

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Indian Gaming****AGENCY:** Bureau of Indian Affairs,  
Interior.**ACTION:** Notice of Tribal-State Gaming Compact Amendments between the Forest County Potawatomi and the State of Wisconsin taking effect.**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compact; for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary-Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the 2003 Amendments to the Tribal-State Compact for Class III gaming between the Forest County Potawatomi Community and the State of Wisconsin executed on February 19, 2003 are considered approved. By the terms of IGRA, the 2003 Amendments to the Compact are considered approved, but only to the extent the 2003 Amendments are consistent with the provisions of IGRA.

The 2003 Amendments expand the scope of gaming activities authorized under the Compact, remove limitations on wager limits, remove limitations on the number of permitted gaming devices, extend the term of the compact to an indefinite term, subject to re-opener clauses, institute an entirely new dispute resolution provision, replaces the sovereign immunity provision, and substantially modifies the revenue-sharing provision of the Compact.

**EFFECTIVE DATE:** May 8, 2003.**FOR FURTHER INFORMATION****CONTACT:**

George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-4066.

Dated: April 30, 2003.

Aurene M. Martin,

*Assistant Secretary-Indian Affairs.*

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# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

**APR 25 2003**

Honorable Harold "Gus" Frank  
Chairman, Forest County Potawatomi Community  
P.O. Box 340  
Crandon, Wisconsin 54520

Dear Chairman Frank:

On February 20, 2003, we received the 2003 Amendments (Amendments) to the Forest County Potawatomi Community of Wisconsin (Community) and State of Wisconsin Gaming Compact of 1992, as amended December 3, 1998, executed on February 19, 2003. On April 4, 2003, we received amendments to the original submission deleting a proposed 50-mile radius exclusivity zone aimed at other Class III Indian gaming facilities, and modifying proposed Section IV.A.8. of the Compact by deleting references to gaming facilities in neighboring states.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the Amendments within forty-five days of their submission. If the Secretary does not approve or disapprove the Amendments within forty-five days, IGRA provides that the Amendments are considered to have been approved, but only to the extent that they are consistent with the provisions of IGRA. Under IGRA, the Secretary can disapprove the Amendments if she determines that the Amendments violate IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians.

We have completed our review of the Amendments, along with the submission of additional documentation submitted by the parties and a number of third parties. Pursuant to Section 11 of IGRA, we have decided to allow the 2003 Amendments to take effect without Secretarial action for the following reasons.

## Scope of Gaming

Under the 2003 Amendments, Section N.A of the Compact is amended by adding, *inter alia*, electronic keno, roulette, craps, poker and similar non-house banked card games, and games played at blackjack style tables. We need to determine whether the inclusion of these gaming activities in the Compact complies with the requirements of Section 11(d)(1)(B) of IGRA. In our view, whether the addition of electronic keno and casino table games complies with Section 11(d)(1)(B) of IGRA, 25 U.S.C. § 2710(d)(1)(B), which requires that such gaming activities be permitted in the State of Wisconsin "for any purpose by any person, organization, or entity" is an unsettled issue. As you are

well aware, the scope of gaming question is one of the issues raised in the state court litigation in *Dairyland Greyland Park v. Doyle*, No. 01-CV-2906. In addition, we understand that a petition has been filed with the Wisconsin Supreme Court on April 2, 2003, by the Majority Leader of the Wisconsin Senate and the Speaker of the Wisconsin Assembly seeking a declaratory judgment on several issues relating to the 2003 Amendments, including the permitted scope of gaming in the State. Although we are mindful that in the *Dairyland* case, the Dane County Circuit Court has ruled in favor of the Governor, the decision has been appealed to an intermediate court which is unlikely to be the final appeal of the case within the State court system. As a result, we believe that the best alternative available to the Department of the Interior (Department) under IGRA is to have the 2003 Amendments go into effect by operation of law.

### Revenue-Sharing Provisions

As you may be aware, the Department has sharply limited the circumstances under which Indian tribes can make direct payments to a State for purposes other than defraying the costs of regulating Class III gaming activities. To date, the Department has approved payments to a State only when the State has agreed to provide the tribe with substantial exclusivity for Indian gaming, *i.e.*, where a compact provides a tribe with substantial economic benefits in the form of a right to conduct Class III gaming activities that are on more favorable terms than any rights of non-Indians to conduct similar gaming activities in the State.

The 2003 Amendments substantially modify Section XXXI of the Compact. When Section XXXI (Payment to the State) was added to the 1992 Compact as part of the 1998 Amendments, it provided for a payment of \$6,375,000 per year for the duration of the term of the Compact (five years) in exchange for exclusive rights to conduct electronic games of chance (with mechanical or video displays), blackjack, and pull-tabs. Section XXXI.G. of the 2003 Amendments requires the Community to pay considerably more money to the State in exchange for the exclusivity agreement in proposed amended Section XXXI.B. of the Compact, *i.e.*, the addition of variations to the game of blackjack, pari-mutuel wagering on live simulcast of horse, harness, and dog racing events, electronic keno, and certain casino table games. We are uncertain whether the addition of these Class III gaming activities is worth the payment of \$34,125,000 in 2004, \$43,625,000 in 2005 (in addition to payments of \$6,375,000 in 2003 and 2004). Starting in 2005, the Community is required to pay between 6% and 8% of net win, depending on the year, until 2011, when a permanent 6.5% payment of net win takes effect. The Community has reassured us that it will receive the benefit of the bargain, and has provided credible financial projections that indicate that it will be able to afford the payments.

The financial projections provided by the Community indicate that net revenues are expected to substantially increase under the 2003 Amendments. However, it is not clear to us that this increase is solely due to the exclusivity agreement in Section XXXI.B. of the Compact. We believe that it may also be due to the proposed modifications of other sections of the Compact, especially the elimination of the ceiling on the number of electronic gaming devices. In this context, we note that gaming revenues have tripled as a result of the increased number of machines and tables authorized

in the 1998 Amendments, which had no change in the scope of gaming. It is the position of the Department to permit revenue-sharing payments in exchange for *quantifiable* economic benefits over which the State is not required to negotiate under IGRA, such as substantial exclusive rights to engage in Class III gaming activities. We have not, nor are we disposed to, authorize revenue-sharing payments in exchange for compact terms that are routinely negotiated by the parties as part of the regulation of gaming activities, such as duration, number of gaming devices, hours of operation, and wager limits.

We are pleased that the parties removed the proposed amendment to Section XXXI.B of the Compact which was designed to protect the Potawatomi Bingo and Casino on the Menomonee Valley Land from competition within a 50-mile radius, including competition from other Indian tribes. As we stated in our November 12, 2002, letter to Governor Pataki and President Schindler, refusing to affirmatively approve the proposed Class III gaming compact between the State of New York and the Seneca Nation of Indians, we find a provision excluding other Indian gaming anathema to basic notions of fairness in competition and inconsistent with the goals of IGRA. We are also pleased that the parties engaged in a productive dialogue with us regarding this matter during consideration of the 2003 Amendments by the Department.

#### Conclusion

Our decision to neither approve nor disapprove the 2003 Amendments within 45 days means that the 2003 Amendments are considered to have been approved, "but only to the extent they are consistent with the provisions of [IGRA]." The 2003 Amendments will take effect when notice is published in the FEDERAL REGISTER pursuant to Section 11(d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B).

Sincerely,

  
Acting Assistant Secretary - Indian Affairs

Similar letter sent to: Honorable Jim Doyle  
Governor of Wisconsin  
State Capitol  
Madison, Wisconsin 53707

AMENDMENTS  
TO THE  
FOREST COUNTY POTAWATOMI COMMUNITY OF WISCONSIN  
AND THE  
STATE OF WISCONSIN GAMING COMPACT OF 1992, AS AMENDED,  
DECEMBER 3, 1998

This Agreement is entered into by and between the FOREST COUNTY POTAWATOMI COMMUNITY OF WISCONSIN (the "Tribe") and the STATE OF WISCONSIN (the "State"), (referred to collectively as "the parties").

WHEREAS, in 1992, the Tribe and the State entered into the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Gaming Compact of 1992 (the "1992 Compact"); and

WHEREAS, on December 3, 1998, the parties renewed and executed amendments to the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Gaming Compact of 1992 ("Amendment #1"); and

WHEREAS, Article XXX of the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Gaming Compact of 1992, as amended on December 3, 1998 ("1998 Compact"), provides that it may be amended upon written agreement of both parties; and

WHEREAS, the parties acknowledge that the requirements in paragraph 1 of Amendment #1, Section XXXIII.D. of the 1998 Compact, as created by paragraph 8 of Amendment #1, and Section XXXIV of the 1998 Compact, as created by paragraph 10 of Amendment #1 have been satisfied;

WHEREAS, both parties wish the 1992 Compact to continue and believe that the amendments to the 1998 Compact contained herein serve the best interests of both the State and the Tribe.

The State and the Tribe do hereby agree to amend the Compact as set forth below (the "2003 Amendments") and which, as amended by Amendment #1 and as further amended herein (the "Compact"):

1. Section III of the Compact is amended by adding the following new definitions at the end of that section:
  - I. "Gaming Commission" means the Forest County Potawatomi Gaming Commission.

- J. "CPR" means the CPR Institute for Dispute Resolution, located at 366 Madison Avenue, New York, NY, 10017.
- K. "CPR Panel of Distinguished Neutrals" means the CPR Institute for Dispute Resolution's roster of persons available to mediate or arbitrate a dispute.
- L. "Rules" means the CPR Rules for Non-Administered Arbitration (2000 Rev.).
- M. "Competitive Market Area" means the geographical area outside of the State of Wisconsin, and within 75 miles of the State of Wisconsin border.
- N. "Competitive Facility" means a facility within the Competitive Market Area outside of the State of Wisconsin where lawful gaming is operated, which would be Class III gaming if the same gaming were operated by an Indian tribe under the Act.

2. Section IV.A. of the Compact is amended by deleting "and" after "3. Blackjack", replacing the period(".") after "where bingo is being played" with a semicolon(";"), and adding the following new provisions after Section IV.A.4.:

- 5. Variations on the game of Blackjack, including, but not limited to, Spanish 21 and additional wagers offered in the game of blackjack, including additional wagers, multiple action blackjack, bonus wagers, and progressive blackjack wagers;
- 6. Pari-mutuel wagering on live simulcast horse, harness, and dog racing events;
- 7. Electronic keno; and
- 8. If a Competitive Facility operates casino table games - such as the game of roulette or craps, the game of poker or other non-house banked games, or operates games played at Blackjack style tables, such as Let It Ride, Casino Stud, and Casino War - then the Tribe may operate such games.

Until the Tribe and State complete the procedures established pursuant to Section XXX. B.2, the Tribe may operate the games in paragraphs 5, 6, 7, and 8 under rules of play and internal controls adopted by the Gaming Commission and agreed to by the State, which agreement shall not be unreasonably withheld.

3. Section V of the Compact is amended by adding a new paragraph G to the end as follows:

G. If the State and a tribe in Wisconsin amend a current gaming compact or adopt a new gaming compact establishing regulatory standards for comparable Class III gaming facilities governing the play of games authorized under this Compact that are more favorable terms than those provided in this Compact, upon request by the Tribe, the parties shall negotiate the incorporation of substantially similar provisions into this Compact.

4. Section XV.D.14. of the Compact is deleted.

5. Section XV.H. of the Compact is amended by replacing the semicolon(";") after "June 15, 1992" with a period(".") and by deleting the following:

and provided further that no more than 200 games may be operated and available for play on the Menomonee Valley Land.

6. Section XVI.B. of the Compact is deleted.

7. The first sentence in Section XVI.C.3.j. of the Compact is deleted in its entirety.

8. The first sentence of Section XVI.C.3.k. is deleted in its entirety and replaced with the following:

Except as otherwise provided in this Compact, any winning wagers made in accordance with this paragraph shall be paid at odds of 1 to 1.

9. Paragraphs 3, 4, and 5 of Amendment #1 are deleted.

10. Section XVII.B. of the Compact is amended by replacing the comma (",") after "on behalf of the Tribe" with a period(".") by deleting the following:

but only on such lands within the exterior boundaries of the tribal reservation.

11. Section XXII of the Compact is deleted in its entirety and replaced with the following:

Section XXII. DISPUTE RESOLUTION.

**A. Arbitration.** If either the Tribe or the State believes the other has failed to comply with the requirements set forth in this Compact, or if a dispute arises over the proper interpretation of any provision of the Compact, then either party may serve a written demand on

the other for binding arbitration and if both parties agree, the dispute shall be resolved through binding arbitration at a neutral location. Unless the State and the Tribe agree in writing to resolve the dispute by negotiation pursuant to XXII.B, or by mediation pursuant to XXII.C, or in court pursuant to XXII.D, binding arbitration is the sole method for resolving disputes regarding the compact provisions under §§ V (Conduct of Games; Generally), VII (Gaming Related Contractor; Contractor to Hold State Certificate), VIII (Management Contracts), IX (Criminal and Background Restrictions), X (Records), XI (Conflict of Interests Prohibited), XII (Audits), XIII (Withholding Wisconsin Income Tax), XIV (Public Health and Safety), XV (Electronic Games of Chance), XVI (Blackjack, Regulation and Play of), XVII (Pull-Tabs or Break-Open Tickets), XXV (Effective Date and Duration), XIX (Liability for Damage to Persons and Property), XXX (Amendment and Periodic Enhancement of Compact Provisions), XXXII (Additional Benefits to the Tribe), and XXXIII (Transition). Unless otherwise agreed to by the parties, the arbitration shall be conducted in accordance with the Rules, as modified by the following:

1. **Demand for Arbitration.** Either party may serve on the other a written demand for arbitration of the dispute, in accordance with CPR Rule 3.
2. **Arbitrators.** Unless the parties agree otherwise, at least one of the arbitrators on the tribunal shall be an attorney or retired judge knowledgeable about the Act, federal Indian law, gaming industry regulation, and jurisdiction within Indian country. If the parties do not appoint an arbitrator with those qualifications, the party-appointed arbitrators or the CPR shall do so.
3. **Selection of Arbitrator(s) by the CPR.** If for any of the reasons set forth in Rule 6.1, arbitrators are not appointed in accordance with the Rules, CPR shall fill any vacancies on the tribunal within ten (10) days of a request in accordance with CPR Rule 6.
4. **Cost of Arbitration.** The costs of arbitration shall be borne equally by the parties, with one-half (½) of the expenses charged to the Tribe and one-half (½) of the expenses charged to the State.
5. **Preliminary Conference/Hearing.** The tribunal shall hold an initial pre-hearing conference no later than thirty (30) days following the selection of the members of the tribunal and shall permit discovery and make other applicable decisions in accordance with CPR Rules 9 through 12. Unless the parties agree otherwise, or unless the tribunal determines that compelling circumstances exist which demand otherwise, the arbitration shall be completed within one hundred and eighty (180) days of the initial pre-hearing conference.

## 6. **Arbitration Hearing.**

- a. **Last, Best Offer Format.** The arbitrators shall conduct each arbitration proceeding using the "last, best offer" format, unless any party to an arbitration proceeding opts out of the "last, best offer" arbitration format in the manner set forth in Section XXII.A.6.b.
- (i) No later than forty (40) days before the arbitration hearing (or forty days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), each party shall submit to the other party or parties to the arbitration a last, best offer for those issues that will be decided using the last, best offer format.
  - (ii) No later than twenty (20) days before the arbitration hearing (or twenty (20) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived) and/or no later than ten (10) days after the conclusion of the arbitration hearing (or ten (10) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived), a party or the parties may request permission to submit additional last, best offers. The arbitrators may grant such requests if, in their opinion, such additional last, best offers will promote the resolution of the dispute.
  - (iii) Except as otherwise provided in Section XXII.A.6.b., for each issue to be decided using the last, best offer format, the tribunal shall, for its decision on the issue, adopt one of the last, best offers submitted under Section XXII.A.6.a. and no other remedy (excepting only remedies in aid of the tribunal's decision). If the tribunal expressly determines that a last, best offer submitted by a party with respect to an issue or issues is not consistent with or does not comply with the Act and/or the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject that last, best offer and shall not consider it in rendering its decision. If the tribunal expressly determines that all the last, best offers submitted by the parties with respect to an issue or issues are not consistent with or do not comply with the Act and/or the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction, then the tribunal shall reject all the last, best offers and shall allow both parties an opportunity to resubmit last, best offers. If the tribunal determines that the resubmitted last best offers

should both be rejected, then the tribunal shall decide the related issue or issues as if the parties had elected to have the issue or those issues decided without using the "last, best offer" format. In addition, the tribunal shall have no authority to award money damages against either party, regardless of whether a last, best offer proposes an award of damages.

- b. Opting Out of Last, Best Offer Format.** Unless the parties agree otherwise, a party desiring to opt out of the "last, best offer" arbitration format shall serve a written notice of its election no later than fifty (50) days before the arbitration hearing (or fifty (50) days before the date the dispute is to be submitted to the tribunal for decision if oral hearings have been waived). The notice shall (i) identify with specificity the issue or issues that the arbitrators will decide without using the "last, best offer" arbitration format or (ii) state that the arbitrators will not use the "last, best offer" arbitration format.
7. **Decision of the Tribunal.** If the tribunal determines that a last, best offer is not consistent with or does not comply with the Act and/or the Compact, the decision of the tribunal shall set forth detailed findings of fact and conclusions of law and a statement regarding the reasons for the tribunal's determination. The written decision of the tribunal shall be made promptly and, unless otherwise agreed to by the parties, no later than forty (40) days from the date of the closing of the hearing or, if oral hearings have been waived, no later than forty (40) days from the date the dispute is submitted to the tribunal for decision. The tribunal may take additional time to render its decision if the tribunal determines that compelling circumstances require additional time. The tribunal may issue awards in accordance with CPR Rule 13. The decision of the majority of the arbitrators shall be final, binding, and unappealable, except for a challenge to a decision on the grounds set forth in 9 U.S.C. § 10.
8. **Governing Law/Jurisdiction.** Title 9 of the United States Code (the United States Arbitration Act) and the Rules shall govern the interpretation and enforcement of Section XXII.A. The tribunal shall resolve the disputes submitted for arbitration in accordance with, and every decision of the tribunal must comply and be consistent with, the Act and the Compact, as they may be amended and as they are interpreted by courts of competent jurisdiction. The tribunal may resolve a dispute that includes an obligation under the compact by the State or the Tribe to pay money, but the tribunal shall have no authority to award money damages against either party.
9. **Judicial Confirmation.** Judgment upon any award rendered by the

tribunal may be entered in any court having jurisdiction.

- B. **Notice/Negotiation.** If either the Tribe or the State believes the other has failed to comply with the requirements set forth in this Compact, or if a dispute arises over the proper interpretation of any provision of the Compact, then either party may serve a written notice on the other identifying the specific provision or provisions of the Compact in dispute and specifying in detail the factual bases for any alleged non-compliance and/or the interpretation of the provision of the Compact proposed by the party providing notice. If both parties agree to participate in negotiations to resolve the dispute, within ten (10) days following delivery of the written notice of dispute, the Executive Director of the Gaming Commission, the Director of the Department, and representatives designated by the Governor of Wisconsin and the Chairman of the Tribe shall meet in an effort to voluntarily resolve the compliance or interpretation dispute through negotiation. Negotiations pursuant to this Section XXII.B. shall not be a pre-requisite to pursuing mediation or arbitration under Section XXII.C. or Section XXII.A, respectively.
- C. **Mediation.** If either the Tribe or the State believes the other has failed to comply with the requirements set forth in this Compact, or if a dispute arises over the proper interpretation of any provision of the Compact, the parties can agree in writing to settle a dispute in an amicable manner by non-binding mediation administered by the CPR Institute for Dispute Resolution (unless otherwise agreed to by the parties), and the procedures set forth below.
- a. **Selection of Mediator.** If the parties agree upon a mediator, that person shall serve as the mediator. If the parties are unable to agree on a mediator within ten (10) days of a request for mediation, then the CPR (I) shall select an attorney from the CPR Panel of Distinguished Neutrals to be the mediator or (ii) if requested by the parties, shall select the mediator from a list of potential mediators approved by the parties.
  - b. **Costs of Mediation.** The costs of mediation shall be borne equally by the parties, with one-half( $\frac{1}{2}$ ) of the expenses charged to the Tribe and one-half( $\frac{1}{2}$ ) of the expenses charged to the State.
  - c. **Arbitration.** Mediation shall not be a pre-requisite to pursuing arbitration under Section XXII.A.
- D. **Disputes Resolved by Courts of Competent Jurisdiction.** Unless the parties agree otherwise, if a dispute arises regarding compliance with or the proper interpretation of the requirements of the Compact under §§ IV (Authorized Class III Gaming), XXII (Dispute Resolution), XXIII (Sovereign Immunity), XXXI

(Payment to the State), and XXN (Reimbursement of State Costs), the dispute shall be resolved by a court of competent jurisdiction. For this purpose, in an action brought by the Tribe against the State, one court of competent jurisdiction is the State of Wisconsin Circuit Court. In an action brought by the State against the Tribe, one court of competent jurisdiction is the United States District Court for the Western District of Wisconsin. Nothing in this Section XXII.D. is intended to prevent either party from seeking relief in some other court of competent jurisdiction.

E. Other Relief.

1. The Tribe or the State may seek in a court of competent jurisdiction (I) prior to the selection of arbitrators pursuant to XXII.A.2 and XXII.A.3 and pending the outcome of an arbitration proceeding under Section XXII.A., provisional or ancillary remedies, including preliminary injunctive relief, or (ii) permanent injunctive relief to enforce an arbitration award issued pursuant to XXII.A.
2. A violation of any provision in this Compact shall constitute Class ID gaming in violation of a compact subject to the jurisdiction of the United States District Court for the Western District of Wisconsin pursuant to § 11 (d)(7)(A)(ii) of the Act. A willful failure to abide by or implement a final, non-appealable arbitration award issued pursuant to Section XXII.A. and the Rules shall constitute a violation of the Compact.

12. Section XXIII of the Compact is amended as follows:

**XXIII. SOVEREIGN IMMUNITY; COMPACT ENFORCEMENT.**

- A. This Compact does not alter any waiver of either State or Tribal immunity which may have been effectuated by Congress in passing the Act. This Compact in no way limits the application of 25 U.S.C. sec. 2710(d)(7)(A) [1991] which the parties believe provides an enforcement mechanism for violation of this Compact.
- B. In addition to other enforcement mechanisms, both the State and the Tribe agree that suit to enforce any provision of this Compact may be brought in federal court by either the State or the Tribe against any official or employee of either the State or the Tribe. Relief in said suit shall be limited to prospective declaratory or injunctive relief. An allegation that an official or employee violated this Compact shall be deemed an allegation that said official or employee is acting in excess of his/her authority for purposes of jurisdiction only. The State and the Tribe will bear their own costs of litigation for any action to enforce this Compact, including but not limited to, attorneys' fees.

- C. The Tribe and the State expressly waive any and all sovereign immunity with respect to any claim brought by the State or the Tribe to enforce any provision of this Compact. This waiver includes suits to collect money due to the State pursuant to the terms of the Compact; to obtain an order to specifically enforce the terms of any provision of the Compact; or to obtain a declaratory judgment and/or enjoin any act or conduct in violation of the Compact. This waiver also includes a suit to enforce the obligations in Section XXV. and a suit by the Tribe to restrain actions by State officials that are in excess of their authority under the Compact. Nothing contained herein shall be construed to waive the immunity of the Tribe except for suits arising under the terms of this Compact. This waiver does not extend to other claims brought to enforce other obligations that do not arise under the Compact or to claims brought by parties other than the State and the Tribe.
- D. These enforcement provisions are an essential part of this Compact, and if they are found unenforceable against the Tribe or the State, or should the courts otherwise determine they lack jurisdiction to enforce the Compact, the parties will immediately resume negotiations to create a new enforcement mechanism.

13. Section XXV of the Compact is deleted in its entirety and replaced with the following:

#### **XXV. EFFECTIVE DATE AND DURATION**

- A. **Effective date.** The Compact, as amended on December 3, 1998, shall remain in effect. The 2003 Amendments are binding on the Tribe and the State upon signature by the Chairman of the Tribe and by the Governor of the State. The 2003 Amendments are effective upon the date that the Secretary of the Interior publishes in the Federal Register a notice that the 2003 Amendments are approved.
- B. **Termination.** This Compact shall continue in effect until terminated by mutual agreement of the parties, or by a duly adopted ordinance or resolution of the Tribe revoking the authority of the Tribe to conduct Class III gaming upon its lands, as provided for in Section 11(d)(2)(D) of the Act.
- C. **Enforceability.**
  - 1. The State and the Tribe voluntarily enter into this Compact pursuant to Section 11(d)(3)(B) of the Act.
  - 2. By signing this Compact and/or amendments to this Compact, the Governor of Wisconsin and the Chairman of the Tribe represent they are

authorized to execute the Compact and amendments on behalf of the State and the Tribe, respectively.

14. Section XXX of the Compact, entitled "AMENDMENT," is amended and replaced with the following:

**XXX. AMENDMENT AND PERIODIC ENHANCEMENT OF COMPACT PROVISIONS.**

- A. This Compact shall not be modified, amended or otherwise altered without the prior written agreement of both the State and the Tribe.
- B. To continue to ensure the fair and honest operation of gaming operated by the Tribe, no later than ninety (90) days after the execution of the 2003 Amendments, the State and the Tribe may each propose amendments to the Compact to enhance the following provisions of this Compact:
- I. Remedies and oversight procedures to ensure that the operation of class III gaming will be conducted in accordance with the terms of the Compact, including: procedures for the State to object to Minimum Internal Control Standards used at the Tribe's Class III gaming facilities with disputes regarding objections resolved by binding arbitration; procedures for reporting of information in electronic format regarding the operation of electronic games of chance to the Data Collection System maintained by the State; procedures regarding access by the State to the Tribe's class III gaming facilities and records; and procedures regarding Compact violations which reflect the relative severity of the violation;
  2. Procedures for review and establishment of criteria for rules of play and internal controls for newly introduced games;
  3. Procedures for consultation and cooperation on the budgeting of funds made available to the State in Section XXXI of the Compact;
  4. Modifications to Section XXII of the Compact, including subsection A & D, thereof; and
  5. The calculation and timing of payments under Section XXXI of the Compact.
- C. Within fifteen (15) days of receipt by the Tribe or the State of proposed amendments described in Section XXX.B. of the Compact, the Tribe and the State shall enter into good faith negotiations regarding the proposed amendments. If after sixty (60) days of good faith negotiations the parties have failed to agree upon an amendment to this Compact regarding any of the proposed amendments, the State and the Tribe shall participate in good faith in a mediation conducted in accordance with the provisions of Section XXII.C. in an effort to resolve their

differences. Thereafter, either the State or the Tribe may submit any dispute, regarding proposed amendments that are unresolved, to last best offer arbitration under Section XXII.A. of the Compact.

D. Periodic Amendment Process.

1. Within the thirty (30) days preceding each fifth (5th) annual anniversary of July 1, 2004, the State or the Tribe may propose amendments to the Compact to enhance the regulation of gaming under the Compact. The Tribe and the State shall enter into good faith negotiations regarding the proposed amendments. Disputes over the obligation to negotiate in good faith under this provision may be resolved by binding arbitration under Section XXII.A. of the Compact.
2. Within the thirty (30) days preceding each twenty-fifth (25th) annual anniversary of July 1, 2004, the State, by the Governor as directed by an enactment of a session law by the Wisconsin Legislature, or the Tribe may propose amendments to any provision of the Compact. The Tribe and the State shall enter into good faith negotiations regarding the proposed amendments. Disputes over the obligation to negotiate in good faith under this provision may be resolved by binding arbitration under Section XXII.A. of the Compact.

15. Section XXXI.B of the Compact entitled "PAYMENT TO THE STATE", as created by paragraph 6 of Amendment #1, is amended as follows:

B. Exclusivity.

1. In the event a change in State law permits the operation of electronic games of chance, or other Class III games that are not permitted by State law on January 1, 2003, by any person or entity (including the State or a political subdivision of the State) other than a federally recognized Tribe under the provisions of the Act; or
2. If the Wisconsin Legislature approves, on first consideration, an amendment to the Wisconsin Constitution that authorizes any entity, other than a federally recognized Tribe under the provisions of the Act, to engage in gaming, except as was authorized by the 1993 Amendment to the Wisconsin Constitution; or
3. If the State enters into or authorizes an agreement permitting Class III gaming under the Act within 50 miles of the Potawatomi Bingo

and Casino on the Menomonee Valley Land.

then the parties agree to the following: (i) the Tribe shall thereafter be relieved of its obligation to pay the amounts required in this Section XXXI, and (ii) the State shall refund to the Tribe the amount paid to the State by the Tribe under Section XXXI.G.1.b. of the Compact. If the Wisconsin Legislature or the voters of the State of Wisconsin fail to approve the amendment described in Section XXXI.B.2. above, the Tribe shall repay to the State the amount that was refunded to the Tribe.

16. Section XXXI of the Compact entitled "PAYMENT TO THE STATE", as created by paragraph 6 of Amendment #1, is amended by adding new paragraphs F, G, and H as follows:

- F. If the State and another tribe in Wisconsin, that was obligated under a compact to pay three million dollars (\$3,000,000) or more to the State during 2002, amend a gaming compact or adopt a new gaming compact that reduces the payment that the other tribe is required to pay to an amount less than the amount paid to the State in 2002, then the State and the Tribe shall promptly negotiate the incorporation of substantially similar provisions into this Compact.
- G. If consideration for the agreement in Section XXXI.B. of the Compact, which affords the Tribe substantial exclusivity, the Tribe shall:
  - 1. Pay one-time payments, on or before the due date, by electronic transfer as follows:
    - a. \$6.375 million on June 30, 2003 and \$6.375 million on June 30, 2004 to the State of Wisconsin as provided in Amendments #1; and
    - b. \$34.125 million on June 30, 2004 and \$43.625 million on June 30, 2005 to State of Wisconsin for the benefit of the University of Wisconsin, in lieu of and to supplant funds that would otherwise have been provided to the University of Wisconsin from the general fund of the State of Wisconsin.
  - 2. Commencing July 1, 2005, the Tribe shall pay to the State of Wisconsin an amount equal to a percentage of the Tribe's Menomonee Valley Class III net win as follows: 7% per annum for the period July 1, 2005 to June 30, 2006; 8% per annum for the period July 1, 2006 to June 30, 2008; 7% per annum for the period July 1, 2008 to June 30, 2009; 6% per annum for the period July 1, 2009 to June 30, 2011; and 6.5% per annum thereafter.

3. The amount due under paragraph 2, for each annual period, shall be reduced by the amount that the Tribe's payments to the City and the County of Milwaukee exceed combined amount that exceeds \$10 million dollars during that annual period pursuant to the Forest County Potawatomi Community and the City and County of Milwaukee futergovernmental Cooperation Agreement executed on March 3, 1999.
4. Payments of the amount due under paragraph 2 shall be made as follows. The payment for the period July 1, 2005 to November 31, 2005 shall be paid to the State on December 31, 2005. Thereafter, the payment for the period December 1 to May 31 shall be paid to the State on June 30. The payment for the period June 1 to November 30 shall be paid to the State on December 31.
5. Commencing on July 1, 2005, the Tribe shall make payments equal to a percentage of the Tribe's annual Class III net win from outside of the Menomonee Valley Land, based on the following table:

Annual Class III Net Win	Payment Amount
\$0 - \$20,000,000	3% per annum of Class III Net Win
\$20,000,001 - \$50,000,000	5% per annum of Class III Net Win

The first Three Hundred and Seventy Five Thousand Dollars (\$375,000.00) of the annual amount required by this paragraph shall be paid by the Tribe to the County of Forest, or such other local government in Forest County as the Potawatomi and the Governor shall direct. The balance of the annual amount required by this paragraph shall be paid to the State. fu the event the Tribe's Class III net win subject to this paragraph exceeds Forty Million Dollars in a twelve month period, the State and the Tribe shall negotiate in good faith to reach an agreement on the payment percentages that would be applicable to any Class ill net win above Fifty Million Dollars (\$50,000,000).

- H. The State and the Tribe agree to cooperate and to consult in the preparation of the budget of the State of Wisconsin to the extent it proposes the appropriation of the funds made available to the State of Wisconsin under this Section XXXI of the Compact. The State and the Tribe shall cooperate as is appropriate for governments that share their revenue to fund programs or activities to achieve goals of mutual interest.
17. Section XXXIII of the Compact, as created by paragraph 8 of Amendment #1, is deleted in its entirety and replaced with the following:

**Section XXXIII. TRANSITION.**

- A. In the event that Section XXV (Effective Date and Duration) of the 2003 Amendments is disapproved, in whole or in part, by the Secretary of the Interior or are found unenforceable or invalid by a court of competent jurisdiction, the State shall immediately refund any payments made by the Tribe to the State under Section XXXI.G.1.b., the Tribe shall not be required to make any further payments under Section XXXI.G.2., and the parties shall negotiate in good faith to reach agreement on substitute provisions for Sections XXV and XXXI.
- B. In the event that any portion of the 2003 Amendments other than Section XXV is disapproved, in whole or in part, by the Secretary of the Interior or are found by a court of competent jurisdiction to be unenforceable or invalid, either party may serve on the other a demand for renegotiation of such portion of the amendments as are impacted. The parties shall negotiate in good faith to reach agreement on substitute provisions. If a mutually satisfactory solution is not achieved within sixty (60) days of the Secretary's action or the court's decision, the parties shall resolve the dispute pursuant to Section XXII.A. of the Compact, or if that provision is invalid, Section XXII of the 1992 Compact.
- C. If the 2003 Amendments, or Section XXXI (Payment to the State) of the 2003 Amendments, are not approved or are found invalid or unenforceable the parties acknowledge their intent that the terms of the Compact, as amended on December 3, 1998, including Section XXV, thereof, shall remain in effect and shall govern the conduct of Class III gaming on Tribal lands for its full term. In addition the parties agree that the 1998 Compact shall be deemed to have automatically renewed for an additional term of five years commencing on June 4, 2004 pursuant to Section XXV.B. of the 1998 Compact.

18. Section XXXV of the Compact is created as follows:

**Section XXXV. SEVERABILITY.**

Each provision of this Compact shall stand separate and independent of every other provision. If a court of competent jurisdiction finds any provision of this Compact to be invalid or unenforceable, it is the intent of the parties that the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, The Forest County Potawatomi Community of Wisconsin and the State of Wisconsin have hereunto set their hands and seals.

FOREST COUNTY POTAWATOMI  
COMMUNITY OF WISCONSIN

By: Harold Frank  
Harold Frank  
Chairman

Date Signed: 2-18-03

STATE OF WISCONSIN

By: Jim Doyle  
Jim Doyle  
Governor

Date Signed: 2-19-03