FIFTH AMENDMENT TO THE TAX AGREEMENT BETWEEN THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS AND THE STATE OF MICHIGAN

This Fifth Amendment to the Tax Agreement between the Grand Traverse Band of Ottawa and Chippewa Indians 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 Fifth Amendment by the State Treasurer or her or his designee.

Recitals:

On the 27th day of May 2004, the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan entered into a Tax Agreement which was implemented on the 1st day of July 2004.

§ 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 Grand Traverse Band of Ottawa and Chippewa Indians 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.

On the 31st day of March 2008, the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, in accordance with § XVIII, entered into a Second Amendment to the Tax Agreement which was effective as of the 1st day of April 2008.

On the 14th day of January 2013, the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, in accordance with § XVIII, entered into a Third Amendment to the Tax Agreement which was effective as of the 1st day of January 2012.

On the 17th day of December 2015, the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, in accordance with § XVIII, entered into a Fourth Amendment to the Tax Agreement which was effective as of the 1st day of January 2015.

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

§ I(B) is amended 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; and
6. ~~**The Single Business Tax pursuant to the Single Business Tax Act as amended, MCL 208.1 et. seq.**~~
6. The Michigan Business Tax pursuant to the Michigan Business Tax Act as enacted, MCL 208.1101 et. seq.

§I(C) is amended as follows:

C. State Law Amendments. The State shall give notice to the Tribes of **recently enacted legislation** ~~**enrolled bills**~~ that amends the taxes that are the subject of this Agreement or the Revenue Act. MCL 205.1, et. seq. Upon receipt of the notice the Tribe may request a meeting to discuss the **legislation** ~~**bill**~~ and its impact. Notice of any such meeting shall be provided to other tribes which are signatories to an agreement with the State substantially similar to this Agreement and their representatives shall be permitted to attend.

§III(A)(2)(d) is amended as follows:

d. Resident Tribal Members are exempt from both the sales tax and use tax on modular homes and mobile homes used as their principal residence. Where a mobile home purchased under this subsection is subsequently transferred to a non-Resident Tribal Member relative and the transfer would be exempt under MCL 205.93(3)(a), the Resident Tribal Member shall reimburse the State an amount equal to the current sales or use tax rate times the retail dollar value of the mobile home at the time of the transfer. The reimbursement shall be paid to the Department within 30 days of the date of transfer. Such reimbursement shall not be required where the retail dollar value of the mobile home at the time of transfer is below $2,000.

Tribal members are exempt from both the sales tax and use tax on modular homes and mobile homes purchased to be used as their principal residence within the Agreement Area within 12 months of the date of purchase. If the Tribal Member does not establish the home as their principal residence within the Agreement Area within 12 months of the date of purchase or acquisition of the modular or mobile home, the Tribal Member must reimburse the State for the amount of the tax that was exempted. The requirement that Tribal Members establish the mobile home as their principal residence within 12 months of the date of purchase shall be extended to the extent that the delay is caused by a disaster or other event that results in a presidentially declared federal state of emergency or a governor declared state of Michigan state of emergency; such an extension shall end when the state of emergency ends. The Tribe issuing the Tribal Exemption Certificate for a Tribal Member must make a reasonable attempt to determine if the Tribal Member has established the modular or mobile home as their principal residence within the Agreement Area within 12 months of the date of purchase of the materials. If the Tribe determines

that the Tribal Member has not established that the modular or mobile home is their principal residence, the Tribe must notify the Tribal Member of their obligation to reimburse the State the amount of tax that was exempted. The Tribe must also notify the Department that the Tribal Member has a tax liability and provide the Department with the Tribal Member's identifying information. The Tribe itself has no obligation to reimburse the State for the amount of the tax that was exempted.

§III(A)(3)(b) is amended as follows:

b. Materials that are purchased, used or acquired in the performance of a contract for construction, renovation or improvement to the principal residence of a Resident Tribal Member are exempt from both the sales tax and use tax.

Materials purchased, used, or acquired for the construction, renovation, or improvement of property that is intended to become a Tribal Member's principal residence within 18 months of the date of purchase of the materials are exempt from both sales and use tax. If a Tribal Member does not establish the constructed, renovated, or improved property as their principal residence within 18 months of the date of purchase of the materials, they must reimburse the State for the amount of the tax that was exempted. The requirement that Tribal Members establish the mobile home as their principal residence within 18 months of the date of purchase shall be extended to the extent that the delay is caused by a disaster or other event that results in a presidentially declared federal state of emergency or a governor declared state of Michigan state of emergency; such an extension shall end when the state of emergency ends. The Tribe issuing the Tribal Exemption Certificate for a Tribal Member must make a reasonable attempt to determine if the Tribal Member has established the constructed, renovated, or improved property as their principal residence within the Agreement Area within 18 months of the date of purchase of the materials. If the Tribe determines that the Tribal Member has not established that the constructed, renovated, or improved property as their principal residence, the Tribe must notify the Tribal Member of their obligation to reimburse the State the amount of tax that was exempted. The Tribe must also notify the Department that the Tribal Member has a tax liability and provide the Department with the Tribal Member's identifying information. The Tribe itself has no obligation to reimburse the State for the amount of the tax that was exempted.

Where a Resident Tribal Member seeks exemption claimed under either § III(A)(2)(b), § III(A)(2)(d) or § III(A)(3)(b), for the purchase, construction, renovation, or improvement of a new principal residence, the Resident Tribal Member **or Tribal Member** shall repay to the Department any previously received exemption claimed under § III(A)(2)(b), § III(A)(2)(d) or § III(A)(3)(b), for the purchase, construction, renovation, or improvement of his or her previous principal residence(s) for a period of two years immediately preceding the purchase of the item(s) on which the exemption is to be claimed. Repayment will not be required where the cumulative cost of the previously purchased items for which exemption was received does not exceed $2,000 for the two-year period.

§VI(B)(1) is amended as follows:

B. Implementation: Refund Method

1. All tobacco products for resale shall be purchased in accordance with State law from any State licensed wholesaler **or unclassified acquirer** and shall be tax prepaid. Taxable Sales of such tobacco products shall include the tax in the retail price.

§VI(B)(1)(E) is amended as follows:

E. "Tribal Entity (CIT)" means an entity other than a single Tribe (CIT) acting alone or single Resident Tribal Member (CIT) acting alone, that is wholly comprised of any combination of the Tribe (CIT) and Resident Tribal Members (CIT) or is wholly owned by Resident Tribal Members (CIT) and is a Michigan C Corporation or is taxed as a corporation federally.

§VI(C) is amended as follows:

C. Implementation: Quota Method

2. The Tribe shall acquire its tax-free quota of tobacco products from a single pre-identified State licensed wholesaler **or unclassified acquirer**.

3. All tobacco products acquired for resale in excess of the quota shall be purchased in accordance with State law from any State licensed wholesaler **or unclassified acquirer** with State tobacco products tax prepaid. All retail sales of such tobacco products shall include the tax in the retail price.

§VI(D) is amended as follows:

D. The Tribe shall ensure that Tribal Member and Tribal Entity retailers only purchase tobacco products bearing the State Tribal stamp and only purchase from State licensed wholesalers **or unclassified acquirers**. The Tribe shall also ensure that Tribal Member and Tribal Entity retailers prepay all taxes on tobacco product purchases, except for quota exempt purchases authorized by the Tribe.

§VII is amended as follows:

~~**VII. SINGLE BUSINESS TAX**~~

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

1. "Tribe (SBT)" 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 (SBT).

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

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

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

B. The Single Business Tax Act (SBTA) 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 SBTA without regard to Tribe (SBT) or Tribal Member (SBT) 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 (SBT), Tribal Members (SBT) or Tribal Entities (SBT) that engage in business activity within the State will apportion their tax base by application of the three statutory factors (property, payroll and sales) 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 SBTA.

D. Entities which are not wholly owned by any combination of Tribes (SBT), Tribal Members (SBT) or Tribal Entities (SBT) will apportion their tax base by application of the three statutory factors (property, payroll, and sales) 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 (SBT), Tribal Members (SBT) or Tribal Entities (SBT) will be exempt. The portion of the tax base attributable to non-Tribes (SBT), non-Tribal Members (SBT) or non-Tribal Entities (SBT) is subject to the SBTA 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 (SBT);
2. Resident Tribal Members (SBT); 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.~~

§VII.1 is amended as follows:

VII. ~~VII.1.~~ MICHIGAN BUSINESS TAX

§IX is amended as follows:

IX. ADMINISTRATION: **INDIVIDUAL** INCOME TAX, **CORPORATE INCOME TAX** ~~**SINGLE BUSINESS TAX**~~, AND MICHIGAN BUSINESS TAX

~~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.~~

§XI(A) is amended as follows:

2. The Tribe shall purchase all of its tax-free quota tobacco products from a single wholesaler **or unclassified acquirer** licensed by the State. The Tribe shall notify the State in writing of the wholesaler **or unclassified acquirer** it will use prior to making any purchase of tax-free quota tobacco products. The State shall contact the wholesaler **or unclassified acquirer** and authorize the quantity of tax-free quota tobacco products to be sold to the Tribe. The designated wholesaler **or unclassified acquirer** may be changed by written notice to the State providing the name of the new wholesaler **or unclassified acquirer** and providing at least 14 days advance notice of the date that the change will be effective. The notice from the Tribe to the State shall also state the total number of cigarette sticks and quantity of other tobacco products purchased from the old wholesaler **or unclassified acquirer** and the number of cigarette sticks and quantity of

other tobacco products remaining to be purchased under the quota. The State shall then advise the new **wholesaler or unclassified acquirer** ~~supplier~~ that it is authorized to make sales of tax-free quota tobacco products to the Tribe and the amount remaining under the quota.

4. The Tribe shall determine which retailers within the Agreement Area will be authorized to purchase and sell tax free tobacco products and the quantities that each retailer may acquire. The Tribe shall establish a system whereby the Tribe shall pre-approve, and clearly designate, all purchases of tax-free product prior to submission to the wholesaler **or unclassified acquirer**. In addition to maintaining the books and records required by State law, all authorized retailers (including the Tribe itself) shall maintain a log of their purchases of tax-free quota tobacco products showing the date, type (cigarettes, cigar, chew, etc.), quantity, and brand.

§XII is amended as follows:

A. General

2. To obtain the benefit of statutory exemptions other than those specifically identified in § III(A)(1), § III(A)(2), § III(A)(3), or § III(A)(4), of this Agreement, the Tribe, Tribal Member or Tribal Entity shall use the standard procedures and forms used by all taxpayers claiming exemption. See Revenue Administrative Bulletin-**Sales and Use Tax Exemption Claim Procedures and Formats** ~~2002-15.~~

C. Resident Tribal Member and Tribal Entity Purchases

1. Tribal Certificate of Exemption Option

   If the Tribe has elected to use a Tribal Certificate of Exemption under § XII(B)(1), the Tribe may elect to authorize Resident Tribal Members or Tribal Entities to use a Tribal Certificate of Exemption for the purchases described in this § XII(C)(1)(a) or §XII(C)(1)(c) below. If the Tribe so elects and notifies the State of such election, Resident Tribal Members and Tribal Entities shall use a Tribal Certificate of Exemption and may ~~not only~~ seek refunds **from the Department** of taxes paid for purchases described in § XII(C)(1)(a) or § XII(C)(1)(c) below **as permitted by law**.

3. Refund Table – Resident Tribal Members

   A Resident Tribal Member shall be entitled to an annual refund representing sales tax and use tax paid on tangible personal property acquired under § III(A)(2)(b) (except for the purchase and affixation by the Resident Tribal Member of materials for construction, renovation, or improvement of his or her principal residence within the Agreement Area). This refund shall apply under both the Tribal Certificate of Exemption method described in § XII(C)(1), above and Refund Method described in § XII(C)(2) above. This refund shall be determined by use of the following table:

Resident Tribal Member's federal Adjusted Gross Income modified to include Social Security benefits, Social Security disability benefits, Railroad Retirement benefits, Veteran Disability Pay, 50% of the Combat Zone Compensation for Enlisted Members of the Armed Forces, fishing income under section 7873 of the Internal Revenue Code, Public Assistance payments made directly to a Resident Tribal Member pursuant to a Tribal supplemental assistance program qualifying for exemption under the Tribal General Welfare Exclusion Act of 2014, and disability income to the extent they are specifically exempt from or excluded from the computation of federal Adjusted Gross Income **(AGI)** (but not to exceed **an AGI limit for tax year 2023 of ~~$80,000~~ $113,000**) x 15% x 6%. **The AGI limit may increase annually, according to changes in the calendar year average of the Consumer Price Index (CPI). If the 2023 CPI is greater than the 2022 CPI, then the AGI limit for tax year 2024 shall be calculated by multiplying the AGI limit for tax year 2023 by the ratio of the 2023 CPI to the 2022 CPI and rounding that product to the nearest $1,000; otherwise, the AGI limit for tax year 2024 shall be the same as the AGI limit for tax year 2023.The calculation shall be repeated each tax year after 2024 in the same manner as described for tax year 2024 above. Each year, by February 28, the State will notify the Tribe of the present tax year's AGI limit and the CPI values used to calculate that limit.**

STATE OF MICHIGAN

By: Rachael Eubanks

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Date: 7/11/23

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

By: David Arroyo

David Arroyo
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Date: 12/19/2022

APPENDIX TO THE FIFTH AMENDMENT TO THE TAX AGREEMENT BETWEEN THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS AND THE STATE OF MICHIGAN

This Appendix identifies and corrects a scrivener's error in the Fifth Amendment to the Tax Agreement between the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan.

The Tax Agreement, as previously amended, defines the term "Tribal Entity (CIT)" in § IV(B)(1)(E). The present amendment modifies the term "Tribal Entity (CIT)" and identifies it as located in § VI(B)(1)(E). That location reference inadvertently refers to the Roman numeral "VI" (i.e., "six") instead of "IV" (i.e., "four").

The parties recognize that the reference to "§ VI(B)(1)(E)" in the present amendment should have been written as "§ IV(B)(1)(E)." The parties acknowledge that the present amendment's reference to "§ VI(B)(1)(E)" should be understood to mean "§ IV(B)(1)(E)."