a national banking association, acting as servicer (the “**Servicer**”), and the “**Lenders**” defined therein (the “**Lenders**”); and

WHEREAS, the Loan will (i) bear interest at variable rate, (ii) mature in approximately 36 months, (iii) require monthly payments of principal and interest sufficient to fully pay the Loan and all accrued interest no later than the maturity date, and (iv) be evidenced by one or more promissory notes of the Tribe executed on behalf of the Tribe by Gaming Administration (the “**Notes**”); and

WHEREAS, as a Lender, the Servicer will originally advance the sum of \$24,000,000 as a portion of the Loan with the intent that the Servicer will further transfer a portion or portions of the Loan to other financial institutions, and to facilitate such transfer, the Tribe and Servicer will enter into a Note Custody Agreement (the “**Note Custody Agreement**”) under which the Tribe will deliver to Servicer forms of Notes, executed in blank, which Servicer shall be authorized, with notice to the Tribe, to complete and deliver to other financial institutions, provided that at no time shall the outstanding principal balance of the Loan exceed amounts actually advanced on the Loan to the Tribe or the sum of \$25,000,000; and

WHEREAS, it is proposed that payment of amounts due under the Loan Agreement and of the Loan and the Notes, as well as the other obligations of the Tribe thereunder, will be secured by a security interest in furniture, equipment and other personal property (the “**Collateral**”) used in connection with the Casino Facilities pursuant to a Security Agreement between the Tribe and Servicer (the “**Security Agreement**”), and that under the terms of a Consent to Enter Trust Lands (the “**Consent to Enter Land**”), the Tribe would agree to allow the Servicer to enter the Tribe’s trust lands to enforce the security interest in the Collateral; and

WHEREAS, it is proposed the Loan be further secured by a Springing Depository Agreement (“**Depository Agreement**”) previously entered into between the Tribe and National City Bank of Michigan/Illinois, in its capacity as a depository (the “**Depository**”), which Agreement authorizes a pledge of certain “**Pledged Revenues**” from the “**Casino Facilities**,” as such terms are defined therein and provides that, among other things, (a) monthly payments on “**Secured Obligations**” (as defined in the Depository Agreement, and the Loan) must be deposited with the Depository on or prior to the date a payment is due thereon, and (b) upon the occurrence of a “**Monthly Payment Default**” (as defined in the Depository Agreement), all Pledged Revenues must be deposited on each business day with the Depository for application as therein set forth, first to pay monthly operating costs of the Casino Facilities, then to pay amounts with respect to the Loan and other Secured Obligations (whether due as scheduled, in full as a result of a default or otherwise), then to fund deposits to a repair and replacement account, and then, to the extent permitted therein, to the Tribe; and

WHEREAS, it is proposed that the Tribe and the provider of armored car services for Victories Casino enter into an agreement (the “**Armored Car Agreement**”) requiring the provider to accept instructions from the Servicer upon the occurrence of an event of default and to deliver casino revenues to the Servicer; and

WHEREAS, it is further proposed that the Tribe enter into standard forms of interest rate protection agreements (“**Swap Documents**”) with National City Bank, an Affiliate of the Servicer, requiring National City Bank to pay for the benefit of the Tribe amounts related to the variable interest rate borne by the Loan, and requiring the Tribe to pay to National City Bank a fixed rate of interest, thereby effectively providing the Tribe a fixed rate of interest on the Loan;

WHEREAS, the Tribal Council has been further advised that to receive the Loan in accordance with the foregoing, the Tribe will be required to agree to various provisions set forth in the agreements approved below (the “**Legal Provisions**”) that will, among other things, provide for: (a) a limited waiver of the Tribe’s sovereign immunity concerning claims and disputes with respect to the Loan and the agreements related thereto; (b) a waiver of the doctrines of exhaustion of tribal remedies or comity, to the fullest extent permitted by law; (c) a consent to arbitration or other forums for resolution of such disputes and the enforcement of remedies related thereto; (d) adoption as the law of the Tribe of Titles 1, 8 and 9 of the Uniform Commercial Code, together with related definitions, in the form enacted from time to time by the State of Michigan (the “**State UCC**”); and (e) adoption as the law of the Tribe of an arbitration code setting forth the standards for review of arbitration proceedings and enforcement procedures related thereto, (f) application of the laws of the State of Michigan to govern and interpret the foregoing documents, except with respect to application of the Arbitration Code and the Tribal UCC described below.

NOW THEREFORE BE IT RESOLVED by the Tribal Council as follows:

Section 1. Findings. The Tribal Council hereby determines and finds that (i) the Recitals in this Resolution are true and correct in all material respects; (ii) the Tribal Council is the duly elected and governing body of the Tribe, with full power and authority to adopt this Resolution and enact as the law of the Tribe the Arbitration Code and the Tribal UCC, (iii) payment of the Termination Payment and the execution of the various documents related thereto (the “**Termination Transaction**”) will enhance the Tribe’s opportunity for self-sufficiency and economic development and is otherwise in the best interest of the Tribe and its members, and (iv) the Project will enhance the Tribe’s opportunity for self-sufficiency and economic development and is otherwise in the best interest of the Tribe and its members.

Section 2. Approval of Documents. The Tribal Council acknowledges that proposed forms of each of the Loan Agreement, the Note, the Note Custody Agreement, the Security Agreement, the Depository Agreement, the Consent to Enter Land, the Armored Car Agreement, and the Swap Documents (the “**Financing Documents**”) have been presented to the Tribal Council, and the Tribal Council hereby authorizes and grants to Chairman of Gaming Administration, or if such person shall be unavailable, such other person permitted by the law of the Tribe to act in such persons stead, all requisite authority and power for and on behalf of the

Tribe (i) to incur the Loan, (ii) to apply the proceeds of the Loan in accordance with the terms of the Financing Documents, (iii) to secured the loan by the pledge of collateral and revenues of the Tribe as set forth in the Financing Document; (iv) to execute, deliver and perform the Financing Documents, (v) to consummate the Termination Transaction, and (vi) to take such other actions or enter into such other agreements, including such filings with the federal, state or tribal governmental authorities (“**Related Documents**”) in connection with the Loan as Tribal Council shall deem necessary or desirable based upon the advise of legal counsel to the Tribe. The approval herein granted with respect to any agreement or instrument shall also extend to any modification or amendment or changes thereto as shall be approved by Tribal Council. In addition, the Tribal Council also hereby authorizes and grants to the Tribal Chairman of the Tribe, or if either such person shall be unavailable, such other person permitted by the law of the Tribe to act in such person’s stead, all requisite authority and power for and on behalf of the Tribe to execute and deliver such additional documents and certificates as may be required to effect the transactions contemplated by the Financing Documents and Related Documents.

Section 3. Authorization of Gaming Administration. Gaming Administration is hereby authorized and directed to perform fully and timely all obligations of Gaming Administration contained in the Documents or Related Documents.

Section 4. Approval of Legal Provisions. All Legal Provisions in each of the Financing Documents are hereby approved and shall constitute the law of the Tribe so long as the applicable document in which the Legal Provisions appear or are referenced shall be in effect, subject to such modification from time to time as is permitted under the Financing Documents.

Section 5. Limited Waiver of Sovereign Immunity. The Tribal Council expressly acknowledges that the Financing Agreements contain provisions, which, in accordance with the terms set forth therein, waive the Tribe’s sovereign immunity.

Section 6. Non-Impairment; Enforceability of Obligations. The Tribal Council shall never 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 third party under any of the Financing Documents or Related Documents, and if any future Tribal Council should ever do so, the same may result in an immediate event of default, with the consequence that the loan may become immediately due and owing in full. Upon execution and delivery of any Financing Document or Related Document as herein authorized, the Financing Document or the Related Document shall become a valid and binding obligation of the Tribe, enforceable in accordance with its terms for purposes of tribal law and the laws of all other applicable jurisdictions.

Section 7. Arbitration Code. From the date of execution of any Financing Document, until all amounts owing by the Tribe to the Servicer, Depository or Lenders under the Financing Agreements or Related Documents have been fully and indefeasibly paid in full (the “**Loan Period**”), the following provisions (referred to herein as the “**Arbitration Code**”) and shall constitute the law of the Tribe.

7.1 The Financing Documents contain provisions setting forth the laws by which the Financing Documents and the performance of the parties thereunder are to be governed and interpreted (“**Applicable Laws**”). The Financing Documents further contain provisions (the “**Arbitration Provisions**”) requiring the parties thereto to submit to binding arbitration for any claim, demand, action or cause of action arising under the Loan or any Financing Document or Related Document or in anyway connected with or related or incidental thereto, whether now existing or hereafter arising and whether sounding in tort, contract or otherwise (“**Arbitrable Matter**”). The Arbitration Provisions, as a matter of the law of the Tribe, are hereby declared to be and are valid, irrevocable and enforceable by and against all applicable parties in accordance with the terms thereof.

7.2 The Tribe currently has a tribal court (the “**Tribal Court**”), created under the Tribe’s Code of Laws, and notwithstanding any other provision in the Code of Laws, the following shall apply with respect to the Tribal Court (and any other court established by the law of the Tribe):

(1) For all Claims, (a) the Tribal Court shall apply the procedural rules of the Tribal Court as to procedural matters, or, if no such rules exist, shall apply the then-current Federal Rules of Civil Procedure; and (b) the Tribal Court shall apply the Applicable Laws as to substantive law matters; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of federal courts of the State of Michigan.

(2) If any action for legal or equitable relief or any other proceeding is brought by any party concerning any Arbitrable Matter, except as may be otherwise expressly permitted in the Arbitration Provisions or in this Arbitration Code, the Tribal Court shall not review the merits of the action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the Arbitration Provisions.

(3) A party to any Financing Document claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with the applicable Arbitration Provisions. In such event, the Tribal Court shall order the parties to arbitration in accordance with the Arbitration Provisions and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator.

(4) At any time within one year after an arbitration award has been rendered in accordance with the applicable Arbitration Provisions (the “**Arbitration Award**”) and the parties thereto notified thereof, to the extent permitted by the applicable Financing Document, any party to an arbitration under the Arbitration

Provisions may make application to the Tribal Court for an order confirming the Arbitration Award, provided that the party shall file with the Tribal Court a true and correct copy of the Arbitration Award, a true and correct copy of the applicable Arbitration Provisions (together with any provisions modifying the same mutually agreed to by the applicable parties), a written identification of the arbitrator, any documentation material to the appointment of the arbitrator, and evidence that any other party to the arbitration proceedings shall have received notice of the filing or the intent to file an application to the Tribal Court for confirmation of the Arbitration Award.

(5) An Arbitration Award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator; provided, however, that if the Tribal Court is permitted under the applicable Financing Document to enforce any Arbitration Award, the Court may nevertheless decline to enforce any Arbitration Award if it finds that any of the following occurred:

- (a) The Arbitration Award was procured by corruption, fraud, or undue means.
- (b) There was evident partiality or corruption in the arbitrator.
- (c) The arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
- (d) The arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an Arbitration Award is so vacated and the time within which the applicable Financing Document required the award to be made has not expired, the Tribal Court may, in its discretion, direct a rehearing by the arbitrators.

(6) In any of the following cases where the Tribal Court is authorized to make an order regarding arbitration, the Tribal Court may make an order modifying or correcting the Arbitration Award upon the application of any party to the arbitration:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to

them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the Arbitration Award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

(7) The judgment confirming an Arbitration Award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

(8) No further appeal may be taken from an order issued by the Tribal Court pursuant to the foregoing provisions enforcing an agreement to arbitrate or an Arbitration Award.

(9) Subject to any contrary provision in the Financing Documents, the Tribal Court shall have jurisdiction over any action to enforce an agreement to arbitrate in any of the Financing Documents, to compel arbitration pursuant to the Arbitration Provisions, and to enforce an Arbitration Award; provided that in any such actions brought against the Tribe (or any agency or instrumentality thereof), the Tribe (or any such agency or instrumentality) shall have waived the defense of tribal sovereign immunity as to the Arbitrable Matters in dispute.

(10) To the extent allowed by federal law, the jurisdiction of the Tribal Court as to the foregoing matters shall be concurrent with the jurisdiction of any state or federal court permitted under the Financing Documents. Any consent to the jurisdiction of a state or federal court contained in a Financing Document shall be valid and enforceable in accordance with its terms, including any expression of a preference or priority of one jurisdiction or court over another.

7.3 The Tribe shall comply with and observe each Arbitration Award to the extent not judicially vacated or modified in accordance herewith by any court whose jurisdiction is authorized in the Financing Documents. To that end, the Tribe and the Tribal Court shall give full faith and credit to any award, order or decree rendered in any arbitration or by any federal or state court in accordance with this Section, 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 the

Tribal Court pursuant to this Section. The Tribe agrees that judgment enforcement remedies generally available throughout the State of Michigan may be applied on lands held by or in trust for the Tribe or an agency or instrumentality of the Tribe with respect to any Arbitrable Matter.

Section 8. Uniform Commercial Code. During the Loan Period, the provisions of this Section (herein referred to as the “**Tribal UCC**”) shall constitute the law of the Tribe. Articles 1, 8 and 9 of the Uniform Code in effect from time to time in the State of Michigan, together with all definitions used, but not contained, in such Articles and found elsewhere in the State UCC shall be the law of the Tribe to provide the Servicer and each other holder of a Secured Obligation all rights available to a secured party having a security interest under the State UCC; subject however, to the following:

8.1 The Tribal UCC shall be applicable throughout the lands under the sovereign control of the Tribe, but shall be applicable only to create, perfect and permit the enforcement of security interests that secure obligations with respect to Financing Documents, Related Documents, the Loan and Secured Obligations, and to such extent shall apply to all documents, agreements, moneys and property (whether tangible or intangible) evidencing or securing the foregoing, including Pledged Revenues, Collateral and Pledged Assets (all as such terms are defined in the Depository Agreement).

8.2 Notwithstanding the other provision of this Section or the State UCC, the security interest in Pledged Revenues created by the Depository Agreement shall attach and be perfected in the Pledged Revenues (including with respect to any proceeds thereof) upon the receipt thereof, whether directly or indirectly, by or on behalf of the Tribe, or any agency or instrumentality of the Tribe (each, a “**Tribal Party**”), without possession thereof by or on behalf of the Servicer, any Lender, any Secured Payee (as defined in the Depository Agreement), the Tribe, the Depository, or any agent of the above, and such security interest shall continue while the Pledged Revenues or proceeds thereof are in the possession or under the control of any Tribal Party, all without the filing of any financing statement or statements.

8.3 Notwithstanding the other provision of this Section or the UCC, a security interest requiring the filing of a financing statement shall become effective and shall remain in effect once filed without need for further renewal or extension, (a) if filed on a Form UCC-1 presently acceptable for such purposes under the State UCC, and (b) if filed in the office of the Secretary of State of the State of Michigan, the office of the Tribal Chairman, or the Uniform Commercial Code filing office in the District of Columbia. The Tribal Chairman shall cause to be maintained such records available to the public as are commercially reasonable to evidence the filing of any such financing statements (and the information therein contained) and to provide notice to other creditors.

8.4 Notwithstanding any other provisions of this Section or the State UCC, the Tribal UCC shall be applicable to the Tribe as a debtor even though the Tribe may be a government as such term is defined in the State UCC.

Section 9. Prepayment. The Tribal Council acknowledges that prepayment will be governed by the following provision: The Loan Principal Balance may be prepaid in whole or in part on any Monthly Payment Date, without penalty, except as otherwise provided below. Any optional prepayment shall be made only after ten (10) days advance written notice to the Servicer, and shall be in an amount not less than \$100,000, with the Applicable Percentage of any prepayment of the Loan Principal Balance being allocated to this Promissory Note. All prepayment of principal shall be credited to the payment of required Loan Principal Installments in inverse order of required payment.

Section 10. Determination. The Tribal Council hereby determines that no laws, ordinances, resolutions or other actions of the Tribal Council or any of the agencies or instrumentalities of the Tribe, either written or established by custom or tradition: (a) prohibit the Tribal Council from approving the matters herein approved or the execution, delivery or performance of any Financing Documents or Related Documents; or (b) create any obligation of the Tribal Council to submit these matters for approval of or consent from any officer, body, agency or instrumentality of the Tribe, or any vote by members of the Tribe.

Section 11. Effect of this Resolution. Throughout the Loan Period, (a) the provisions of this Resolution shall constitute the law of the Tribe and may be relied on by the Servicer, the Depository, the Lenders, and their respective successors, assigns and participants (the “**Lending Parties**”), (b) the provisions of this Resolution shall constitute the terms of an agreement and contract between the Tribe and the Lending Parties, and (c) shall not be rescinded, amended or modified in any manner that may result in an adverse effect on the Lending Parties without the written consent of each Lending Party so affected thereby.

Section 12. Miscellaneous Matters.

12.1 Any resolutions or other actions of the Tribe, or any of its officers, employees, or agents, either written or established by tradition that are in conflict with or inconsistent with the terms of this Resolution or any provision set forth in a Financing Document or a Related Document are hereby to such extent repealed and annulled. This Resolution shall supersede any prior or currently existing resolutions or other actions of the Tribe, or any of its officers, employees or agents, subdivisions, agencies or instrumentalities that are contrary to the actions authorized or contemplated herein or in a Financing Document or Related Document.

12.2 If any provision of this Resolution or the application of any provision of this Resolution to any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or Indian tribe, or any agency, instrumentality or political subdivision thereof is held to be invalid, the remainder of the Resolution shall not be affected with respect to the same.

12.3 This Resolution shall become effective as of the date and time of its passage and approval by the Tribal Council.

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 by phone poll of the Tribal Council completed on December 27, 2001 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
George Anthony	<u> </u>	<u> </u>	<u> </u>	<u> X </u>
Gerald Chingwa	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Frederick Harrington, Jr.	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Beatrice Law	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Rita Shananaquet	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Janet Shomin	<u> </u>	<u> </u>	<u> </u>	<u> X </u>
Alice Yellowbank	<u> X </u>	<u> 1 </u>	<u> </u>	<u> </u>

Date: 12/27/01

Gerald V. Chingwa, Tribal Chairman 0

Frederick R. Harrington, Jr., Tribal Secretary