

ESCROW AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 26th day of March, 2009, by and between the Oneida Tribe of Indians of Wisconsin (the "Tribe"), the Village of Hobart (the "Village"), (each a "party" and, collectively, the "parties"); Oneida Golf Enterprise Corporation ("OGEC"); and Associated Trust Company, NA (the "Escrow Agent").

WHEREAS, the Village has enacted a liquor license ordinance pursuant to which it issues licenses for the sale of fermented malt beverages and intoxicating liquors as authorized by Chapter 125 of the Wisconsin Statutes; and

WHEREAS, the Tribe purchased Thornberry Creek Golf Course (the "Golf Course"), which is located within the Village, and pursuant to tribal law formed the Oneida Golf Enterprise Corporation ("OGEC"), a tribally chartered corporation wholly owned by the Tribe, to operate the Golf Course; and

WHEREAS, OGEC filed an application (the "Application") with the Village for a Retail Class B fermented malt beverage license and a Retail Class B intoxicating liquor license (each a "Liquor License" and collectively, the "Liquor Licenses") for the sale of alcoholic beverages at the Golf Course; and

WHEREAS, the Village Board approved OGEC's Application, but conditioned issuance of the Liquor Licenses on the Tribe's deposit of funds in an amount equal to the SWMUO Charges (as defined below) in an escrow account; and

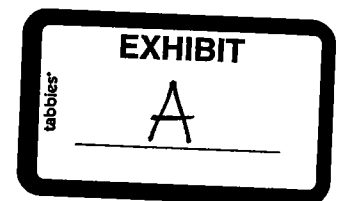
WHEREAS, the Village has enacted a Storm Water Management Utility Ordinance, §4.408 of the Village's ordinances (the "SWMUO"); and

WHEREAS, the United States of America holds title to land within the Village in trust for the benefit of the Tribe (the "Trust Property"); and

WHEREAS, pursuant to the SWMUO, the Village has imposed charges on the Trust Property in the amount of \$106,816.95, inclusive of late fees and penalties, (the "SWMUO Charges"), neither the United States of America nor the Tribe has paid the SWMUO Charges, and the Village contends that the Tribe and/or the United States of America are obligated to pay the SWMUO Charges; and

WHEREAS, the Village claims it possesses authority to impose the SWMUO Charges, and as a separate matter that it may condition issuance of the Liquor Licenses on payment of the SWMUO Charges, and the Tribe disputes whether the Village possesses such authority; and

WHEREAS, the Village has agreed to issue the Liquor Licenses to OGEC if the Tribe agrees to the escrow of funds in accordance with the terms set forth below;



NOW THEREFORE, in consideration of the mutual covenants and agreements made herein and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party and the Escrow Agent, the parties and the Escrow Agent covenant and agree as follows:

ARTICLE 1 - ESTABLISHMENT OF ESCROW ACCOUNT

Section 1.1 Escrow Amount. The Tribe shall transfer to the Escrow Agent the amount of \$106,816.95, which shall constitute the Escrow Amount and shall be held in an Escrow Account and administered under this Agreement. Immediately upon establishment of the Escrow Account and deposit of the monies, the Escrow Agent shall notify the Village that the Account has been established and the monies have been deposited (the "Notice of Deposit").

Section 1.2 Escrow of Escrow Amount. The Escrow Amount will be held in escrow by the Escrow Agent, as collateral for obligations, if any, of the Tribe or the United States of America to pay the SWMUO Charges, until the Escrow Amount is to be released pursuant to the terms of this Agreement. The Escrow Agent agrees to accept delivery of the Escrow Amount and to hold the Escrow Amount in escrow subject to the terms and conditions of this Agreement. During the term of this Agreement, the Escrow Amount shall be invested in an interest bearing account as set forth in Schedule 1 attached hereto. The Parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to the investment of the Escrow Amount. All interest shall accrue to the benefit of the Tribe, but shall be considered part of the Escrow Amount and be subject to disbursement in accordance with the terms of this Agreement.

Section 1.3 Additional Payments to Escrow Account. Until the Escrow Amount is disbursed in accordance with this Agreement, the Tribe shall on or before January 31 of each year deposit additional monies in the escrow account in an amount equal to the SWMUO Charges imposed by the Village on the Trust Property for the previous calendar year pursuant to the SWMUO, and all such monies shall be added to and be part of the Escrow Amount.

Section 1.4 Protection of Escrow Fund. The Escrow Agent shall hold and safeguard the Escrow Amount in accordance with the terms of this Agreement, and not as the property of the Tribe or the Village, and shall disburse the Escrow Amount only in accordance with the terms of this Agreement.

ARTICLE 2 - LIQUOR LICENSES

Section 2.1 Issuance by Village. Within three (3) business days of receipt of the Notice of Deposit, the Village Clerk shall issue the Liquor Licenses to OGEK for the premises described in the Application. In the event the Village Clerk fails to issue the Liquor Licenses within three (3) business days of receipt of the Notice of Deposit, this Agreement shall terminate and the Escrow Agent shall disburse the Escrow Amount to the Tribe. As long as the Tribe deposits monies in

the Escrow Account in accordance with Section 1.3 above, the Village will not condition the renewal of the Liquor Licenses on payment of the SWMUO Charges or any future SWMUO Charges on the Trust Property, and the Village will not seek to revoke or suspend a Liquor License on the grounds that the SWMUO Charges or any future SWMUO Charges on the Trust Property have not been paid, unless there is a Decision (as defined below) in favor of the Village with respect to the question of whether the Village has authority to condition issuance of the Liquor Licenses to OGEC on the payment of the SWMUO charges or the question whether the Tribe or the United States of America owes the SWMUO Charges.

ARTICLE 3 - CLAIMS UPON ESCROW AMOUNT

Section 3.1 Triggering Events. The following shall be the events that would give rise to a claim by the Village or the Tribe upon all or part of the Escrow Amount:

- a. Failure of the Village Clerk to issue the Liquor Licenses within three (3) business days of receipt of the Notice of Deposit, in which event the Escrow Amount shall be delivered to the Tribe;
- b. A Decision of a court of competent jurisdiction determining whether the Village possesses authority to impose the SWMUO Charges, in which event the Escrow Amount shall be delivered to the Tribe or the Village in accordance with said Decision;
- c. A Decision of a court of competent jurisdiction determining that the Village may lawfully condition the issuance of liquor licenses to OGEC on the payment of SWMUO charges, regardless of whether or not they are legally owed by any person or entity, in which event the Tribe shall be entitled to delivery of the Escrow Amount; provided, however, that if the Tribe elects to receive the Escrow Amount or if the Tribe does not, within three (3) days of the issuance of a decision by the court, give Notice of its consent to the delivery of the Escrow Amount to the Village, the OGEC shall be deemed to have simultaneously surrendered the Liquor Licenses, and shall immediately discontinue the sale of any alcoholic beverages and thereafter must re-apply for the Liquor Licenses. The Village may in its discretion grant or deny the OGEC's application and in the event of denial of the new application, the Tribe or OGEC may appeal or challenge the denial. Pending the new application and any possible appeal, neither the Tribe nor OGEC will be entitled to the Liquor Licenses and may not seek any injunctive relief. In the event the Tribe does not elect to receive the Escrow Amount and consents to the delivery of the Escrow Amount to the Village, the Village will not attempt to revoke or suspend the Liquor Licenses on the grounds that the SWMUO charges have not been paid.
- d. Approval and execution by the Tribe and the Village of a written agreement terminating this Agreement and directing the delivery of the Escrow Amount.

Section 3.2 "Decision" Defined. For purposes of Section 3.1, the term "Decision" shall mean a judgment or order which is final and therefore may be appealed, but which has not been appealed within the time permitted by law.

Section 3.3 Filing of Action. In the event the Village and the Tribe do not reach an agreement under Section 3.1(d) within ninety (90) days following the execution of this Agreement, either the Village or the Tribe may file an action for declaratory and/or injunctive relief in the United States District Court for the Eastern District of Wisconsin (the "District Court") seeking a Decision. In accordance with the provisions of Article 5 below, the Village and the Tribe consent to the jurisdiction of the District Court.

Section 3.4 Notice of Claim. Promptly after a default under Section 3.1(a) or agreement under Section 3.1 (d), or after a Decision contemplated under Sections 3.1(b) or (c) is rendered, the party seeking the release of all or part of the Escrow Amount shall give the other party and the Escrow Agent written notice thereof and the grounds therefor (a "Notice of Claim").

Section 3.5 Distribution. Upon receipt by the Escrow Agent of a Notice of Claim, the Escrow Agent shall, subject to the provisions of Article 4, deliver the Escrow Amount, or part thereof, as provided in the Notice of Claim. The delivery shall be effectuated by certified check or wire transfer. For greater certainty, the Escrow Agent shall act in accordance with the delivery instructions set out in each Notice of Claim, subject to the provisions of Article 4.

ARTICLE 4 - OBJECTIONS

Upon delivery of a Notice of Claim by a party (the claiming party) to the other party and the Escrow Agent, and for a period of fifteen (15) calendar days after such delivery, the Escrow Agent shall make no distribution of the Escrow Amount, or any part thereof, unless the Escrow Agent shall have received written authorization from the other party to make such distribution. After the expiration of such fifteen (15) calendar day period, the Escrow Agent shall make the distribution as provided in the Notice of Claim, unless the other party has in writing objected to the Notice of Claim and such written objection shall have been delivered to the Escrow Agent and to the claiming party prior to the expiration of such fifteen (15) calendar days.

ARTICLE 5 - LIMITED WAIVER OF IMMUNITY

Section 5.1 Federal Court. Each party hereby waives sovereign immunity and/or governmental immunity and consents to suit in the District Court for the following purposes:

- a. Claims by a party for declaratory and/or injunctive relief and the distribution of the Escrow Amount with respect to i) the Village's contention that it possesses authority to impose the SWMUO Charges; ii) the Village's contention that it may lawfully condition the issuance of the Liquor Licenses to OGEC on the payment of the SWMUO Charges.

- b. Claims by a party for enforcement of all other terms of this Agreement.
- c. Appeals of decisions and orders of the District Court with respect to a claim contemplated under Sections 5.1(a) and (b).

Section 5.2 State Court. Each party hereby waives sovereign immunity and/or governmental immunity and consents to suit in the Circuit Court for Brown County, Wisconsin, (the "Circuit Court") but only in the event that such claim is first brought before the District Court and the District Court determines that it does not possess or will not accept jurisdiction over the claim for the following purposes:

- a. Claims by a party for declaratory and/or injunctive relief and the distribution of the Escrow Amount with respect to i) the Village's contention that it possesses authority to impose the SWMUO Charges; ii) the Village's contention that it may lawfully condition the issuance of the Liquor Licenses to OGEC on the payment of the SWMUO Charges.
- b. Claims by a party for enforcement of all other terms of this Agreement.
- c. Appeals of decisions and orders of the Circuit Court with respect to a claim contemplated under Sections 5.2(a) and (b).

Section 5.3 Exhaustion of Remedies. The Tribe waives any requirement of the exhaustion of tribal remedies, and the Village waives any requirement of the exhaustion of remedies provided for in village ordinances or state law, including any requirement of the filing of a notice of claim under the Wisconsin Statutes. To the extent a notice of claim may nonetheless be deemed necessary, the Village agrees that this Agreement constitutes sufficient notice of claim for purposes of the Wisconsin Statutes.

Section 5.4 Escrow Agent Not to be Named as Party. The Tribe and the Village agree to refrain from naming the Escrow Agent as a party to any suit contemplated under this Article.

Section 5.5 Limitations and Condition Precedent. Except as expressly provided in Sections 5.1 and 5.2, nothing in this Agreement is intended as or constitutes a waiver of the sovereign immunity or the governmental immunity of either party. In addition, the Tribe's waiver of sovereign immunity provided for in Sections 5.1 and 5.2 shall only be effective upon issuance of the Liquor Licenses by the Village Clerk as contemplated in Article 2 above.

ARTICLE 6 - ESCROW AGENT

Section 6.1 Limitation of Liability.

- a. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it except to the extent that a final adjudication of a court of competent jurisdiction

determines the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to the Tribe or the Village. The Tribe and the Village agree, jointly and severally, to indemnify, defend and save harmless the Escrow Agent, its affiliates and their respective successors, assigns, managers, attorneys, accountants, experts, officers, directors, employees and agents from and against all losses, charges, penalties, judgments, settlements, proceedings, litigation, investigations, claims, demands, actions, suits, liabilities or other proceedings by whomsoever made, prosecuted or brought and from all losses, costs, damages and expenses (including without limitation, the legal and advisory expenses and fees of outside counsel and experts and their staffs) in any manner based upon, occasioned by or attributable to any act of the Escrow Agent in the execution of its duties hereunder. It is understood and agreed that this indemnification shall survive the termination of this Agreement or resignation or removal of the Escrow Agent hereunder. The Tribe and the Village hereby agree to jointly and severally indemnify the Escrow Agent from and against all reasonable costs, liabilities and expenses incurred by it or to which it becomes subject as a result of performing its obligations in accordance with any written direction provided by the Tribe and/or the Village pursuant to this Agreement. The Escrow Agent shall have no duties and responsibilities except as expressly provided in this Agreement.

- b. The Escrow Agent acts hereunder as a depository only and may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request.
- c. Except as expressly provided in this Section, nothing in this Escrow Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent, the Tribe and the Village any legal or equitable right, remedy, interest or claim under or in respect to this Agreement or the Escrow Amount.

Section 6.2 Remuneration and Expenses. The Tribe and the Village agree jointly and severally to (i) pay the Escrow Agent for the services to be rendered hereunder, which unless otherwise agreed in writing shall be as described in Schedule 1 attached hereto, and (ii) pay or reimburse the Escrow Agent upon request for all expenses, disbursements and advances, including, without limitation reasonable attorney's fees and expenses, incurred or made by it in connection with the performance of this Agreement.

Section 6.3 Resignation and Replacement.

- a. The Escrow Agent may resign and be discharged from all further duties and liabilities hereunder after giving not less than thirty (30) calendar days' notice in writing to the

Tribe and the Village. The Tribe and the Village may remove the Escrow Agent and appoint a replacement Escrow Agent upon ten (10) calendar days' notice to the Escrow Agent. In the event the Escrow Agent resigns, is removed, or is otherwise incapable of acting, the Tribe and the Village shall appoint in writing a successor Escrow Agent. The Escrow Agent's sole responsibility after such ten (10) day notice period expires shall be to hold the Escrow Amount (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of a final order or judgment of a court of competent jurisdiction, at which time of delivery Escrow Agent's obligations hereunder shall cease and terminate.

- b. Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.
- c. On any new appointment, and upon payment to the Escrow Agent vacating office of any amounts owing to it hereunder, the Escrow Agent shall transfer to the new escrow agent all the Escrow Fund and the new escrow agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Escrow Agent without any further assurance, conveyance, act or deed.

Section 6.4 Advice. The Escrow Agent may consult with counsel, accountants and other skilled persons to be selected and retained by it and employ such assistance as in its judgment, acting and relying reasonably, may be necessary for the proper discharge of its duties and the determination of its rights hereunder and may act and rely upon the opinion, information or advice of such counsel or any other independent expert or advisor retained by it. Except as provided in Section 6.1, the Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such counsel, accountants or other skilled persons and may act on and rely as to the truth of the statements and the accuracy of the opinions expressed therein upon statutory declarations, opinions, reports, certificates, notices, statements, directions, instructions, requests, waivers, consents, receipts or other evidence or documents furnished (each, a "Document") to the Escrow Agent including, without limitation, by the Tribe and/or the Village, without further authorization or independent verification being necessary, not only as to the due execution and validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein which it believes to be genuine. The Escrow Agent shall not be responsible for any loss resulting from any action or inaction taken in reliance upon such opinion, information, advice or Document.

Section 6.5 Disagreement. In the event of any disagreement arising regarding the terms of this Agreement, the Escrow Agent shall be entitled, at its option, to refuse to comply with any or all demands whatsoever until the dispute is settled either by agreement in writing between the various parties by a court of competent jurisdiction evidenced by a final non-appealable order.

The Tribe and the Village agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, incidental, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 6.6 Books and Records. Escrow Agent shall maintain accurate books, records and accounts of the transactions effected or controlled by the Escrow Agent hereunder and the receipt, investment, reinvestment and distribution of the Escrow Amount, and shall provide to the Tribe and the Village records and statements upon request. The Escrow Agent shall have no duties or responsibilities except as expressly provided in this Agreement. Notwithstanding the above, the Escrow Agent shall provide a monthly statement of the Escrow Funds to the Village and the Tribe.

Section 6.7 Compliance with Court Orders. In the event the Escrow Amount, or any part thereof, shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Amount, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 6.8 Acceptance of Obligations. The Escrow Agent hereby accepts the covenants and obligations of this Agreement and agrees to perform the same upon the terms and conditions herein set forth and to hold and exercise the rights, privileges and benefits conferred upon it hereby for and on behalf of the persons having an interest in the Escrow Amount.

Section 6.9 Patriot Act Disclosure/Taxpayer Identification Numbers/Tax Reporting.

- a. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the Tribe and the Village acknowledge that Section 326 of the USA PATRIOT Act and the Escrow Agent's identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the Tribe's and the Village's identity including without limitation name, address and organizational documents ("identifying information"). The Tribe and the Village agree to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of

opening an account with or using any service provided by the Escrow Agent.

- b. The Tribe and the Village have provided the Escrow Agent with their respective fully executed Internal Revenue Service ("IRS") Form W-8, or W-9 and/or other required documentation. The Tribe and the Village each represent that its correct TIN assigned by the Internal Revenue Service ("IRS") or any other taxing authority, is set forth in the delivered forms.

ARTICLE 7 - GENERAL

Section 7.1 Governing Law. It is the intention of the parties that the laws of the State of Wisconsin shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties under this Agreement.

Section 7.2 Notices. Any notice provided for or permitted under this Agreement will be deemed to have been given by a party when:

- a. delivered personally to the designated representatives of the other party and the Escrow Agent,
- b. sent by overnight commercial courier, with written verification of receipt, to the designated representatives of the other party and the Escrow Agent, at the addresses set forth below, or
- c. mailed postage pre-paid by certified or registered mail, return receipt requested, to the designated representatives of the other party and the Escrow Agent, at the addresses set forth below.

Designated representatives of the Village:

Village of Hobart
Attn: Clerk/Treasurer
2990 South Pine Tree Road
Hobart, WI 54115

With a copy to:

Davis & Kuelthau, S.C.
Attn: William S. Woodward
318 S. Washington St., Suite 300
Green Bay, WI 54301
Fax: (920)431-2262

Designated representatives of the Tribe:

Richard G. Hill, Chairman
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

with a copy to:

James R. Bittorf
Rebecca M. Webster
Oneida Law Office
P.O. Box 109
Oneida, WI 54155
Fax: (920) 869-4065

Designated representative of the Escrow Agent:

Associated Trust Company, NA
Attn: Molly Carlson
200 N. Adams Street
Green Bay, WI 54301
Fax: (920) 433-3191

Notwithstanding the foregoing, in the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by an officer of the Escrow Agent or any employee of the Escrow Agent who reports directly to any such officer at the above-referenced office. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

A party may by notice given in accordance with this Section designate additional or different representatives for the receipt of notices.

Section 7.3 Binding upon Successors and Assigns. Subject to, and unless otherwise provided in this Agreement, each and all of the covenants, terms, provisions and agreements contained herein shall be binding upon and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties.

Section 7.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories.

All signatures of the parties to this Agreement may be transmitted by facsimile, and such facsimile will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.

Section 7.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, expressed or implied, written or oral, between the parties with respect to the subject matter hereof. The expressed terms hereof control and supersede any course of performance or usage of the trade inconsistent of any of the terms hereof.

Section 7.6 Waivers, Amendment and Assignment. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing approved by the Escrow Agent, the Tribe and the Village, and executed by the authorized representatives of the Escrow Agent, the Tribe and the Village; provided, however, that if the Escrow Agent does not agree to an amendment agreed to by both the Tribe and the Village, the Tribe and the Village shall appoint a successor Escrow Agent. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by the Escrow Agent, the Tribe or the Village, except as provided in Section 7.3, without the prior consent of the Escrow Agent and the parties.


Section 7.7 Reasonable Efforts. Each of the parties agrees to use all reasonable efforts to take, or cause to be taken, all action in order to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. No party to this Escrow Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

Section 7.8 Matters Not Addressed. The previous owner of the Golf Course filed a petition for relief under Chapter 11 of the United States Bankruptcy Code, and during the pendency of the bankruptcy proceedings the previous owner failed to pay personal property taxes (the "Personal Property Taxes") with respect to personal property associated with the Golf Course. This Agreement does not address the Personal Property Taxes and does not preclude the Village from pursuing remedies it believes it possesses with respect to the Personal Property Taxes.

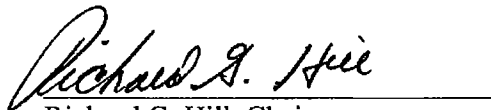
Section 7.9 Description of Disputes. This Agreement is intended to describe in general terms disputes existing between the Village and the Tribe with respect to the SWMUO Charges and the issuance of Liquor Licenses to OGEC. This Agreement does not signify or constitute either party's concurrence in any particular legal theory or factual determination.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

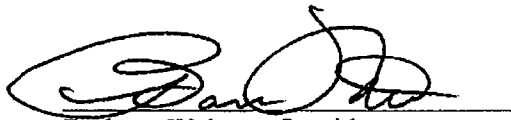
VILLAGE OF HOBART


Richard Heidel, President


ONEIDA TRIBE OF INDIANS OF WISCONSIN


Richard G. Hill, Chairman

ONEIDA GOLF ENTERPRISE CORPORATION


Barbara Webster, President

ASSOCIATED TRUST COMPANY, NA


Molly Carlson, Vice President

Schedule 1

Amounts received will be invested in to the Goldman Sachs Prime Obligations Money Market Fund (ticker FBAXX)

A \$1500 annual fee will be invoiced for the Escrow Agent's fees. There is a \$750 minimum fee and if the account is distributed prior to the first year the fees will be prorated after the \$750 minimum is surpassed.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

Oneida Tribe of Indians of Wisconsin,
Plaintiff,

v.

Case File No.

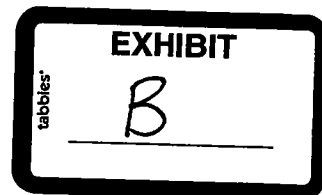
Village of Hobart, Wisconsin,
Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Oneida Tribe of Indians of Wisconsin (the “Tribe”), by and through its undersigned counsel, states and alleges as follows:

NATURE OF THE ACTION

1. The Tribe brings this action for declaratory and injunctive relief under 28 U.S.C. §2201 and Fed. R. Civ. Proc. 65 against the Village of Hobart, Wisconsin (“Village” or “Hobart”) for a declaration of the parties’ legal rights with regard to the status of lands held in trust for the Tribe by the United States and located within the Village (the “trust lands”); the United States holds title to and the Tribe is the beneficial owner of these trust lands. Specifically, the Tribe seeks a declaration that the trust lands are not subject to the “fee” imposed by the Village Stormwater Management Utility, Village of Hobart Code of Ordinances, ch. 4.5, and an injunction against attempts by the Village to impose and collect such charges against the Tribe’s trust lands.



JURISDICTION

2. The court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1362.

The Tribe maintains a government-to-government relationship with the United States and has a governing body duly recognized by the Secretary of the Interior. 74 Fed. Reg. No. 153, at 40220, August 11, 2009. The Tribe asserts claims arising under the Constitution, laws and treaties of the United States, including but not limited to Art. I, §8, cl. 3, Art. II, §2, cl. 2, and Art. VI of the United States Constitution; the Treaty with the Oneidas, February 3, 1838, 7 Stat. 566; the Indian Reorganization Act of 1934, 25 U.S.C. §461 *et seq.*; and the federal common law.

VENUE

3. Venue is proper in this district under 28 U.S.C. §1391(b) inasmuch as the Tribe's trust lands and the Village of Hobart are located within the district and the events giving rise to the claims made by the Tribe occurred within the district.

PARTIES

4. Plaintiff Tribe is a successor in interest to the Oneida Nation recognized by the United States in the Treaty of Fort Stanwix, Oct. 22, 1784, 7 Stat. 15, the Treaty of Fort Harmar, Jan. 9, 1789, 7 Stat. 33, and the Treaty of Canandaigua, Nov. 11, 1794, 7 Stat. 44. The Tribe has continuously since 1794 received or been entitled to receive annuity payments under the Treaty of Canandaigua. The Tribe is organized pursuant to a constitution adopted under the Indian Reorganization Act of 1934, 25 U.S.C. §476, and approved by the Secretary of the Interior on December 21, 1936. The Tribe's principal government offices are located at N7210 Seminary Road, Oneida, Wisconsin 54155.

5. Defendant Village of Hobart is an incorporated municipality in Brown County,

State of Wisconsin. Its principal offices are located at 2990 South Pine Tree Road, Oneida, Wisconsin 54155.

ALLEGATIONS COMMON TO ALL CLAIMS

6. On February 3, 1838, the United States executed a treaty with the First Christian and Orchard Parties of the Oneidas to set aside a tract of recently ceded Menominee territory for the Oneidas. 7 Stat. 566. Under Article 2 of the treaty, the reserved land was a tract “to be held as other Indian lands are held...” containing approximately 65,400 acres (“Oneida Reservation”). *Id.* The First Christian and Orchard Parties are now organized as the Oneida Tribe of Indians of Wisconsin pursuant to the Indian Reorganization Act.

7. On June 18, 1934, Congress enacted the Indian Reorganization Act (the “IRA”), which, among other things, authorizes the Secretary of the Interior to take lands into trust for tribes. 48 Stat. 984, codified as amended at 25 U.S.C. §461, *et seq.* As authorized by the IRA and in accordance with governing regulations, the Tribe has from time to time since 1934 applied for certain lands to be placed into trust by the United States for the benefit of Tribe. 25 C.F.R. Part 151.

8. The United States has continuously since 1838 held parcels of land in trust for the Tribe, and the Secretary has from time to time since 1934 acquired parcels of land in trust for the Tribe under the IRA, located within the boundaries of the Village. As of this date, approximately 1420 acres located within the Village are held in trust by the United States for the Tribe. These trust lands and the immunity of these trust lands from the Village’s Stormwater Management Utility “fees” are the subject of this litigation.

9. In accordance with its Stormwater Utility Management Ordinance (the

“Ordinance”), the Village has since July 2007 imposed a “fee” upon all property located within the Village for the alleged purpose of managing stormwater run-off. *Village of Hobart Code of Ordinances*, §§4.501 Findings, 4.508 Billing and Penalties. The Ordinance creates a Storm Water Management Utility to assess and impose these “fees” on all real property located in the Village, including a base charge and an Equivalent Runoff Unit Charge. *Id.*, §4.505(4) Rates and Charges.

10. The charges imposed by the Ordinance are not fees for services rendered by the Village. Rather, the charges “apply to each and every lot or parcel within the Village.” *Id.*, §4.505(1). The charges are the responsibility of every property owner in the Village and unpaid charges under the Ordinance “shall be a lien upon the property served.” *Id.*, §4.508(3) Billing and Penalties. The Ordinance further provides that, “The Village shall collect delinquent charges under Wis. Stat. §§ 66.0821(4) and 66.0809(3).” *Id.*

11. Wis. Stat. 66.0809(3) authorizes the imposition of penalties for failure to pay the charges and provides that “arrears and penalty will be levied as a tax against the lot or parcel of real estate...” The statute further authorizes the use of the same proceedings “in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes...” Wis. Stat. §66.0809(3).

12. Beginning in July 2007, the Village purported to impose the charges levied under the Ordinance on the Tribe’s trust land and fee land in the amount of \$70,462.80. By letter dated January 31, 2008, and signed by Chairman Danforth, the Tribe advised the Village that it considered the charges imposed on its trust and fee land to be invalid under federal law and declined to pay the same in the amount of \$70,462.80. Letter attached as Exhibit A.

13. In December 2008, the Village once again purported to impose the charges under

the Ordinance on the Tribe's trust and fee land. By letter dated January 14, 2009, and signed by Chairman Hill, the Tribe paid under protest the charges as against its fee land in the amount of \$37,748.59, and the Tribe declined again to pay the charges under the Ordinance as to the trust land. Letter attached as Exhibit B.

14. On March 25, 2009, the Tribe and the Village executed an Escrow Agreement; the Oneida Golf Enterprise Corporation ("OEGC"), a tribally chartered corporation wholly owned by the Tribe and charged with the management of the Tribe's Thornberry Creek Golf Course trust property, also signed the Escrow Agreement. The purpose of the Escrow Agreement was to obtain the approval by the Village of liquor license applications for OEGC for the Golf Course property, which approval was conditioned by the Village on the payment by the Tribe into escrow of the disputed, outstanding charges under the Ordinance with respect to the Tribe's trust land located within the Village.

15. The Escrow Agreement required the Tribe to deposit the disputed charges under the Ordinance in the amount of \$106,816.95 into escrow, upon which payment the Village approved the Tribe's pending liquor license applications. The Escrow Agreement further provided for a ninety (90) day period during which time the parties may attempt a negotiated resolution of the disputed charges under the Ordinance. Finally, the Escrow Agreement provided that, in the event no agreement was reached at the end of the ninety (90) day period, each party waived its sovereign and/or governmental immunity for the limited purpose of contesting the Village's authority to impose its charges under the Ordinance on the Tribe's trust land. Both parties consented to suit in federal district court regarding the dispute. Escrow Agreement attached as Exhibit C.

16. Following the execution of the Escrow Agreement, representatives of the Tribe

and the Village did meet for the purpose of addressing the disputes between the Tribe and the Village with respect to the Village's claims of authority and jurisdiction over the Tribe's trust lands. No agreement has been reached.

17. On March 27, 2009, the Tribe received by certified mail a letter dated March 24, 2009, from the Midwest Regional Office, BIA, regarding the imposition of the charges under the Ordinance on the Tribe's trust land. The letter advised the Tribe and the Village that the charges constituted a tax that may not be imposed on land held in trust by the United States. Regional Director Virden requested the Village to immediately delete the Tribe's trust land from the tax certificate and terminate further collection action. Letter attached as Exhibit D.

18. On December 15, 2009, the Tribe received the 2009 annual tax bills for its fee and trust land. The bills include amounts levied by the Village for the charges under the Ordinance for the Tribe's trust land in the aggregate amount of \$42,156.00, notwithstanding direction to the contrary from the BIA.

19. The Tribe has promulgated ordinances that comprehensively regulate water quality on the Oneida Reservation, including stormwater run-off on its trust land. These ordinances include Chapter 69 of the Oneida Code of Laws, the Zoning and Shoreland Protection Law, adopted in 1981 to prevent surface water run-off into creeks and wetlands; Chapter 46 of the Oneida Code of Laws, the On-Site Waste Disposal Ordinance, adopted in 1988 to regulate private sewage systems; Chapter 47 of the Oneida Code of Laws, the Sanitation Ordinance, adopted in 1990 to regulate water and sanitary utilities; Chapter 43 of the Oneida Code of Laws, the Well Abandonment Law, adopted in 1994 to require the abandonment or upgrade of unused, unsafe, or noncomplying wells; Chapter 48 of the Oneida Code of Laws, the Water Resources Ordinance, adopted in 1996 to regulate present and potential sources of water pollution; and

Chapter 41 of the Oneida Code of Laws, the Non-Metallic Mining Ordinance, adopted in 2007 to regulate reclamation projects for the purpose of meeting water quality standards for surface waters and wetlands.

20. The Tribe has an Environmental, Health & Safety Division (the “Division”) which is tasked with implementation and enforcement of the Tribe’s environmental laws and programs. The Division has an annual budget of approximately \$3.7 million. Within the Division, seven staff members are assigned to the Water Resources Team, which is responsible for carrying out the Tribe’s water quality programs. The Tribe expends approximately \$800,000 annually for water quality programs which are directly or indirectly related to mitigating the effects of stormwater run-off. Specific activities include restoring and enhancing meanders to streams and creeks to slow the flow of water, restoring and enhancing wetlands to provide for filtration of stormwater, establishing buffer zones between agricultural fields and waterways, planting cover vegetation to control erosion, investigation of and response to spills, water quality monitoring for both point and non-point sources of pollution, construction site erosion control, and community education regarding best practices to reduce pollution to waterways and improve water quality. In addition to these efforts, the Tribe installs and maintains on-site stormwater treatment facilities on tribal properties, including water infiltration systems and retention ponds.

21. The Tribe has entered into a Direct Implementation Tribal Cooperative Agreement with the United States Environment Protection Agency (the “EPA”) for the control of stormwater runoff from construction sites, and employees of the Tribe have received federal credentials with respect to construction site permitting and investigation under the Clean Water Act and related regulations. In addition, the Tribe has applied for and expects to receive a Municipal Separate Stormwater Sewer Permit from the EPA for the entire Oneida Reservation.

22. The Tribe's trust land is subject to comprehensive federal statutes and regulations regarding the use and management of the land, the leasing and use of resources thereon, and the quality of water sources thereon, including stormwater run-off. These federal statutes include, but are not limited to, the Indian Trade and Intercourse Act, 25 U.S.C. §177, 25 U.S.C. §321 *et seq.* (regarding rights-of-way over Indian land, including trust land), 25 U.S.C. §391 *et seq.* (regarding the lease or sale of tribal lands, including trust land, for any use including timber, mineral and other resource development and protection), the American Indian Agricultural Resources Management Act, 25 U.S.C. §3701 *et seq.* (regarding management and development of tribal agricultural lands, including trust land), and the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and regulations promulgated thereunder.

23. By the terms of the 2009 Escrow Agreement, the Village consents to this action to challenge its authority to impose the charge under the Ordinance on the Tribe's trust land and waives its claims to sovereign and/or governmental immunity. No other action has been filed in this court.

FIRST CLAIM FOR RELIEF

(Claim under the IRA and implementing regulations)

24. The Tribe repeats and incorporates by reference herein the allegations in paragraphs 1 through 23.

25. The IRA, 25 U.S.C. §465, authorizes the Secretary of the Interior to place land into trust to be held by the United States for the benefit of Indian tribes. Such lands "shall be exempt from State and local taxation." *Id.*

26. Regulations promulgated by the Secretary of the Interior prohibit local regulation

and taxation of trust lands. 25 C.F.R. §1.4.

27. The United States holds title to land within the Village in trust for the Tribe. This is the trust land that is the subject of this action.

28. The charges authorized and imposed by the Village under the Stormwater Management Utility Ordinance constitute a tax on the Tribe's trust land and, as such, violate the tax immunity provided for those lands by federal law and regulation.

SECOND CLAIM FOR RELIEF

(Federal pre-emption)

29. The Tribe repeats and incorporates by reference herein the allegations in paragraphs 1 through 23.

30. Under federal common law and rules governing construction of Indian statutes, federal law pre-empts the application of state and local law and regulation to recognized Indian tribes and their property located in Indian country, 18 U.S.C. §1151, when federal regulation is comprehensive.

31. Federal regulation of the Tribe's trust property is comprehensive and pervasive and precludes state and local regulation by virtue of the Supremacy Clause of the United States Constitution. U.S. Const., Art. VI, §2.

32. Whether or not they constitute a tax, the charges that the Village attempts to impose under its Stormwater Management Utility Ordinance on the Tribe's trust land are pre-empted by the pervasive and comprehensive federal regulation of the Tribe's trust land.

THIRD CLAIM FOR RELIEF

(Infringement of tribal self-government)

33. The Tribe repeats and incorporates by reference herein the allegations in paragraphs 1 through 23.

34. The Tribe holds inherent powers of self-government, including the authority to manage and regulate the Oneida Reservation and tribal property, including tribal trust land.

35. In the exercise of its inherent power of self-government, the Tribe has promulgated tribal law to manage the water resources on the Oneida Reservation, including stormwater run-off on trust lands.

36. The Tribe's interests in the regulation of its trust land, including stormwater run-off, far outweigh any interest the Village has in regulating the same land for the same purpose.

37. It is overriding federal policy and law to protect the Tribe's inherent power of self-government. The federal interests in encouraging tribal self-sufficiency and economic development with particular reference to the Tribe's trust lands far outweigh any interest the Village has in regulating the Tribe's trust land.

38. Whether or not it constitutes a tax, the charges that the Village attempts to impose under its Stormwater Management Utility Ordinance on the Tribe's trust land violate the Tribe's inherent powers of self-government.

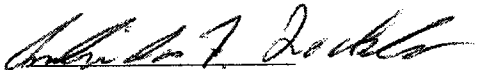
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

1. A declaration that the Tribe's trust land is immune from the Village's Stormwater Management Utility Ordinance and the Village lacks authority to impose charges under the

Ordinance on the Tribe's trust land directly or otherwise;

2. An injunction against the Village's attempts to impose and any effort to collect charges under its Stormwater Management Utility Ordinance on the Tribe's trust land;
3. Attorneys' fees and costs of the action; and
4. All relief available, at law or in equity, to enforce the rights of the Tribe as alleged in this complaint, and such other and further relief, both special and general, at law or in equity, as the Court may deem just and proper.



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Dated: February 19, 2010

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

ONEIDA TRIBE OF INDIANS OF WISCONSIN,

Plaintiff,

Case No. 10-CV-00137-WCG

v.

VILLAGE OF HOBART, WISCONSIN,

Defendant.

**VILLAGE OF HOBART'S ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIM**

Defendant, Village of Hobart (the Village), by and through its undersigned counsel,
answers the complaint of Oneida Tribe of Indians of Wisconsin (the Tribe) as follows:

NATURE OF ACTION

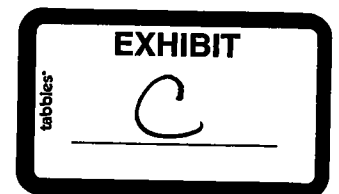
1. In answering paragraph 1, admits the complaint asserts a claim for declaratory and injunctive relief and; lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

JURISDICTION

2. In answering paragraph 2, admits that this court has jurisdiction over this action and; lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

VENUE

3. In answering paragraph 3, admits.



PARTIES

4. In answering paragraph 4, denies that the Tribe is a successor in interest to the Oneida Nation; admits that the Tribe's principal offices are located at N7210 Seminary Road, Oneida, Wisconsin and; lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

5. In answering paragraph 5, admits.

ALLEGATIONS COMMON TO ALL CLAIMS

6. In answering paragraph 6, admits that on February 3, 1838 the United States executed the treaty referenced and affirmatively alleges that the treaty speaks for itself and denies any allegations inconsistent with the express language of that treaty and; lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

7. In answering paragraph 7, admits that on June 18, 1934 Congress enacted the Indian Reorganization Act ("IRA") and affirmatively alleges that the IRA speaks for itself and denies any allegations inconsistent with the express language of the IRA; admits that the Tribe has from time to time applied to have land placed into trust for their benefit but denies this was properly done in accordance with the IRA and governing regulations.

8. In answering paragraph 8, admits that United States holds land in trust for the Tribe; denies the property was properly placed into trust; lacks knowledge or information sufficient to form a belief as to the acreage held in trust; denies that the trust lands are immune from the Village's Stormwater Management Utility fees and; lacks knowledge or information sufficient to form a belief as to the remaining allegations contained therein and therefore denies the same.

9. In answering paragraph 9, admits.

10. In answering paragraph 10, denies that the fees or monetary charges are not for services rendered and states that the Village Ordinances, § 4.505, § 4.508, Wis. Stats. § 66.0821 and Wis. Stats. § 66.0809, speak for themselves and deny any allegations inconsistent with their express language.

11. In answering paragraph 11, admits.

12. In answering paragraph 12, admits.

13. In answering paragraph 13 denies the Tribe paid \$37,748.59 in that Exhibit B references a payment of \$34,427.07 and; admits the remaining allegations.

14. In answering paragraph 14, admits the Tribe and the Village executed an Escrow Agreement; admits OEGC also signed that Agreement; lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same and; affirmatively alleges that the Escrow Agreement speaks for itself and denies any allegations inconsistent with the express language of that document.

15. In answering paragraph 15 affirmatively alleges that the Escrow Agreement speaks for itself and denies any allegations inconsistent with the express language of that document.

16. In answering paragraph 16, admits an Escrow Agreement was executed and that following the execution of the Escrow Agreement, representatives of the Tribe and Village met and; denies that there was ever a meeting that had to do with the Escrow Agreement, or payment of fees or charges relating to the Village's Stormwater Management Utility.

17. In answering paragraph 17, admits that the Village received a copy of the letter attached to the plaintiff's complaint as Exhibit D. A copy of the Village's written response to the

Midwest Regional Office of the Bureau of Indian Affairs is attached hereto as Exhibit A and incorporated herein.

18. In answering paragraph 18, admits.

19. In answering paragraph 19, lacks knowledge and information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

20. In answering paragraph 20, lacks knowledge and information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

21. In answering paragraph 21, lacks knowledge and information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

22. In answering paragraph 22, states that the allegations contained therein are legal conclusions for which no answer is required. To the extent an answer is required, denies knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same.

23. In answering paragraph 23, admits.

FIRST CLAIM FOR RELIEF
(Claim under the IRA and implementing regulations)

24. In answering paragraph 24, the Village reasserts and realleges its answers and allegations contained in paragraphs 1 through 23.

25. In answering paragraph 25, states that the allegations call for legal conclusions for which no answer is required. To the extent an answer is required, denies knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same.

26. In answering paragraph 26, states that the allegations call for legal conclusions for which no answer is necessary. To the extent an answer is required, denies knowledge or

information sufficient to form a belief as to the allegations contained therein and therefore denies the same.

27. In answering paragraph 27, admits that the United States holds some property within the Village in trust for the Tribe; denies that the property was properly placed into trust and; lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

28. In answering paragraph 28, denies.

SECOND CLAIM FOR RELIEF
(Federal pre-emption)

29. In answering paragraph 29, the Village reasserts and realleges its answers and allegations contained in paragraphs 1 through 28.

30. In answering paragraph 30, states that the allegations contained therein call for legal conclusions for which no answer is necessary. To the extent an answer is required, denies knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same.

31. In answering paragraph 31, denies.

32. In answering paragraph 32, denies.

THIRD CLAIM FOR RELIEF
(Infringement of tribal self-government)

33. In answering paragraph 33, the Village reasserts and realleges its answers and allegations contained in paragraphs 1 through 32.

34. In answering paragraph 34, states that the allegations contained therein call for legal conclusions for which no answer is necessary. To the extent an answer is required, denies

knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same.

35. In answering paragraph 35, lacks knowledge and information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

36. In answering paragraph 36, denies.

37. In answering paragraph 37, states that the allegations contained therein call for legal conclusions for which no answer is necessary and to the extent an answer is required, denies knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same and; denies that federal interests outweigh the Village's interests.

38. In answering paragraph 38, denies.

AFFIRMATIVE DEFENSES

1. The property at issue is not properly held in trust because the Tribe was not under federal jurisdiction and the land was not within the present boundaries of an Indian reservation when the IRA was enacted. These as well as other issues are the subject of the Village's April 16, 2010 appeal to the Board of Indian Appeals of a Bureau of Indian Affairs decision to accept into trust, the first six parcels of the Tribe's request to place 133 additional parcels into trust.

2. The Village was mandated under applicable laws to implement its Stormwater Runoff and Stormwater Management Utility Ordinances (Stormwater Ordinances) on all property within the Village, including the property the Tribe alleges is properly held in trust.

3. Alternatively, if it is determined that the property is properly held in trust, the fees and charges asserted by the Village relating to its Stormwater Ordinances are not taxes and are owed by the Tribe.

4. The Tribe has failed to name all necessary and indispensable parties.

5. The Secretary of Interior has no authority under any statute to remove lands from state jurisdiction. Once land has ceased to be territorial land by Congressional cession or act and is under state jurisdiction there is no federal authority to nullify state jurisdiction. Therefore, the Village has authority to implement its Stormwater Ordinances and impose related charges and fees on the property at issue.

6. The fees and charges asserted by the Village relating to its Stormwater Ordinances are not preempted by federal law.

7. The fees and charges asserted by the Village related to its Stormwater Ordinances do not violate the Tribe's inherent powers of self-government.

WHEREFORE, the Village of Hobart requests that the Court:

1. Enter judgment against the plaintiff dismissing its claims and in favor of the defendant declaring that the lands the Tribe alleges are properly held in trust are subject to all fees and charges imposed by the Village pursuant to its Stormwater Runoff and Stormwater Management Utility Ordinances.

2. Award the Village all attorney's fees and costs incurred in defending this action.

3. Award all other relief the Court deems appropriate.

COUNTERCLAIM
(Allegations Common to All Counterclaims)

1. The Village of Hobart (the Village) is an incorporated municipality in Brown County, Wisconsin with a principal office at 2990 South Pine Tree Road, Hobart, Wisconsin 54155.

2. The Oneida Tribe of Indians of Wisconsin (the Tribe) purports to be a federally recognized Indian Tribe with principal government offices at N7210 Seminary Road, Oneida, Wisconsin 54155.

3. Pursuant to requirements placed on the Village by the Wisconsin Department of Natural Resources and other governmental entities to manage stormwater runoff, the Village enacted the Stormwater Ordinances, which authorized the Village Board to establish a stormwater management utility and set rates for stormwater management services for the purposes of protecting the health, safety, welfare of the public, Village Assets, and natural resources.

4. Under the Stormwater Ordinances, the Village established stormwater service charges that applied to all parcels within the Village. (Village of Hobart Code of Ordinances § 4.505)

5. The primary purpose of the charges is to cover the expenses of providing services related to stormwater runoff management, including financing, planning, design construction, maintenance, administration, enforcement and operation of the stormwater management facilities.

6. The Village has imposed charges under the Stormwater Ordinances on Tribal land held in fee and land the Tribe alleges is properly held in trust by the United States Government.

7. The Tribe refuses to pay the charges relating to the land it alleges is properly held in trust.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

8. The Village realleges and incorporates by reference paragraphs 1 through 7 of the Counterclaim.

9. The Tribe alleges that the property at issue was placed into trust via the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465.

10. The Tribe was not federally recognized or under federal jurisdiction on June 18, 1934 and is therefore not eligible to use the IRA to obtain trust status for real property it owns.

11. Some or all of the property at issue was not within an existing reservation or within the present boundaries of a reservation at the time the IRA was enacted and the Tribe was therefore not eligible to use the IRA to obtain trust status for real property it owns.

12. The Tribe is subject to the Village's Stormwater Ordinances and is required to pay any fees or charges associated with the Village's Stormwater Ordinances for the real property at issue in this case.

13. In the event it is determined that the property is properly held in trust, the IRA does not remove land from the jurisdiction of the state and the Secretary of the Interior does not have such authority and the property therefore remains subject to the Village's Stormwater Ordinances including the charges relating thereto.

14. Because the charges assessed under the Stormwater Ordinances are fees for services and not taxes, the Tribe is obligated to pay the charges even if it is determined that the property is properly held in trust.

15. Because the Village's interest in complying with the state and federal requirements which resulted in the Village's Stormwater Ordinances outweighs the Tribe's interest in not paying the charges associated therewith, the Tribe is obligated to pay the charges even if it is determined that the property is properly held in trust.

SECOND CAUSE OF ACTION
(Money Judgment)

16. The Village realleges and incorporates by reference paragraphs 1 through 15 of the Counterclaim.

17. The Village was authorized to assess the Tribe for the property at issue, fees and charges under the Village's Stormwater Ordinances.

18. The Village has not received payment from the Tribe for the fees and charges.

19. The Village is entitled to payment from the Tribe for all charges and fees now due and owing under the Stormwater Ordinances.

WHEREFORE, the Village of Hobart requests the following relief:

1. A declaration that the Village may impose on the property the Tribe alleges is trust land, its Stormwater Ordinances and assert all fees and charges associated therewith.

2. Judgment against the Tribe for the amount currently owed under the Stormwater Ordinances.

3. Attorney's fees and costs of this action.

4. All other relief the Court deems appropriate.

Dated this 20th day of April, 2010

Respectfully Submitted,
Attorneys for Defendant, Village of Hobart

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