SECOND AMENDMENT TO THE TAX AGREEMENT BETWEEN THE NOTTAWASEPPI HURON BAND OF POTAWATOMI AND THE STATE OF MICHIGAN

This Second Amendment to the Tax Agreement between the Nottawaseppi Huron Band of Potawatomi and the State of Michigan is executed on the date(s) indicated below and shall be effective as of the first day of the month following the date of execution of this Second Amendment by the State Treasurer or his designee.

Recitals:

On the 20th day of December, 2002, the Nottawaseppi Huron Band of Potawatomi and the State of Michigan entered into a Tax Agreement which was implemented on the 1st day of July, 2007.

§ XVIII of the Tax Agreement provides that the Agreement may be amended upon the mutual, written agreement executed by an authorized representative of each party.

On the 20th day of August, 2007, the Nottawaseppi Huron Band of Potawatomi and the State of Michigan, in accordance with § XVIII, entered into a First Amendment to the Tax Agreement which was effective as of the 1st day of September, 2007.

Now, in accordance with **§ XVIII** of the Tax Agreement, the parties make the following amendments to the Tax Agreement:

1. **§ I(B)** is amended to read as follows:

   B. Taxes Subject to This Agreement.

   The taxes that are the subject of this Agreement are:

   1. Sales Tax pursuant to the General Sales Tax Act as amended, MCL 205.51 et. seq.;
   2. Use Tax pursuant to the Use Tax Act as amended, MCL 205.91 et. seq.;
   3. Motor Fuel Tax pursuant to the Motor Fuel Tax Act as amended, MCL 207.1001 et. seq. and the Motor Carrier Fuel Tax Act as amended, MCL 207.211 et. seq.;
   4. Income Tax pursuant to the Income Tax Act of 1967 as amended, MCL 206.1 et. seq.;
   5. Tobacco Products Tax pursuant to the Tobacco Products Tax Act as amended, MCL 205.421 et. seq., as amended;
   6. The Single Business Tax pursuant to the Single Business Tax Act as amended, MCL 208.1 et. seq.; and

7. The Michigan Business Tax pursuant to the Michigan Business Tax Act as enacted, MCL 208.1101 et. seq.

2. **§ II(K)** is amended to read as follows:

K. "Tribal and Trust Lands" means:

1. all lands held in trust by the federal government for the benefit of the Tribe which are listed on Appendix A (K-1) and designated as Tribal and Trust Lands at the time this Agreement is executed,

2. all fee lands owned by the Tribe which are listed on Appendix A (K-2) and designated as Tribal and Trust Lands at the time this Agreement is executed,

3. all Tribal lands acquired after execution of this Agreement within an area identified for automatic Tribal and Trust Land status on Appendix A (K-3) so long as they are used for a Governmental Function,

4. all Tribal lands accepted into federal trust after execution of this Agreement which are located within the area identified in Appendix A (K-4), regardless of the use of such Tribal lands, and

5. all other lands acquired after execution of this Agreement by the Tribe that are mutually agreed upon in writing by the parties to this Agreement and identified in Appendix A (K-5).

6. all lands listed on Appendix A (K-2) that have been subsequently taken into trust by the federal government for the benefit of the Tribe, which do not meet the criteria of Appendix A (K-4).

3. **VII.1** is added following the end of §VII(E) and shall read as follows:

VII.1 MICHIGAN BUSINESS TAX

A. For purposes of application of the Michigan Business Tax section only, the following definitions shall apply:

1. "Tribe (MBT)" means any Tribe that has entered into a tax agreement with the State that is substantially similar to this Agreement.

2. "Expanded Tribal Agreement Area" means the lands within the combined Agreement Areas of each Tribe (MBT).

3. "Tribal Member (MBT)" means an individual who is an enrolled member of a Tribe (MBT).

4. "Resident Tribal Member (MBT)" means a Tribal Member (MBT) whose principal place of residence is located within his or her Tribe's Agreement Area.

5. "Tribal Entity (MBT)" means an entity other than a single Tribe (MBT) acting alone or single Resident Tribal Member (MBT) acting alone, that is wholly comprised of any combination of the Tribe (MBT) and Resident Tribal Members (MBT), or is wholly owned by Resident Tribal Members (MBT).

B. The Michigan Business Tax Act (MBTA) exemptions provided by this Agreement will be applied without regard to the law under which an entity is organized. Publicly traded entities shall be subject to the MBTA without regard to Tribe (MBT) or Tribal Member (MBT) ownership and without regard to the Expanded Tribal Agreement Area.

C. Entities in which the ownership interests are entirely comprised of one or more Tribes (MBT), Tribal Members (MBT) or Tribal Entities (MBT) that engage in business activity within the State will apportion their tax base by application of the statutory sales factor to determine the portion of the tax base attributable, if any, to the State but outside the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area will be exempt from the MBTA.

D. Entities which are not wholly owned by any combination of Tribes (MBT), Tribal Members (MBT) or Tribal Entities (MBT) will apportion their tax base by application of the statutory sales factor to determine the portion of the tax base attributable to the State and to the Expanded Tribal Agreement Area. The portion of the tax base attributable to the Expanded Tribal Agreement Area which is equal to the percentage of ownership interests held in combination of Tribes (MBT), Tribal Members (MBT) or Tribal Entities (MBT) will be exempt. The portion of the tax base attributable to non Tribes (MBT), non Tribal Members (MBT) or non Tribal Entities (MBT) is subject to the MBTA for activity within the State both within and outside of the Expanded Tribal Agreement Area. In calculating the State sales factor of the apportionment formula the numerator shall only exclude sales that are destined to:

1. The Tribe (MBT);
2. Resident Tribal Members (MBT); and
3. Sales shipped to destinations outside of the State.

E. To the extent a tax base or portion of a tax base is attributable to the State under this Agreement and a tax is due, a credit against the tax may be claimed to the extent the business is conducted in an area designated as a Renaissance

Zone under State law. See MCL 125.2681, et seq. The credit shall be determined in accordance with State law using the payroll and property factors. The denominator of the respective factors is calculated in accordance with State law except that payroll and property within the Expanded Tribal Agreement Area must be excluded. The numerators of the respective factors will be the property located within a designated Renaissance Zone excluding property within the Expanded Tribal Agreement Area and the payroll for services performed in a designated Renaissance Zone excluding payroll within the Expanded Tribal Agreement Area. The credit is otherwise allowed in accordance with State law.

3. **§ IX** is amended to read as follows:

IX. ADMINISTRATION: INCOME TAX, SINGLE BUSINESS TAX, AND MICHIGAN BUSINESS TAX

A. Income Tax

All Resident Tribal Members shall file a State tax return if they owe a Michigan Income Tax, are due a refund, or their federal adjusted gross income exceeds their exemption allowance. (See MCL 206.30 (2) and (3)). In addition a Resident Tribal Member shall file a return in all instances where a federal return is required in order to eliminate unnecessary correspondence with the Department. A taxpayer who is entitled to exemption based on this Agreement shall complete a Schedule in accordance with its instructions whereat the subtractions will be taken. These subtractions shall then be carried over to the MI 1040.

B. Withholding

Withholding is to be done in accordance with regulations/instructions applicable to all persons required to withhold.

C. Single Business Tax

A taxpayer claiming entitlement to exemptions provided in this Agreement shall prepare and file the SBT annual return form C-8000. The C-8000 shall have a box on its face indicating that the taxpayer is claiming exemptions under this Agreement. A taxpayer who checks that box will be directed to complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt property, payroll and sales numbers which will then be carried over to the C-8000H for use in completing the return.

D. Michigan Business Tax

A taxpayer claiming entitlement to exemptions provided in this Agreement shall prepare and file the MBT annual return form 4567. A taxpayer claiming MBT exemption under this Agreement shall complete a separate schedule which will guide the taxpayer through the special apportionment calculations to arrive at the non-exempt sales numbers which will then be carried over to form 4567 for use in completing the return.

Except as amended by this Second Amendment to the Tax Agreement, the terms of the Tax Agreement as previously amended by the First Amendment remain in full force and effect.

STATE OF MICHIGAN

By: Robert J. Kleine
Robert J. Kleine
Michigan State Treasurer
First Floor Treasury Building
Lansing, MI 48922

Date: 3-31-08

NOTTAWASEPPI HURON BAND OF POTAWATOMI

By: Laurence Spurr

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